

# MAIDSTONE BOROUGH COUNCIL



## CONSTITUTION

March 2022



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## **PART A - CORE PROVISIONS**

## **A1. The Council and the Constitution**

### **1. The Council**

- 1.1.** The Maidstone Borough Council is constituted by virtue of Section 2 of the Local Government Act 1972 as consisting of the Chairman and the Councillors, being the Mayor and the Members.
- 1.2.** The Council shall exercise all its powers and duties in accordance with the law and with this Constitution.

### **2. Purpose of this Constitution**

The Council is required by law to have a written Constitution setting out how the Council operates, how decisions are made and the rules and procedures that need to be followed. The arrangements making up this Constitution have the purpose of: -

- 2.1.** Ensuring that the strategies, policies, ethos & direction of the Council are determined by elected Members;
- 2.2.** Facilitating decision-making closest to those elected Members who can be held politically accountable for such decisions by other Members and also by Local Residents (as defined in Part A2, provision 1.1);
- 2.3.** Maintaining political accountability during periods of no overall control by any individual Political Group;
- 2.4.** Providing elected Members with the information, mechanisms & forums needed to represent Local Residents effectively and to hold those responsible for discharging functions to account; and
- 2.5.** Enabling Local Residents opportunities to be heard and to participate directly in the proceedings of the Council, the Committees & the Executive.

### **3. The Structure of this Constitution**

- 3.1.** This Constitution, in all six parts, together with annexes, appendices & schedules, and also with the Glossary of Terms, is the Constitution of the Maidstone Borough Council.
- 3.2.** The six parts cover different areas and have differing levels of status.
  - 3.2.1.** Part A contains the higher-level principles and core provisions of the Constitution.
  - 3.2.2.** Part B contains provisions on responsibilities for discharging the functions of the Council and for making decisions.
  - 3.2.3.** Part C sets out various rules of procedure around how certain proceedings of the Council are regulated and how decisions are

made. This also impinges on how the Council enters into certain transactions. These are intended to be binding on all bodies of the Council.

3.2.4. Parts D & E set out respectively the Codes and Protocols followed by the Council. These are intended to be binding on the Council's Officers and on its decision-making bodies save that the Council may resolve to make a decision notwithstanding the content of these Codes and Protocols.

3.2.5. Part F contains final provisions such as the statutory Scheme of Allowances.

**3.3.** The Parts and provisions of this Constitution should not conflict. Where however provisions in this Part A conflict with any provision in any other Part of this Constitution, the provisions in this Part A shall prevail.

#### **4. Citation**

**4.1.** Within any Chapter, a reference to a numbered Provision, Rule or Clause shall refer to the contents of that Chapter of the Constitution unless specified otherwise. Within an Appendix to a Chapter, references to a numbered Paragraph shall likewise refer to the contents of that Chapter.

**4.2.** The contents of this Part A, and also Parts B, D, E & F are correctly referred to as Provisions (e.g. "Provision 4.2"), save for any appendix whose content is correctly referred to as Paragraphs.

**4.3.** The individual chapters of Part C may be referred to by Chapter number (e.g. "Chapter C1") or by their title (e.g. "Council Procedure Rules"). Within these particular chapters, the contents are correctly referred to as Rules (e.g. "Rule 2" or "Council Procedure Rule 2").

#### **5. Interpretation**

**5.1.** Every Provision in this Constitution, including every Rule, Clause or Paragraph, must be interpreted in the light of its purpose.

**5.2.** The purpose of any such Provision in this Constitution is to be gathered first and foremost from the words used in that Provision.

**5.3.** Where particular words or phrases are defined within the Local Government Acts, they shall have the same meaning for the purposes of this Constitution unless negated by a particular definition within this Constitution or by the context in which the words or phrases are used.

**5.4.** A number of definitions for particular words or phrases are contained in the Glossary of Terms. These are capitalised throughout this Constitution.



**5.5.** Where the words used provide for any ambiguity or for alternate interpretations of a Provision, that Provision shall be construed in accordance with any particular statement of purpose applying to that provision or to that Part or sub-Part of the Constitution. Where there is no such particular statement of purpose, the general purpose of the arrangements that make up this Constitution set out above in Provision 2 of this Chapter shall apply.

**6. Monitoring and Reviewing this Constitution.**

**6.1.** The Democracy & General Purposes Committee shall monitor and review the operation of the Constitution and associated guidance at least once a year to ensure that the aims and principles of the Constitution are given full effect.

**6.2.** A key role for the Monitoring Officer is to regularly review the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended to better achieve the purposes set out in Provision 2.

**7. Changes to the Constitution**

**7.1.** Subject to Provision 7.2 below, changes to the Constitution will only be approved by the Full Council after consideration of the proposal by the Democracy & General Purposes Committee.

**7.2.** The first exception to Provision 7.1 is the power of the Monitoring Officer who has delegated authority to make changes to the Constitution which are necessitated by decisions taken by the Council; which remove inconsistency or ambiguity; which are minor; or to effect changes in the law. The other exceptions apply to the following Council bodies or Officers in respect of particular Chapters or parts thereof: -

<b>Section</b>	<b>Body / Officer</b>	<b>Subject or Scope</b>
Chs. B3 & B5	Leader	Delegations of Executive Functions to Officers and individual portfolio holders
Ch. B5	Chief Executive	Division of delegated matters amongst Officer roles
Ch. B6	Chief Executive	Appointment of new Proper Officers
Ch. C6	Executive	Crime & Disorder Reduction Rules

**8. Suspension & Derogation**

- 8.1.** The Core Provisions contained in this Part A may not be suspended or excepted.
- 8.2.** The Provisions in Part B may not be suspended or excepted.
- 8.3.** The Rules of Procedure in Part C provide for the circumstances in which particular Rules may be suspended. No other suspension or exception shall be permitted.
- 8.4.** The nature of the Codes in Part D and the Protocols in Part E are such that the Council may resolve to make any exception to their terms as the Council may see fit.
- 8.5.** No other suspension, exception or derogation shall be permitted other than in accordance with this Provision 8.

**9. Publicity and Information**

- 9.1.** The Democracy & General Purposes Committee and the Monitoring Officer shall ensure that the *Guide to the Constitution* ("the Guide") is produced and maintained alongside the Constitution itself. The Guide shall serve as the summary and explanation of the Constitution and shall be attached as an Appendix.
- 9.2.** The Council shall ensure that a copy of this Constitution and the Guide are readily available to Local Residents, Members and Officers alike. This shall include maintaining copies on the Council's website.
- 9.3.** This shall include offering all newly elected Members a hard copy of the Guide, as well as providing soft copies of both the Guide and the Constitution and ensuring the same are covered in any induction training.

## **A2. Core Provisions of The Constitution**

### **1. THE RESIDENTS**

#### **1.1. Rights of Local Residents**

“Local Residents” in this Constitution means people who reside, work or own or operate a business in the Borough of Maidstone or who use its services or are affected by its decisions or services, and shall have the following rights in respect of the Council. These are subject to the Rules of Procedure in Part C of this Constitution where they pertain to the proceedings of the Council.

1.1.1. **Voting.** Eligible Local Residents on the electoral roll have the right to vote in elections of the Members, and in local referendums or polls.

1.1.2. **Information.** Local Residents shall have the right to: -

- (a) Attend meetings of the Council, the Committees and the Executive;
- (b) Make such recordings and records of such meetings as they wish;
- (c) Know via the Forward Plan what Key Decisions and Other Material Decisions will be taken by the Executive and when;
- (d) Copies of reports and background papers, and any records of decisions made;
- (e) Inspect the Council’s accounts and make their views known to the External Auditor.

1.1.3. **Participation.** Local Residents shall have the right: -

- (a) At meetings of the Council, the Committees and the Executive,
  - To ask questions and to receive answers,
  - To address the meeting, and
  - To present petitions in accordance with the Petition Scheme;
- (b) Via consultations, that where possible shall include an online option, to give their views;
- (c) To lobby their local Ward Members.

1.1.4. **Complaints.** Local Residents have the right to make complaints and to have these determined objectively by: -

- (a) the Council itself under its Complaints Scheme and arrangements as to Member conduct;
- (b) where applicable, the Local Government and Social Care Ombudsman.

## **1.2. Responsibilities**

If Local Residents disrupt or participate in the disruption of meetings or engage in abusive or threatening behaviour or a course of behaviour amounting to harassment of any Member or Officer, then this will affect the way in which the Council interacts with those Local Residents in the exercise of those rights. In these instances, the Council may take action such as removing individual Local Residents from meetings and/or managing their contact with Officers and/or Members.

## **2. THE MAYOR**

### **2.1. Election of the Mayor**

- 2.1.1. The Mayor shall be elected by the Council annually in accordance with the Council Procedure Rules in Part C of this Constitution, and the Deputy Mayor shall be appointed in accordance with the same.
- 2.1.2. In preparing for the election of the Mayor and the appointment of the Deputy Mayor, the Council shall have regard to the Protocol on Mayor & Deputy Mayor Pre-Selection contained in Part E of this Constitution.

### **2.2. Efficient Role of the Mayor**

The Mayor and, in his or her absence, the Deputy Mayor shall have the following responsibilities: -

- 2.2.1. To preside at meetings of the Council so that its business can be carried out efficiently and with regard to the rights of elected Members and the interests of Local Residents;
- 2.2.2. To ensure that the Council meeting is a forum for the debate of matters of concern to Local Residents and a place at which Members who are not on the Executive are able to hold the Executive to account;
- 2.2.3. To promote public involvement in the Council's proceedings & activities;
- 2.2.4. To uphold & promote the purposes of this Constitution and to be the conscience of the Council.

### **2.3. Dignified Role of the Mayor**

The Mayor and, in his or her absence, the Deputy Mayor shall also: -

- 2.3.1. Be the First Citizen of the Borough of Maidstone and shall take precedence, save for members of the Royal family and the Lord Lieutenant of Kent when present in the Borough;
- 2.3.2. Promote the Council as a whole and act as a focal point for the community;
- 2.3.3. Attend such civic and ceremonial functions as the Council and he/she determine to be appropriate.

### **3. THE MEMBERS**

#### **3.1. Composition & Eligibility**

- 3.1.1. **Composition.** The Council shall comprise of a number of Members, otherwise called councillors, with one or more Members 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 ("Scheme of Elections").
- 3.1.2. **Eligibility.** Only registered voters of the Borough or those living or working or owning land there will be eligible to hold the office of Member of the Council as long as they are not otherwise disqualified

#### **3.2. Election & Terms of Members**

- 3.2.1. The ordinary election of a third (or as near as may be) of all Members will be held on the first Thursday in May in each year until 2023 inclusive, in accordance with the Scheme of Elections.
- 3.2.2. From 2024, whole council elections shall be held on the first Thursday in May of that year and then every four (4) years thereafter.
- 3.2.3. The terms of office of Members will ordinarily be four (4) years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four (4) years later.

#### **3.3. Role of Members**

All Members will: -

- 3.3.1. Collectively be the ultimate policymakers and will carry out a number of strategic & corporate functions;
- 3.3.2. Contribute to the good governance of the Borough;
- 3.3.3. Effectively represent the interests of their Ward and Local Residents;
- 3.3.4. Respond to enquiries & representations, and offer representation & assistance in respect of the Council, to individual Local Residents.

#### **3.4. Rights of Members to Access Information & Meetings**

- 3.4.1. The following principles are subject to further explanation given in the Access to Information Procedure Rules in Part C and to

case law and legislation which deals with members rights to access information.

- 3.4.2. An elected Member is entitled by virtue of his or her office to have access to all documents in the Council's possession where he/she has a need to know the information contained in those documents, and where the Member's interest in having access to a document is not outweighed by any other legal duties which would normally require the document not to be provided to the Member, such as data protection and confidentiality duties.
- 3.4.3. Members also have statutory rights to access documents held by the Council. The Access to Information Procedure Rules sets out how the need to know operates and how decisions will be made on when a member will be entitled to exempt information.
- 3.4.4. Any officer or body with delegated authority to make a decision under this Constitution determining whether a Member has a need to know certain information shall consider that there is likely to be a need to know where: -
  - (a) The Member sits on the relevant Member body considering a matter to which the information relates, or the proper officer has been notified that the member will be sitting on that body as a substitute when it is to consider the information in questions;
  - (b) The information relates directly and materially to a matter which affects the Member's role in representing their Ward; or
  - (c) If a Member has a reasonable based concern for a problem, and it is reasonably necessary for the member to access the information in order that they can properly carry out their duties as a Member, such that they can apply their minds and efforts to shaping decision-making.
  - (d) Where the need to know is not outweighed by any other legal duties which would normally require the document not to be provided to the Member, such as data protection and confidentiality issues.
- 3.4.5. Members are not entitled to all information held by the Council and there is no right to roving commission or to seek to obtain information for purposes other than those directly related to the Council's functions and their role as a Member. As stated above the need to know is also subject to other legal considerations such as any duties of confidentiality owed by the Council and the law on data protection.

### **3.5. Rights in Respect to Proceedings**

To assist Members in their work, their rights in respect of the proceedings of the Council shall include: -

- 3.5.1. The right, together with four (4) others, to requisition an Extraordinary Meeting of the Council;
- 3.5.2. The right to move amendments to any Motion by the Leader concerning the Administration's Programme for the Municipal Year;
- 3.5.3. The right to move a Motion on Notice at a meeting of the Council;
- 3.5.4. The right to ask Questions on Notice at meetings of the Council, the Committees and the Executive;
- 3.5.5. The right to have a subject added to the agenda of a meeting of a Committee;
- 3.5.6. The right to refer the determination of a planning application affecting the Member's Ward to the Planning Committee;
- 3.5.7. The right to refer a breach of planning control to the Planning Committee;
- 3.5.8. The right, together with two (2) others, to refer a serious nuisance or a major service failing directly to the Executive;
- 3.5.9. The right, together with two (2) others, to call-in a decision of the Executive for scrutiny;
- 3.5.10. The right to issue a Member Call for Action;
- 3.5.11. For the purposes of provision 3.5.8;

"Serious nuisance" shall mean conduct or behaviour that causes a significant nuisance or annoyance to, or has a detrimental effect, of a persistent or continuing nature, on, the quality of life of Local Residents;

"major service failure" shall mean a failure in a service which it is a function of the Council to provide, or failure to provide such a service where such failure has a significant impact on Local Residents.

This is a non-exhaustive statement of Member rights, the contents of which are without prejudice to any rights arising under any other Provision within this Constitution or the law.



**3.6. Conduct**

Members will at all times observe the Members Code of Conduct in Part D of this Constitution and the Protocol on Member/Officer Relations set out in Part E of this Constitution.

**3.7. Allowances**

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

## **4. DECISIONS**

### **4.1. Principles of decision making**

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

- 4.1.1. reasonableness i.e. not being manifestly unreasonable;
- 4.1.2. due consultation;
- 4.1.3. the taking of professional advice from Officers;
- 4.1.4. the need to explain the reasons for decisions and the options considered;
- 4.1.5. respect for human rights and procedural fairness;
- 4.1.6. a presumption in favour of openness;
- 4.1.7. clarity of aims and desired outcomes; and
- 4.1.8. the Public Sector Equality Duty.

### **4.2. Rules of Procedure**

Subject to the Provisions of this Chapter, all decisions must comply with the Rules of Procedure in Part C of this Constitution.

### **4.3. Types of decision**

Decision types may be classified in a number of ways

#### **4.3.1. The Member Body Responsible**

- (a) Functions may be reserved for the Full Council as a matter of law or Local Choice. These in turn maybe subdivided into:
  - (i) those the Full Council must retain by law,
  - (ii) those the Full Council chooses to retain, and
  - (iii) those delegated to Committees and/or to Officers.
- (b) Functions not so reserved are the responsibility of the Executive. These may similarly be delegated by the Executive.

#### **4.3.2. Significance**

- (a) Key decisions will be those which :
  - (i) result in the Council incurring expenditure, or making savings, of more than £250,000; or

are significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough. Procedural and Minor Decisions are those decisions pertaining to procedural matters and those decisions of little or no policy significance where expenditure or loss is less than £5,000.

(b) Other Material Decisions are those decisions not otherwise falling into (a) or (b) above.

4.3.3. **The Administration's Programme:** Whether the matter for decision is contained within the Administration's Programme for the Municipal Year or whether it arises in another way.

4.3.4. **The Nature of the Decision:** ranging from general policy to quasi-judicial in particular cases.

#### **4.4. Responsibility for decision making**

The remaining Provisions in this Chapter set out the principles by which particular types of decision or decisions relating to particular areas or functions are the responsibility of which Member body of the Council and/or Officer Role.

Part B of this Constitution gives effect to these Core Provisions by setting out the responsibility for decisions and functions in more detail.

#### **4.5. Decision making in Certain Individual Cases**

Decisions in individual cases that involve the determination or consideration of the civil rights and obligations, or criminal responsibility of any person will follow a proper procedure. Such a procedure shall accord with the requirements of natural justice, procedural fairness and human rights as the context may require.

## **5. THE FULL COUNCIL**

### **5.1. Introduction**

- 5.1.1. Full Council is a formal meeting of the Mayor and Members and may also be referred to as "the Council" where the context allows. Full Council is required by law to take certain important decisions including setting the Council's Budget and Council Tax and approving a number of key plans and strategies, which together form the Policy Framework. Full Council must also by law take decisions on a number of specific matters.
- 5.1.2. Full Council provides a central forum for debate and gives the opportunity for Members and indeed Local Residents to hold those discharging functions to account.

### **5.2. Types of Meeting**

There are three types of Council meeting: -

- 5.2.1. The Annual Meeting
- 5.2.2. Other Ordinary Meetings
- 5.2.3. Extraordinary Meetings

### **5.3. Proceedings at Meetings of the Council**

All meetings of Full Council are subject to the Council Procedure Rules contained in Part C of this Constitution.

### **5.4. Functions of Full Council**

Subject to the detailed specification maintained in Part B of the Constitution, only a meeting of the Council will make decisions in respect of those matters reserved for it by law or by Local Choice that are not in turn delegated.

### **5.5. Meaning of Budget and Policy Framework**

- 5.5.1. The Policy Framework means the following Plans and Strategies:
- (a) Those required by law to be adopted by the Council. These include:
    - (i) Crime and Disorder Reduction Strategy;
    - (ii) Licensing Authority Policy Statement including any Cumulative Impact Policies;

- (iii) Local Development Framework - Plans and alterations which together comprise the Development Plan and Development Plan Documents;
  - (iv) Sustainable Community Strategy;
  - (v) Policies made under the Gambling Act (including any resolution relating to casinos);
- (b) Those which the Council has decided should be adopted by the Council meeting as a matter of Local Choice:
- (i) The Strategic Plan

5.5.2. The Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure (including the Capital Strategy) and the setting of virement limits.

**5.6.** The Budget and Policy Framework will be adopted pursuant to the Budget and Policy Framework Rules at Part C20 of this Constitution. Those rules will govern how any decisions are to be made in accordance with that framework and how any changes may be made to it.

## **6. THE COMMITTEES**

### **6.1. Outline of the Council's Committees**

- 6.1.1. The Council shall establish a number of different committees, of variable standing, to assist in the decision-making of the Council and the discharge of its functions.
- 6.1.2. These are: -
  - (a) Policy Advisory Committees;
  - (b) The Overview & Scrutiny Committee;
  - (c) Regulatory Committees;
  - (d) Committees in respect of governance, standards and general purposes;
  - (e) The Employment Committee.
- 6.1.3. These Committees shall be subject to the requirements for political balance and proportionality laid down in Sections 15-17 & Schedule 1, Local Government and Housing Act 1989.
- 6.1.4. Part B of this Constitution contains further provisions where Committees are responsible for the discharge of the Council's functions.
- 6.1.5. Part C of this Constitution contains Rules of Procedure applying to the Committees.
  - (a) The Committee Procedure Rules shall apply to all Committees.
  - (b) The Access to Information Procedure Rules shall apply to all Committees.

### **6.2. Policy Advisory Committees**

- 6.2.1. There shall be up to four Policy Advisory Committees ("PACs") consisting each of nine (9) Members.
- 6.2.2. The purpose of the PACs shall be: -
  - (a) To involve Members who are not on the Executive in the work of the Executive and to promote collegiate working between the Executive and such Members;
  - (b) As a forum for: -
    - (i) Members to raise issues pertaining to the discharge of the Council's functions;

- (ii) Officers and/or the Executive to inform Members and seek feedback via reports for noting and comment;
    - (iii) Budget and Performance Monitoring.
  - (c) To provide an appraisal and opinion of proposed decisions, reflecting the balance on the Council, before they are made with a view to reducing the need for calling-in of decisions.
- 6.2.3. The portfolios of the PACs shall be assigned by the Proper Officer according to a set formula and method. This shall be specified in Part B of this Constitution.
- 6.2.4. The Executive shall nominate a Member on each PAC to coordinate its activities with the Executive. The PAC shall appoint one of its members to act as Committee Chairman.
- 6.2.5. Each PAC shall elect a member who is not on the Executive to act as its vice-chair, with preference in the election process to be given to Members on the PAC belonging to the non-Administration Political Groups.

### **6.3. The Overview & Scrutiny Committee**

- 6.3.1. There shall be an Overview & Scrutiny Committee of the Council consisting of thirteen (13) Members who are not on the Executive plus up to two (2) non-Members co-opted in accordance with the Rules of Procedure.
- 6.3.2. The purpose of the Overview & Scrutiny Committee shall be: -
- (a) To review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
  - (b) To make reports and/or recommendations to the Full Council and/or the Executive in connection with the discharge of any functions;
  - (c) To consider any matter affecting the Council, the Borough or Local Residents;
  - (d) To act as the Council's Crime & Disorder Scrutiny Committee for the purposes of Section 19, Police and Justice Act 2006; and
  - (e) To exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive.
- 6.3.3. Part B of this Constitution shall set out a more detailed specification of the functions of the Overview & Scrutiny Committee.

- 6.3.4. The Members on the Overview & Scrutiny Committee shall elect one of their number to chair that Committee and another to act as vice-Chair, with preference in the election process to chair that Committee being given to Members from the largest non-Administration Political Group on the Council
- 6.3.5. The role and powers of the Overview & Scrutiny Committee are not affected by whether or not a decision relates to a matter within the Administration's Programme.
- 6.3.6. The Overview & Scrutiny Committee must report annually to the Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

#### **6.4. Regulatory Committees**

- 6.4.1. There shall be a Licensing Committee consisting of thirteen (13) Members.
- 6.4.2. The purpose of the Licensing Committee shall be to exercise the licensing and gambling functions on behalf of the Council including: -
  - (a) the creation and review of the statutory and non-statutory policies;
  - (b) the setting of fees and charges including making recommendations to the Council as required; and
  - (c) via the Licensing sub-Committee, to make decisions about individual licensing matters and appeals where not otherwise delegated to Officers
- 6.4.3. The Members on the Licensing Committee shall elect one of their number to chair that Committee and another to act as vice-Chair.
- 6.4.4. There shall be a Planning Committee consisting of thirteen (13) Members.
- 6.4.5. The functions of the Planning Committee shall be to determine town and country planning and development control matters and associated issues.
- 6.4.6. The Members on the Planning Committee shall elect one of their number to chair that Committee and another to act as vice-Chair.



- 6.4.7. Part B of this Constitution provides for the functions & responsibilities of these Committees.

## **6.5. Governance, Standards & General Purposes**

- 6.5.1. There shall be an Audit, Governance & Standards Committee consisting of nine (9) Members.
- 6.5.2. The purpose of the Audit, Governance & Standards Committee shall include: -
- (a) The promotion and maintenance of high standards of Member and Officer conduct within the Council;
  - (b) Adopting and reviewing the Council's Annual Governance Statement;
  - (c) Independent assurance of the adequacy of the financial and risk management framework and the associated control environment;
  - (d) Independent review of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment; and
  - (e) Overseeing the financial reporting process.
- 6.5.3. There shall be a Democracy & General Purposes Committee consisting of nine (9) Members.
- 6.5.4. The functions of the Democracy & General Purposes Committee shall include: -
- (a) Acting as the guardian of this Constitution, working with the Monitoring Officer to ensure that it is maintained and adhered to;
  - (b) Being responsible for Member training and development
  - (c) Determining matters relating to elections and electoral registration;
  - (d) Other democratic services responsibilities and functions;
- 6.5.5. Part B of this Constitution provides more detail of the role & responsibilities of these Committees.

## **6.6. The Employment Committee**

- 6.6.1. There shall be an Employment Committee consisting of nine (9) Members.

- 6.6.2. The purpose of the Employment Committee shall be to undertake the following functions: -
- (a) To develop and approve the Council's human resources strategies, policies and officer terms and conditions of employment subject to the approval of any budget implications by the Cabinet and/or Council as appropriate.
  - (b) To appoint: -
    - (i) a Chief Officers Appointments Panel to consider appointments at chief officer and head of service level;
    - (ii) a Chief Officers Investigation and Disciplinary Panel to consider any disciplinary allegations against chief officers and head of service level (excluding the Chief Executive, Monitoring Officer and Section 151 Officer);
    - (iii) a Chief Officers Disciplinary Appeals Panel to consider appeals against dismissal by any chief officer or heads of service (excluding the Chief Executive, Monitoring Officer and Section 151 Officer) or disciplinary action short of dismissal by any chief officer or head of service (including the Chief Executive, Monitoring Officer and Section 151 Officer); and
    - (iv) a Statutory Officer's investigation and Disciplinary Panel to consider any disciplinary allegations against the Chief Executive, Monitoring Officer and Section 151 Officer.
  - (c) Dealing with employment and staffing matters unless otherwise delegated.

## **6.7. Miscellaneous**

- 6.7.1. Any sub-Committee of any of the aforementioned Committees shall:
- (a) Be drawn mainly from the membership of the parent Committee;
  - (b) Be subject to the rules on political balance cited above;
  - (c) Hold its meetings in public;
  - (d) Report the minutes of its proceedings to its parent Committee; and
- 6.7.2. Any Working Group of any of the aforementioned Committees shall:

- (a) Be limited in its terms of reference to exploratory work on behalf of its parent Committee;
  - (b) Report the minutes of its proceedings to its parent Committee;
  - (c) Be drawn primarily though not necessarily exclusively from the membership of its parent Committee, and shall aim for inclusivity though not subject to the requirements of political balance cited above.
- 6.7.3. For any other council body that is neither constituted by this Constitution nor by a Political Group, involving two (2) or more Members that endures for six (6) months or more, the Proper Officer shall ensure that: -
- (a) The existence of the body is documented;
  - (b) The body is assigned to a Parent body, being a Member body that is formally constituted under this Constitution;
  - (c) It reports the minutes of its proceedings to its Parent body.
- 6.7.4. For the avoidance of doubt, the Executive is not to be treated as a Committee of the Council for the purposes of this Provision 6.

## **7. THE EXECUTIVE**

### **7.1. Role and Form**

- 7.1.1. The Executive shall be responsible for all of the functions of the Council that are not designated by law or this Constitution (where permitted by law) to other Member bodies.
- 7.1.2. The Executive shall consist of the Leader together with at least two (2), but no more than nine (9), Members appointed to the Executive by the Leader.
- 7.1.3. Members appointed to the Executive shall be referred to as "Members on the Executive". Individual Members on the Executive assigned portfolios may be referred to as "Lead Member for [portfolio name]".

### **7.2. The Leader**

- 7.2.1. The Leader will be a Member elected to the position of Leader by the Council.
- 7.2.2. The Leader will hold office until:
  - (a) He/she resigns from office; or
  - (b) He/she is no longer a Member; or
  - (c) The earlier of: -
    - (i) The fourth Annual Meeting following his or her election, or
    - (ii) The Annual Meeting following Whole Council Electionssave that the Leader may be removed from Office at an earlier date by resolution of the Council.

### **7.3. The Deputy Leader**

- 7.3.1. The Leader may designate one of the Members on the Executive as the Deputy Leader.
- 7.3.2. The Deputy Leader may exercise all the functions of the Leader where the position is vacant or where the Leader is absent or is otherwise unable to act.
- 7.3.3. The Leader may, if he/she thinks fit, remove the Deputy Leader from office at any time.

### **7.4. Other Members on the Executive**

Other Members on the Executive shall hold office until:

- 7.4.1. they resign from office; or
- 7.4.2. they are no longer Members; or
- 7.4.3. they are removed from office by the Leader acting in accordance with the provisions for removal in the Rules of Procedure in Part C.

## **7.5. The Administration's Programme**

- 7.5.1. By the latter of sixty (60) days from his or her election or the Annual Meeting, the Leader and/or the Executive shall submit to Full Council for consideration & approval the Administration's Programme for the remainder of the Municipal Year.
- 7.5.2. Where Full Council does not approve the Administration's Programme within the timescales set out in Provision 7.5.1 above, with or without amendments agreed by Full Council, the Executive and the Officers shall use their best endeavours to secure that such a programme, acceptable to the majority of Members, is so approved. In this event, a proposal for the Administration's Programme shall be put to each meeting of Full Council until one is approved.
- 7.5.3. Where the Administration's Programme is approved by Full Council but either sets out proposed changes to the Budget & Policy Framework, or otherwise conflicts with the Budget & Policy Framework, this shall not alter the prevailing Budget & Policy framework unless Council resolves explicitly that the Budget and Policy Framework should be so amended; if no such resolution is made the Executive and the Officers shall undertake the work necessary to bring detailed implementation proposals for such changes to a future meeting of Full Council for approval.
- 7.5.4. Where the Administration's Programme is approved by Full Council and contains particular pledges within the scope of Executive Functions that are not in conflict with the existing Budget & Policy Framework, each of those particular pledges shall then form priority items for consideration by the Executive and not require prior consideration by a Policy Advisory Committee. This shall not prevent the Leader or a Member on the Executive choosing to place the matter before a Policy Advisory Committee nevertheless.

## **7.6. Delegations, Decisions and Proceedings of the Executive**

- 7.6.1. The Leader shall maintain a Scheme in Part B of this Constitution setting out which individual Members on the Executive, Committees of the Executive, Officers or Joint Arrangements are responsible for the exercise of particular Executive Functions.
- 7.6.2. No Key Decision or Other Material Decision in respect of a matter shall be placed before the Executive or any individual Member on the Executive, no report prepared for them by Officers nor any decision made by the Executive or any individual Member on the Executive on such a matter unless: -
- (a) A report on the matter has previously been considered by a meeting of a Policy Advisory Committee;
  - (b) The matter is a reference to the Executive from another Committee, including the Overview & Scrutiny Committee, whose terms of reference allowed the matter to be considered;
  - (c) The matter was the subject of a particular pledge contained within the Administration's Programme approved by the Full Council and does not conflict with the Budget & Policy Framework;
  - (d) The matter was the subject of a Motion before Full Council referred directly to the Executive for consideration;
  - (e) The matter was the subject of a Member Agenda Item Request that has been considered by any Committee and that Committee has resolved to request an Officer's report on the matter be submitted directly to the Executive;
  - (f) The matter concerns a serious nuisance or major service failure and at least three (3) Members have submitted a request it be considered by the Executive;
  - (g) The matter is urgent and the Urgency Arrangements set out in the Executive Procedure Rules in Part C of the Constitution have been engaged.
- 7.6.3. Key Decisions and Other Material Decisions which are made by Members or Member bodies shall be made in public, either at a meeting of the Executive or at another meeting convened for the purpose of making the decision. This will not prevent all or part of any item being considered in private in accordance with the Access to Information Procedure Rules if confidential or exempt information is likely to be discussed but the decision will always be made in public.

- 7.6.4. Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part C of this Constitution.

## **8. THE OFFICERS**

### **8.1. Roles to be Appointed**

- 8.1.1. The Council shall engage such staff as it considers necessary to carry out its functions.
- 8.1.2. The following shall be designated as Chief Officers: -
  - (a) The Chief Executive (and Head of Paid Service);
  - (b) The Director of Finance & Business Improvement;
  - (c) The Director of Regeneration & Place;
- 8.1.3. The following Statutory Officers must be appointed and/or designated: -
  - (a) Head of Paid Service;
  - (b) Chief Finance Officer; and
  - (c) The Monitoring Officer
- 8.1.4. The role of Head of Paid Service may be undertaken by the same person, if a qualified accountant, who undertakes the role of Chief Finance Officer. The role of Monitoring Officer however must not be undertaken by a person also undertaking either the role of Head of Paid Service or the role of Chief Finance Officer.

### **8.2. Appointments**

- 8.2.1. The recruitment, selection and dismissal of Officers will comply with the Officer Employment Rules set out in Part C of this Constitution.

### **8.3. Delegations to Officers**

- 8.3.1. Officers have the delegated powers as set out in Part B, 5 of the Constitution.

### **8.4. Principles of Officer Support of Member Bodies**

In employing and organising Officer support for the different roles within the Council, the Council will follow a number of key principles with a view to delivering efficient and effective services:-

- 8.4.1. all Officers are employed by, and are accountable to, the Council as a whole, and the Council will both expect and respect the political neutrality of Officers in the discharge of their functions;



- 8.4.2. adequate support from Officers is provided for the discharge of all the functions of the Council and specifically the roles of the Council, the Committees, the Executive and individual Members representing their communities;
  - 8.4.3. day to day managerial and operational decisions are the responsibility of the Council's Chief Executive, Directors, Heads of Service, and other Officers;
  - 8.4.4. the Council seeks to avoid creating potential conflicts of interests for Officers arising from the separation of the Executive and Scrutiny roles; and
  - 8.4.5. all Officers have access to appropriate training and development to help them support the various functions of the Council and its Members effectively.
- 8.5.** The roles, responsibilities and rights of Officers and Members are set out in the Protocol on Officer/Member Relations in Part E of this Constitution.

**8.6. Scope of Senior Officer Roles**

- 8.6.1. The Council employs officers to give advice, implement decisions and manage the day-to-day planning and delivery of the wide range of functions undertaken for the Council on a non-party political basis. Some officers have a specific duty to ensure that the Council acts within the law uses its resources wisely. A protocol in Part Four governs the relationships between Officers and Members.
- 8.6.2. The Council's most senior officers are set out below with details of their responsibilities:
- 8.6.3. Chief Executive (Head of Paid Service)
  - (a) Being Chief Advisor to the Council;
  - (b) Having overall corporate management and operational responsibility;
  - (c) Managing the Council's electoral and democratic processes, including record keeping;
  - (d) Providing professional advice to all parties in the decision-making process;
  - (e) Representing the Council on partnerships and external bodies;
  - (f) Communications
- 8.6.4. Director of Regeneration and Place

- (a) Environment and Public Realm
  - (b) Regeneration and Economic Development
  - (c) Housing and Community Services
  - (d) Planning and Development
- 8.6.5. Director of Finance and Business Improvement
- (a) Business Improvement
  - (b) Finance
  - (c) Policy, Communications and Governance
- 8.6.6. Director of Mid-Kent Services
- The Director of Mid-Kent Services has line management responsibilities for:
- (a) Head of Audit Partnership
  - (b) Head of Human Resources Shared Service
  - (c) Head of Legal Partnership
  - (d) Head of Revenues and Benefits Shared Service
- 8.6.7. In addition, the Council is required to appoint three statutory officers whose roles are set out below:
- 8.6.8. Post and Designation Role and Responsibilities
- Head of Paid Service, Chief Executive (may not be the Monitoring Officer but may hold the post of the Chief Finance Officer if a qualified accountant).
- (a) Responsible for effective corporate management.
  - (b) May report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grades of officers required and the organisation of officers.
- 8.6.9. Monitoring Officer
- (a) Head of Legal Partnership
  - (b) The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.
  - (c) After consulting with the Head of Paid Service, the Monitoring Officer will report to the full Council if he/she considers that any proposal, decision or omission would give rise to unlawfulness

or maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (d) The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of guidance and support to the Audit, Governance and Standards Committee.
- (e) The Monitoring Officer shall receive complaints relating to alleged breaches of the Part D Members' Code of Conduct and shall process complaints in accordance with the adopted procedure for dealing with complaints, as set out in Part D of this Constitution.
- (f) The Monitoring Officer is the Proper Officer for the purposes of receiving declarations of Members' interests, maintaining the Register of Interests and determining applications for Dispensations to allow Members to vote where they have a conflict of interest pursuant to Section 33(1) of the Localism Act 2011.

#### 8.6.10. Chief Finance Officer

- (a) Director of Finance and Business Improvement
- (b) The Chief Finance Officer has responsibility for the proper administration of the Council's financial affairs
- (c) After consulting with the Head of Paid Service and Monitoring Officer, the Chief Finance Officer will report to the full Council and the Council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.
- (d) The Chief Finance Officer will provide advice on financial impropriety, financial probity and the budget to all Members and will support and advise Members and officers in their respective roles, as well as provide financial information to the public.

8.6.11. The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out in Part Six of this Constitution.

8.6.12. The Council is required to 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 performance. The Council approves an annual Pay Policy Statement before the start of the financial year and this includes details of the remuneration of senior officers. It can be viewed on the Council's website and the Protocol on Member/Officer Relations set out in Part E of this Constitution.

### **8.7. Conduct**

Officers will comply with the Officer's Code of Conduct in Part D of this Constitution and the Protocol on Officer/Member Relations set out in Part E of this Constitution.

### **8.8. Structure**

The Head of Paid Service shall determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out in an Annex to this Constitution.

## **9. JOINT ARRANGEMENTS**

### **9.1. Outline of Arrangements**

The Council and the Executive may: -

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

### **9.2. Joint Arrangements**

- 9.2.1. The Council may establish Joint Arrangements with one or more local authorities and/or their Executives to exercise functions which are not Executive 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.
- 9.2.2. The Executive may establish Joint Arrangements with one or more local authorities to exercise functions which are Executive Functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- 9.2.3. Except as set out below, the Executive may only appoint Members on the Executive to a joint committee and those Members need not reflect the political composition of the Council as a whole.
- 9.2.4. The Executive may appoint Members to a joint committee from outside the Executive in the following circumstances:
  - (a) the joint committee has functions for only part of the area of the Borough. In such cases, the Executive may appoint to the joint committee any Member whose Ward is wholly or partly contained within the area;
  - (b) the joint committee is between the County Council and this Borough Council only and relates to functions of the Executive of the County Council. In such cases, the Executive of the County Council may appoint to the joint committee any Member for an electoral division which is wholly or partly contained within the area.

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

- 9.2.5. Details of any Joint Arrangements including any delegations to joint committees are set out in Part B of this Constitution.

### **9.3. Access to information**

- 9.3.1. The Access to Information Rules in Part C of this Constitution apply to any joint arrangements.

### **9.4. Delegation to and from other local authorities**

- 9.4.1. The Council may delegate functions that are not Executive Functions to another local authority or, in certain circumstances, the Executive of another local authority.
- 9.4.2. The Leader or, in the absence of any direction by the leader to the contrary, the Executive, a Member on the Executive or a committee of the Executive may delegate Executive Functions to another local authority or the Executive of another local authority in certain circumstances.
- 9.4.3. The decision whether or not to accept a delegation of a service from another local authority shall be reserved to a Full Council meeting. The agreement to collaborate on one off cross border investigations and prosecutions may be dealt with through officers delegated powers.

### **9.5. Contracting out**

The Council (for functions which are not Executive Functions) and the Executive (for Executive Functions) may contract out to another body or organisation functions which may be exercised by an Officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## **10. FINANCE, CONTRACT AND LEGAL MATTERS**

### **10.1. Financial management**

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

### **10.2. Contracts**

10.2.1. Every contract made by the Council will comply with the Contract Procedure Rules set out in Part C of this Constitution.

### **10.3. Legal proceedings**

The Head of Mid Kent Legal Partnership 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 any part of it, or in any case where the Head of Mid Kent Legal Partnership considers that such action is necessary to protect the Council's interests.

### **10.4. Authentication of documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Head of Mid Kent Legal Partnership 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.

### **10.5. Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Mid Kent Legal Partnership. 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 Mid Kent Legal Partnership should be sealed. The affixing of the Common Seal will be attested by the Head of Mid Kent Legal Partnership or some other person authorised by him/her.

## **PART B - RESPONSIBILITIES**



**B1. Responsibility for Functions**

**1. INTRODUCTION TO THIS PART**

**1.1.** Core Provision 4 in Chapter A2 of this Constitution outlined the how the Council approaches decision-making and how decisions or functions of the Council might be classified. The principal classification relates to how functions divide between the Council and the Executive. Functions must in law be: -

1.1.1. Council Functions that are either: -

- (a) Retained by Full Council, or
- (b) Delegated to Committees;

1.1.2. Executive Functions;

1.1.3. Local Choice Functions where the law states that a function may but need not be exercised by the Executive.

**1.2.** In addition to this apportionment between Member bodies, responsibility for functions may be delegated to Officers for the purposes of operational effectiveness.

**2. EXECUTIVE FUNCTIONS**

Executive Functions are those functions that are not Council Functions and also not Local Choice Functions assigned to the Council. Where functions are not specified in law or this Constitution to be Council functions then they will be presumed to be the responsibility of the Executive.

**3. FUNCTIONS THAT ARE NOT TO BE THE RESPONSIBILITY OF THE EXECUTIVE (WHOLLY COUNCIL FUNCTIONS)**

These are the functions set out in Schedule 1, Functions & Responsibilities Regulations.

**4. RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS**

**4.1.** These are functions set out in Schedule 2, Functions & Responsibilities Regulations, where the Council has agreed the following apportionment:

<b>FUNCTION</b>	<b>MEMBER BODY</b>
Any function under a local Act	Council

The determination of an appeal against any decision made by or on behalf of the Council	Council
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the Borough	Council
The appointment of any individual: <ul style="list-style-type: none"> <li>• to any office other than an office in which they are employed by the Council;</li> <li>• to anybody other than the Council;</li> <li>• a joint committee of two or more authorities; or</li> <li>• to any committee or sub-committee of such a body; and the revocation of any such appointment</li> </ul>	Council
Any function relating to contaminated land	Executive
The discharge of any function relating to the control of pollution or the management of air quality	Executive
The service of an abatement notice in respect of a statutory nuisance	Executive
The inspection of the Borough to detect any statutory nuisance	Executive
The investigation of any complaint as to the existence of a statutory nuisance	Executive
The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land	Executive
The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Executive
The making of agreements with other authorities for the placing of staff at the disposal of those other authorities.	Executive

## **B2. Responsibility for Council Functions**

### **1. FUNCTIONS RETAINED BY FULL COUNCIL**

The following Council Functions are retained by the Council. This means that decisions in respect of these can only be made at a meeting of the Full Council.

#### **1.1.1. Constitutional and Procedural Matters**

- (a) to adopt and change the Core Provisions of this Constitution;
- (b) to change the name of the area;
- (c) to make, amend or revoke any of the Rules of Procedure set out in Part C of this Constitution;
- (d) to make, amend or revoke the Codes of Conduct and Protocols set out in Part D and Part E to this Constitution;
- (e) to confer the Freedom of the Borough or the title of Honorary Alderman.

#### **1.1.2. Setting the Policy Framework and Related Matters**

- (a) to approve the Council's Policy Framework;
- (b) to determine each year the Council's revenue and capital budget and Council Tax;
- (c) to make decisions about any matter in the discharge of an Executive Function which is covered by the Policy Framework or the Budget where the Cabinet is minded to make it in a manner which would be:-
  - (i) contrary to the Policy Framework; or
  - (ii) contrary to (or not wholly in accordance with) the Budget.
- (d) To adopt, amend or revoke the Scheme of Allowances for Members in Part F of this Constitution;
- (e) to make, amend, revoke, re-enact or adopt bylaws;
- (f) to promote or oppose the making of local legislation or personal Bills;
- (g) to authorise applications to the Secretary of State for housing land transfers of housing stock.

#### **1.1.3. Appointments and Delegations**

- (a) to appoint (and remove) the Leader;

- (b) To determine the terms of reference & composition of any Committees et cetera that report directly to the Council;
- (c) to adopt and approve amendments to the powers and terms of reference of Joint Committees in respect of Council Functions and to make appointments to them;

#### 1.1.4. **Regulatory and Electoral Matters**

- (a) To deal with findings of maladministration (on receipt of a report from the relevant Scrutiny Committee or the Monitoring Officer following a report by the Local Government and Social Care Ombudsman);
- (b) to determine the action to be taken on reports by the Monitoring Officer or the Chief Finance Officer (including Section 5 and Section 114 reports);
- (c) To consider reports concerning the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer pursuant to the procedures set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;
- (d) To determine matters within the Council's powers and responsibilities relating to local elections;
- (e) To review matters relating to electoral and administrative arrangements and to determine the Council's response to any consultations or proposals by the Local Government Boundary Commission for England relating to the Borough.

#### 1.1.5. **Other Matters**

- (a) To determine any matters referred to the Council for decision by a Committee, Board or Panel that reports directly to the Council;
- (b) To deal with all 'local choice functions' set out in Ch.B1 of this Constitution which the Council decides should be undertaken by itself rather than by the Executive or a Committee;
- (c) To deal with any other matter which must, by law, be reserved for determination by the Council.

## **2. COUNCIL COMMITTEES: FUNCTIONS & DELEGATIONS**

- 2.1.** All Committees may hold inquiries and investigate the available options for future direction in policy development and may appoint advisors and assessors to assist them in this process. 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, providing budget is available within the budget and policy framework approved by Council to do so.

**2.2.** All Committees may consider any subject that, in the opinion of the Committee is relevant to the formulation and delivery of its purpose.

**2.3. LICENSING COMMITTEE**

2.3.1. Membership: 13 Members

2.3.2. Purpose: To exercise the licensing and gambling functions on behalf of the Council including the creation and review of the statutory and non- statutory policies and the setting of fees and charges (including making recommendations to the relevant Member on the Executive as required).

<b>FUNCTION</b>	<b>DELEGATION OF FUNCTIONS</b>
<p>Functions relating to licensing exercisable by a District Council as set out in Schedule 1 of the Functions and Responsibilities Regulations</p>	<p>Director of Regeneration and Place / Head of Housing and Community Services or their delegated officers except for:</p> <ul style="list-style-type: none"> <li>• The determination of policy.</li> <li>• The setting of fees and charges.</li> </ul> <p>Licensing Act and Gambling Act matters will be dealt with by the Head of Housing and Community Services.</p> <p>Responsible authority functions will be dealt with by the Director of Regeneration and Place except for:</p> <ul style="list-style-type: none"> <li>• Where this is inconsistent with legislation.</li> </ul> <p>Where the function is otherwise delegated under this Constitution.</p>
<p>To deal with licensing functions in accordance with the Licensing Act 2003 and the Licensing Policies agreed by the Council.</p>	<p>Director of Regeneration and Place / Head of Housing and Community Services or their delegated officers except for:</p> <ul style="list-style-type: none"> <li>• The determination of policy.</li> <li>• The setting of fees and charges.</li> </ul> <p>Which are the responsibilities of the Licensing Committee.</p>

<b>FUNCTION</b>	<b>DELEGATION OF FUNCTIONS</b>
	<p>And;</p> <ul style="list-style-type: none"> <li>• All matters where a 'relevant representation' has been made. This includes an objection, an objection notice and an application for summary review.</li> <li>• Which is the responsibility of a Licensing Sub-Committee.</li> </ul>
<p>To deal with gambling functions in accordance with the Gambling Act 2005 and the Statement of Principles agreed by the Council.</p>	<p>Director of Regeneration and Place / Head of Housing and Community Services or their delegated officers except for:</p> <ul style="list-style-type: none"> <li>• The determination of policy.</li> <li>• The setting of fees and charges. which are the responsibilities of the Licensing Committee.</li> </ul> <p>And;</p> <ul style="list-style-type: none"> <li>• All matters where a 'relevant representation' has been made. This includes an objection and the cancellation of club and gaming machine permits.</li> <li>• Giving a Counter Notice to a Temporary Use Notice. which are the responsibilities of a Licensing Sub-Committee.</li> </ul>
<p>Consider and recommend to the Council adopting a new Licensing Policy Statement, any Cumulative Impact Policies for the Borough decisions, Late Night Alcohol Levy and to make, vary or revoke Early Morning Alcohol Restriction Orders.</p>	<p>A Licensing Sub-Committee.</p>
<p>Consideration of appeals against any officer decision on a licence or consent.</p>	<p>A Licensing Sub-Committee.</p>

**2.4. LICENSING SUB-COMMITTEE**

- 2.4.1. **Membership:** Three (3) Members from the Licensing Committee
- 2.4.2. **Purpose:** To make decisions about individual licensing matters and appeals where not otherwise delegated to the Head of Housing and Community Services.

**2.5. PLANNING COMMITTEE**

- 2.5.1. **Membership:** Thirteen (13) Members
- 2.5.2. **Purpose:** To determine town and country planning and development control matters and associated issues.

<b>FUNCTIONS</b>
<p><b>Planning and Conservation</b> - Functions relating to town and country planning and development control as specified in Schedule 1 to the Functions &amp; Responsibilities Regulations as amended from time to time including:</p> <ul style="list-style-type: none"> <li>• Development Management and Enforcement</li> <li>• Rights of way</li> <li>• The protection of important hedgerows</li> <li>• The preservation of trees</li> <li>• Functions relating to High Hedges contained in Part 8 of the Anti-Social Behaviour Act 2003</li> <li>• Town and village green matters</li> <li>• Commons registration and enforcement</li> </ul>
<b>DELEGATION OF FUNCTIONS</b>
<p>The Director of Regeneration and Place/Head of Planning and Development has delegated power to undertake all the functions relating to planning and conservation, except where the intended delegated decision on a planning or related application:</p> <ul style="list-style-type: none"> <li>• is subject to call-in in accordance with Committee Procedure Rule 14;</li> <li>• would be contrary to the written view of any statutory consultee in the planning process; or</li> <li>• would be contrary to the provisions of the Development Plan or any emerging development plan policies that have been adopted by the Council for Development Control purposes; or</li> </ul>

- is on an application made by: a Member; an Officer; or the Council itself.

The Head of Planning and Development has delegated power to: -

- Undertake all functions relating to planning and enforcement save for where a matter is referred to the Planning Committee in accordance with Committee Procedure Rule 17;
- Determine high hedges complaints and to take appropriate enforcement action, except in the following specific circumstances;
- Where the case relates to a hedge on Council land or complaints relate to Council Officers or Members;
- Where trees within a hedge are protected by a Tree Preservation Order or are located within a Conservation Area and the Officer decision would be contrary to the views of Ward Members or the Parish Council; and
- Exceptional cases where there are wider issues of a public nature or where there is a potential impact on the Council and/or its policies.

## 2.6. AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

2.6.1. **Membership:** Nine (9) Members; plus two (2) non-voting Parish Councillors appointed by the Council for a three-year term of office. The Chairman of the Audit, Governance and Standards Committee may not be a member on the Executive.

2.6.2. **Purpose:** The promotion and maintenance of high standards of Councillor and Officer conduct within the Council; adoption and reviewing the Council's Annual Governance Statement; independent assurance of the adequacy of the financial and risk management framework and the associated control environment; independent review of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment; and to oversee the financial reporting process.

(Other than the induction training delivered to all new Members and Substitute Members of the Audit, Governance and Standards Committee, the Committee will identify its training requirements through an annual assessment of skills and knowledge and Members will undertake training as required)



<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
<b>Audit Activity/Finance</b>	
To consider the Head of Internal Audit Partnership's annual report and opinion, and a summary of Internal Audit activity (actual and proposed) and the level of assurance it can give over the Council's corporate governance arrangements	Report may go to the Executive with a reference from this Committee to ensure that the Council satisfactorily addresses all of the issues.
To consider reports dealing with the management and performance of Internal Audit Services, including consideration and endorsement of the Strategic Internal Audit Plan and any report on agreed recommendations not implemented within a reasonable timescale and the Internal Audit Charter	As above
To consider the External Auditor's Annual Audit Letter, relevant reports, and any other report or recommendation to those charged with governance; and ensure that the Council has satisfactorily addressed all issues raised  To comment on the scope and depth of external audit work and to ensure it gives value for money	As above
To review and approve the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Executive or Council	The summary balance sheet will be reported to the relevant Policy Advisory Committee as part of its Budgetary Control/Budget Strategy arrangements

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
Consider and review the effectiveness of the Treasury Management Strategy, Investment Strategy, Capital Strategy, Medium Term Financial Strategy, Annual Report and Mid- Year review and make recommendations to the Executive, relevant Policy Advisory Committee(s) and Council	
Recommend and monitor the effectiveness of the Council's Counter-Fraud and Corruption Strategy	Executive to approve Head of Audit Partnership to monitor effectiveness
<b>Governance</b>	
To maintain a financial overview of the operation of the Council's Constitution in respect of Financial & Contract Procedure Rules and codes of conduct	The Monitoring Officer will deal with the detail of any proposed minor changes, but significant recommendations for change will be made to the Democracy and General Purposes Committee (then Council)
In conjunction with the relevant Policy Advisory Committee(s) to monitor the effective development and operation of risk management and corporate governance in the Council to ensure that strategically the risk management and corporate governance arrangements protect the Council	Head of Audit Partnership/ Director of Finance and Business Improvement

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
To monitor Council policies on 'Raising Concerns at Work' (Whistleblowing) and the 'Anti-fraud and Corruption' Strategy	Head of Audit Partnership
To oversee the production of the authority's Annual Governance Statement and to agree its adoption	Head of Policy, Communications and Governance
The Council's arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice and high standards of ethics and probity  This Committee will receive the annual review of the Local Code of Corporate Governance and may make recommendations for proposed amendments, as necessary	Head of Policy, Communications and Governance
To consider whether safeguards are in place to secure the Council's compliance with its own and other published standards and controls	Directors and Heads of Service
<b>Standards</b>	
The promotion and maintenance of high standards of conduct within the Council	N/A
To advise the Council on the adoption or revision of its Codes of Conduct	N/A
To monitor and advise the Council about the operation of its Codes of Conduct in the light of best practice, and changes in the law, including in relation to gifts and hospitality and the declaration of	N/A

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
interests	
Assistance to Members, Parish Councillors and co-opted members of the Council to observe the Code of Conduct	N/A
To ensure that all Members have access to training in Governance, Audit and the Member Code of Conduct; that this training is actively promoted; and that Members are aware of the standards expected under the Council's Codes and Protocols	Democracy and General Purposes Committee to oversee Member training
To deal with complaints that Members of the Borough Council and the Parish Councillors may have broken the Member Code of Conduct	Monitoring Officer in consultation with an Independent Person through informal resolution where possible
Following a formal investigation and where the Monitoring Officer's investigation concludes that there has been a breach of the Code of Conduct a hearing into the matter will be undertaken  See the procedure in Part D of this Constitution for dealing with complaints that a Member has breached the Code of Conduct	Hearings Panel comprising three (3) Members (plus 1 non-voting Parish Member when a Parish Member is the subject of the complaint) Drawn from the Audit, Governance and Standards Committee
Advice on the effectiveness of the above procedures and any proposed changes	Democracy and General Purposes Committee and Monitoring Officer
Grant of dispensations to Members with disclosable pecuniary interests and other significant interests, in accordance with the provisions of the Localism Act 2011	Monitoring Officer

**2.7. DEMOCRACY AND GENERAL PURPOSES COMMITTEE**

2.7.1. **Membership:** Nine (9) Members

2.7.2. **Purpose:** To be responsible for Councillor training and development; to determine matters relating to elections, electoral registration; and other democratic services responsibilities and functions, including reviewing this Constitution on a regular basis.

FUNCTIONS	DELEGATION OF FUNCTIONS
To recommend to the Council appointment of an Electoral Registration Officer & Returning Officer	N/A
To consider any matters relating to electoral registration, elections or electoral boundaries which have not been delegated to the Electoral Registration Officer or Returning Officer	Electoral Registration Officer or Returning Officer
To consider matters relating to the Mayoralty or Members generally, where appropriate	N/A
To appoint Council nominees to seminars as appropriate	N/A
To appoint Members to the outside bodies assigned to the Committee and to receive annual reports from the appointed outside body representative	N/A
Consider applications from persons wishing to act as Independent Persons in connection with Member and Statutory Officer conduct; and for the Independent Remuneration Panel and make recommendations to Council to appoint such persons	N/A

<p>In the event of more than one candidate being nominated by Parish Councils to fill a vacancy in the office of non-voting Parish Council representative on the Audit, Governance and Standards Committee, to consider expressions of interest in support of the nominations, and make a recommendation to Council as to the person to be appointed</p>	<p>N/A</p>
<p>To advise Members and the Head of Human Resources Shared Service on Member development priorities where appropriate</p>	<p>Head of Policy, Communications and Governance</p>
<p>To regularly review the Constitution in conjunction with the Monitoring Officer and recommend proposed changes, where significant, to the Council</p>	<p>The Monitoring Officer may make changes to the Constitution which are necessitated by decisions; which remove inconsistency or ambiguity; which are minor; or to effect changes in the law</p>
<p>The determination of an appeal against any decision made by or on behalf of the Council where there is a statutory appeals procedure, and no other panel or Sub-Committee is appropriate elsewhere under this Part of the Constitution</p>	<p>Panel of three (3) Members, to include the Committee Chairman</p>
<p>The consideration of a Member agenda item request in respect of the application of the Constitution.</p>	<p>N/A</p>

**2.8. EMPLOYMENT COMMITTEE**

2.8.1. **Membership:** Nine (9) Members

2.8.2. **Purpose:** To deal with employment and staffing matters unless otherwise delegated.

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
<p>To develop and approve the Council’s human resources strategies, policies and officer terms and conditions of employment subject to the approval of any budget implications by the Cabinet and/or Council as appropriate.</p>	<p>Head of Human Resources Shared Service (within approved policies)</p>
<p>Pensions and superannuation matters related to terms and conditions</p>	<p>Head of Human Resources Shared Service</p>
<p>Joint Consultative Committee</p> <p>A consultative forum for views to be expressed between both parties on the Committee regarding the following issues relating to the employment of staff by the Council but excluding individual cases:</p> <ul style="list-style-type: none"> <li>• Health and Safety Issues at Work</li> <li>• Changes in Staff Structures</li> <li>• Terms of Conditions of Employment</li> </ul> <p>Such views are referred to the appropriate Council Decision Making Body</p>	<p>N/A</p>
<p>To appoint the following:</p> <ul style="list-style-type: none"> <li>• Chief Officers Appointment Panel</li> <li>• Chief Officers Investigation and Disciplinary Panel</li> <li>• Chief Officers Disciplinary</li> </ul>	

Appeals Panel	
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**2.9. CHIEF OFFICERS APPOINTMENTS PANEL**

2.9.1. **Membership:** Five (5) members of the Employment Committee (at least one of whom must be a Member on the Executive). Substitute members of the Employment Committee may be selected to sit on the Panel.

2.9.2. **Purpose:**

- (a) Within relevant legislation, Council policies and agreed appointment procedures to make appointments to posts of Chief Officers and Heads of Service within the Council's agreed officer structure.
- (b) Within relevant legislation, Council policies and agreed appointment procedures to recommend to Council the appointment for the positions of Head of Paid Service (Chief Executive), Monitoring Officer or section 151 officer.

**2.10. CHIEF OFFICERS' INVESTIGATION AND DISCIPLINARY PANEL**

2.10.1. **Membership:** Three (3) members of the Employment Committee (at least one of whom must be a Member on the Executive). Substitute members of the Employment Committee may be selected to sit on the Panel.

2.10.2. **Purpose:**

- (a) In accordance with the Model Disciplinary Procedure contained in the JNC Handbook for Chief Executives, Panel meetings shall be convened by the Monitoring Officer (in consultation with the Chairman of Staffing Committee). The Monitoring Officer will, in consultation with the Chairman of the Staffing Committee, filter out and deal with allegations which are clearly unfounded, trivial or can best be dealt with under some other procedure. If the complaint is about the Monitoring Officer, then this will be done by the chief executive.
- (b) For consistency, unless unavoidably indisposed or conflicted, once appointed, the same Members shall comprise the Panel (and any adjournment of it) over the course of the full consideration of the matter (and any related matter) that it has been convened to consider, until such time as the matter is disposed of.



- (c) To consider allegations/issues regarding disciplinary matters relating to the designated Statutory Officers of the Council (the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer) (the "DSOs") and other Chief Officers and Heads of Service.
- (d) To appoint an Independent Investigator ("II") to investigate allegations of misconduct against any DSO and to commission reports from an II. The Chief Executive has delegated authority to appoint an II in respect of any Chief Officer or Head of Service who is not a DSO.
- (e) To determine appropriate action upon receipt of any preliminary investigation.
- (f) To decide whether to suspend a DSO and to review decisions taken to suspend a statutory officer. The Chief Executive has delegated authority to suspend any Chief Officer or Head of Service who is not a DSO.
- (g) To conduct a hearing into any disciplinary matter against a Chief Officer, Head of Service or DSO.
- (h) To determine what action should be taken against a Chief Officer, Head of Service or DSO following an investigation. This could include dismissal or action short of dismissal.
- (i) In the event that the Panel recommends dismissal of a DSO then that recommendation shall be referred to the Independent Persons Panel prior to being referred to Council for a determination in accordance with the Officer Employment Procedure Rules.
- (j) With the exception of a decision to recommend to Council that a DSO be dismissed, there shall be a right of appeal to the Chief Officers Disciplinary Appeals Panel against any decisions made by the Panel to take disciplinary action against a Chief Officer, Head of Service or DSO.

#### 2.10.3. **Decision**

- (a) If the Committee decides that a DSO shall be dismissed the Full Council shall consider the Committee's recommendation of dismissal. Prior to consideration by Full Council the Independent Persons Panel shall consider the matter and the Proper Officer shall give all members of the Cabinet the opportunity to raise any objections prior to the decision. This process is governed by the Staff Employment Procedure Rules set out in this

Constitution. The consideration by Full Council shall constitute the DSO's appeal against the decision to dismiss.

- (b) In the case of any disciplinary action other than dismissal in respect of a DSO the officer may appeal to the Chief Officers Disciplinary Appeals Panel against the decision.

#### 2.10.4. **Suspension**

- (a) If a DSO has been suspended for a period of 2 months (or in the case of a decision to suspend taken under urgency provisions) then the Committee shall review that suspension. The Committee shall continue to review any continuing suspension every 2 months. In carrying out such review the Committee shall consider any representations made by the IO and the DSO and/or his or her representative.

### 2.11. **Chief Officers Disciplinary Appeals Panel**

- 2.11.1. **Membership:** Three (3) members of the Employment Committee (at least one of whom must be a Member on the Executive) other than those who sat on the Investigation and Disciplinary Panel which made the decision being appealed. Substitute members of the Employment Committee may be selected to sit on the Panel.

#### 2.11.2. **Purpose:**

- (a) To determine any appeal made by a chief officer or head of service (other than a DSO) against a decision to dismiss them; and
- (b) To determine any appeal by a chief officer, head of service or DSO to take any disciplinary action (short of dismissal) against them.

### 2.12. **Independent Persons Panel**

- 2.12.1. **Membership:** At least two (2) independent persons appointed by the Proper Officer in the following priority order:

- (a) Any Independent Person or Independent Persons who has/have been appointed by the authority and who is/are a local government elector(s) in the Council's area;
- (b) Any other Independent Person(s) who has/have been appointed by the authority; and
- (c) Any Independent Person(s) who has/have been appointed by another authority or authorities.

- 2.12.2. **Purpose:** To advise the Council on matters relating to the dismissal of a DSO in accordance with the Employment Procedure Rules where the Investigation and Disciplinary Panel recommends the dismissal of one of the post holders.

### **2.13. INDEPENDENT REMUNERATION PANEL**

- 2.13.1. **Membership:** Three (3) independent people being one representative each of the following:
- (a) Kent Invicta Chamber of Commerce;
  - (b) South East Employers; and
  - (c) The Community, appointed by Council on the recommendation of the Democracy and General Purposes Committee.
- 2.13.2. **Purpose:** To recommend to Council the level of Members' allowances and expenses that should be paid to Members on Maidstone Borough Council.
- 2.13.3. In accordance with the requirements of the Local Authorities (Members' Allowances) (England) Regulations 2003, the terms of reference of the Independent Remuneration Panel are to:
- (a) Make recommendations to the Borough Council as to the amount of basic allowance which should be payable to its elected Members, co-optees and Independent Persons;
  - (b) Make recommendations to the Borough Council about the role and responsibilities for which a special responsibility allowance should be payable and the amount of each such allowance;
  - (c) Make recommendations as to whether the Council's Scheme of Allowances should include an allowance in respect of the expenses of arranging for the care of children and dependents and if it does make such a recommendation, the amount of this allowance and the means by which it is determined;
  - (d) Make recommendations as to whether the Council's Scheme of Allowances should include a travelling subsistence allowance and whether such allowances should be pensionable; and
  - (e) Undertake a general review of the Members' Scheme of Allowances and make recommendations to the Council.

### **2.14. SHARED SERVICES**

- 2.14.1. The Council may establish joint services arrangements with other local authorities. Such arrangements may involve the appointment of a Joint Committee with those other Local

Authorities and delegation of functions to the Joint Committee. Alternatively the Council or Committees may delegate functions to another local authority or to an officer of another Local Authority. The Shared Services Arrangements in which the Council is involved include:

- (a) Mid Kent Services (MKS) which has a Joint Board
- (b) Audit (Ashford, **Maidstone**, Swale and Tunbridge Wells)
- (c) Environmental Health (Maidstone, Swale and Tunbridge Wells)
- (d) Human Resources (**Maidstone** and Swale)
- (e) ICT (**Maidstone**, Swale and Tunbridge Wells)
- (f) Legal (Maidstone, **Swale** and Tunbridge Wells)
- (g) Licensing (**Sevenoaks**, Tunbridge Wells and Maidstone)
- (h) Planning Support (Maidstone, Swale and Tunbridge Wells)
- (i) Revenues and Benefits (Maidstone and Tunbridge Wells)
- (j) Waste (**Maidstone**, Ashford, Swale and Kent County Council)

Marked in bold are the host (employing authorities). Environment Health and Revenues and Benefits do not have a host authority, they are simply run on a collaborative basis.

### **B3. Responsibility for Executive Functions**

#### **1. BACKGROUND**

- 1.1.** The Executive is responsible for all functions that are neither Council Functions in law nor those Local Choice Functions assigned to the Council.
- 1.2.** The Executive is also responsible for co-ordinating the development of the Budget & Policy Framework and the presentation of proposals to Full Council.

#### **2. DECISION MAKING & DELEGATION**

- 2.1.** The proceedings of the Executive are subject to the Executive Procedure Rules in Part C of this Constitution.
- 2.2.** The Appendix to this Chapter sets out the roles, responsibilities and limitations to delegation for each Member on the Executive, as determined by the Leader.
- 2.3.** Chapter B5 also sets out delegations to Officers that include Executive Functions.
- 2.4.** The Leader shall put in place appropriate arrangements for the making of decisions by the Council in its roles as corporate trustee in respect of Cobtree Manor Estate (Reg Charity Number 283617) and land of the same name.
- 2.5.** The Leader shall put in place appropriate arrangements for the making of decisions by the Council in its role as corporate trustee in respect of the Queen's Own Royal West Kent Regiment Museum Trust (Reg Charity Number 1083570)

**APPENDIX: EXECUTIVE ROLES**

**[Role 1 Title]**

<b>Area of Responsibility</b>	<b>Particulars</b>	<b>Limitations</b>
[Area 1]	[Particular 1-1]	
	[Particular 1-2]	
	[Particular 1-3]	
[Area 2]	[Particular 2-1]	
	[Particular 2-2]	
	[Particular 2-3]	
[Area 3]	[Particular 3-1]	
	[Particular 3-2]	
	[Particular 3-3]	

**[Role 2 Title]**

<b>Area of Responsibility</b>	<b>Particulars</b>	<b>Limitations</b>
[Area 1]	[Particular 1-1]	
	[Particular 1-2]	
	[Particular 1-3]	
[Area 2]	[Particular 2-1]	
	[Particular 2-2]	
	[Particular 2-3]	

[Area 3]	[Particular 3-1]	
	[Particular 3-2]	
	[Particular 3-3]	

**[Role 3 Title]**

<b>Area of Responsibility</b>	<b>Particulars</b>	<b>Limitations</b>
[Area 1]	[Particular 1-1]	
	[Particular 1-2]	
	[Particular 1-3]	
[Area 2]	[Particular 2-1]	
	[Particular 2-2]	
	[Particular 2-3]	
[Area 3]	[Particular 3-1]	
	[Particular 3-2]	
	[Particular 3-3]	

**[Role 4 Title]**

<b>Area of Responsibility</b>	<b>Particulars</b>	<b>Limitations</b>
[Area 1]	[Particular 1-1]	
	[Particular 1-2]	
	[Particular 1-3]	

[Area 2]	[Particular 2-1]	
	[Particular 2-2]	
	[Particular 2-3]	
[Area 3]	[Particular 3-1]	
	[Particular 3-2]	
	[Particular 3-3]	

**[Role n Title]**

<b>Area of Responsibility</b>	<b>Particulars</b>	<b>Limitations</b>
[Area 1]	[Particular 1-1]	
	[Particular 1-2]	
	[Particular 1-3]	
[Area 2]	[Particular 2-1]	
	[Particular 2-2]	
	[Particular 2-3]	
[Area 3]	[Particular 3-1]	
	[Particular 3-2]	
	[Particular 3-3]	



## **B4. Functions of Other Committees**

### **1. COMMITTEES SUPPORTING GOVERNANCE ARRANGEMENTS**

#### **1.1. POLICY ADVISORY COMMITTEES**

- 1.1.1. Where portfolios are assigned to individual Members on the Executive, the Proper Officer, in consultation with the Leader of the Council, shall assign to each PAC one or more portfolios mirroring these.
- (a) Where portfolios are not assigned to individual Members on the Executive, the Proper Officer, in consultation with the Leader of the Council, shall assign to each PAC portfolios according to the Default Scheme in the Appendix to this Chapter of the Constitution.
  - (b) Where the Leader has assigned portfolios of limited scope to individual Members on the Executive, such that material matters in the Default Scheme are not so assigned to any Member, the Proper Officer in consultation with the Leader of the Council, shall assign such matters to one or more PACs.
  - (c) PAC's are advisory committees and may only advise the executive on matters within their remit and do not have any power to make decisions on those matters.

#### **1.2. OVERVIEW & SCRUTINY COMMITTEE**

##### **1.2.1. Policy Development and Review Functions:**

- (a) To assist the Council and the Executive in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
- (b) To hold enquiries, conduct research, community and other consultation in the analysis of policy issues and possible options;
- (c) To consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (d) To question Members on the Executive and/or Committee Chairmen and Chief Officers about their views on issues and proposals affecting the area;
- (e) To liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

### 1.2.2. **Scrutiny Functions:**

- (a) review and scrutinise the decisions made by and performance of the Executive 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 executive and/or committees and chief officers about their decisions and performance, whether generally in comparison with
- (d) plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (e) make recommendations to the executive and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
- (f) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the committee and local people about their activities and performance;
- (g) question and gather evidence from any person (with their consent).

1.2.3. **Finance Functions:** The Overview and Scrutiny Committee may exercise overall responsibility for the finances made available to it.

1.2.4. **Officers:** The Overview & Scrutiny Committee may exercise overall responsibility for the work programme of the officers employed to support its work.

1.2.5. **Annual Report:** The Overview and Scrutiny Committee must report annually to the full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.

## 2. **JOINT ARRANGEMENTS**

### 2.1. **KENT JOINT WASTE MANAGEMENT COMMITTEE**

2.1.1. **Membership:** comprises the portfolio holders or designated members with responsibility for waste within the 12 Districts and the County. Each Member will be entitled to one vote and will act as the Partner Authority's appointed member.

- 2.1.2. Partner Authorities may each appoint another named person to act as a Deputy for their appointed Kent Joint Waste Management Committee Member. Where the appointed Committee Member is unable to attend a meeting, their Deputy may attend and speak in their absence and may vote.
- 2.1.3. The purpose of the Joint Waste Management Committee (Objectives) is to:
- (a) Ensure the delivery of the Joint Municipal Waste Management Strategy and Vision for Kent;
  - (b) Provide a platform for cooperative and joint working to improve or deliver services;
  - (c) Act as a single voice for strategic waste issues for Kent local authorities and to influence Central Government and other bodies as necessary on key strategic waste issues;
  - (d) Increase awareness of waste as a resource and to interact with other stakeholders to promote waste minimisation and achieve an economically, environmentally and socially sustainable waste strategy; and
  - (e) Work with and support as required statutory agencies, non-governmental organisations (NGO's), small and medium sized enterprises (SME's), business, scientific and commercial organisations and other bodies who are in pursuit of developing, supporting and influencing the future direction of sustainable waste/resource management.
- 2.1.4. The key functions of the Joint Waste Management Committee are to:
- (a) Ensure the implementation, monitoring and review of the approved Joint Municipal Waste Strategy for Kent;
  - (b) Advise on the future development of the Joint Municipal Waste Strategy for Kent;
  - (c) Produce the Draft Annual Action Plan, including a budget, for approval by the Partner Authorities;
  - (d) Take decisions relevant to the implementation and future development of the Joint Waste Management Strategy and the Approved Annual Action Plan;
  - (e) Authorise any relevant expenditure as outlined in the budget of the Approved Annual Action Plan;

- (f) Undertake joint funding applications relevant to the implementation and future development of the Joint Waste Management Strategy and the Approved Annual Action Plan;
- (g) Act as a forum for consideration of strategic/operational municipal and other waste management issues in Kent;
- (h) Encourage the adoption and sharing of waste management best practices and initiatives;
- (i) Co-ordinate baseline evaluation and monitoring of services; Facilitate constructive partnership working;
- (j) Inform and raise awareness of Members, officers, and the community with regards to key waste management and resource issues;
- (k) Consult and engage key interested bodies and stakeholders;
- (l) Influence, advise and lobby government and other agencies, both nationally and internationally, where to do so is consistent with Kent's Joint Municipal Waste Strategy and the Purpose of the Joint Waste Management Committee; and
- (m) Carry out such other activities calculated to facilitate, or which are conducive or incidental to the discharge of the Joint Waste Management Committee's function in implementing the Approved Annual Operating Plan.

## 2.2. JOINT TRANSPORTATION BOARD

- 2.2.1. **Membership:** 9 Members from Maidstone Borough Council; and 9 Councillors from Kent County Council ("KCC") representing divisions in Maidstone Borough area; and two (2) representatives of the Parish Councils in the District.
- 2.2.2. **Purpose:** Collaboration on the delivery of highways functions where KCC is the Highway authority, in the interests of Maidstone residents.
- 2.2.3. **Terms of Reference:**
  - (a) The Joint Transportation Board ("JTB") will 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 Committee as appropriate.

- (b) Be a forum for consultation between KCC, Parish Councils and the Council on policies, plans and strategies related to highways, road traffic and public transport.
- (c) Review the progress and out-turn 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 need within the district.
- (f) The JTB will generally meet four times a year on dates and at times and venues to be specified by the Council in accordance with the normal arrangements in consultation with KCC.
- (g) The quorum for a meeting shall be four comprising at least two voting members present from each of KCC and the Council.
- (h) In alternate years a Member of KCC (who is a member of the JTB) will chair the JTB and a Council Member (who is a member of the JTB) will be Vice-Chairman of the JTB and then a Member of the Council will chair the JTB and a KCC Member will be Vice-Chairman of the JTB and so on following on the arrangements which existed in the year before this agreement came into force.
- (i) The relevant Member on the Executive will be the lead Member on behalf of the Council.

## **Appendix: Default Scheme for Policy Advisory Committees**

### **FINANCE & CORPORATE SERVICES**

- The Council Tax Base and recommendations to Full Council concerning financial decisions
- Financial management and performance across the Council including virement between services, business rates, council tax, and revenue & benefits functions
- Land and property including acquisition (by agreement or compulsorily), disposal, appropriation and development with the exception of the declaration of Open Space surplus to requirements
- Compulsory purchase orders on planning grounds and/or recommending to Council the making of compulsory purchase orders
- Strategic budget-related staffing issues
- Health & Safety Strategy and reporting
- The Council's functions as Shareholder in Maidstone Property Holdings Limited
- People strategy and workforce plan
- Medium Term Financial Strategy to include, though not exclusively, Capital Investment Strategy, Council tax support scheme, business rates and income generation
- Communication and Engagement Strategy
- Corporate Improvement Plan
- Information Management Strategy
- Risk Management Strategy including Counter Fraud
- Commissioning Strategy
- Asset Management Strategy including assets of community value
- Council Accommodation Strategy
- Emergency and Resilience Planning
- Commercialisation Strategy
- Information and communications technology (ICT)

**COMMUNITIES, HOUSING & ENVIRONMENT**

- The Council's strategic objectives with regard to Communities, Housing, Public Health and the Environment
- Revenue estimates and capital programmes in respect of the same
- All strategic budget related staffing matters in respect of the same
- To take the lead within the Council in ensuring that the Council achieves inclusiveness and productive community engagement
- Open Space in respect of Section 123 of the Local Government Act 1972 or any other similar enactment and related disposals
- Housing Strategy
- Community Development Strategy
- Climate Change Framework
- Parish Charter, Parishes and Community Governance
- Crime and Disorder Reduction Strategy (and recommend changes to full Council); and Community Safety Strategy to include CCTV
- Compact with Voluntary and Community Sector
- Public Health, Healthy Living and Health Inequalities Strategy
- Waste Management, Waste Minimisation and Recycling Strategy
- Private Water Management
- Responsibility for Safeguarding children and adults who come into contact with Council services and activities
- District flood risk management functions
- Public Conveniences
- Street Scene and Environmental Strategy to include Clean Neighbourhood Enforcement, monitoring
- Enforcement of Air Quality Policies
- Renewable Energy Strategy
- Contaminated Land Strategy

- Community Safety, Protection and combatting anti-social behaviour
- Parks and Open Spaces 10 Year Plan including play areas and allotments
- Bereavement Services – Vinters Park Crematorium and Maidstone Cemetery

### **ECONOMIC REGENERATION & LEISURE**

- The Council's strategic objectives with regards to Maidstone as a decent place to live, cultural and leisure pursuits, a sense of place, with access to quality open space, sports and leisure facilities
- Maidstone's Heritage and Culture together with its leisure facilities play a key role in regeneration and in improving and sustaining the Borough's economic development and health and wellbeing
- Revenue estimates and capital programmes in respect of the same
- All strategic budget related staffing matters in respect of the same
- Festivals and Events Policy including the Hazlitt Theatre and Arts Centre contract
- Tourism Destination Management Plan
- Maidstone Culture and Leisure Business Plan
- Museums 20 Year Development Plan
- Maidstone Market
- Public Realm Design Guide and Public Arts Policy
- Economic Development Strategy

### **STRATEGIC PLANNING & INFRASTRUCTURE**

- The Council's strategic objectives for planning, sustainability and transportation
- Revenue estimates and capital programmes in respect of the same
- All strategic budget related staffing matters in respect of the same
- Potential application of Schedule 2 to the Noise and Nuisance Act 1993 to the Borough



- Development Plan, including the Maidstone Borough Local Plan and Neighbourhood Plans (subject to approval by Council)
- Spatial planning documents such as supplementary planning documents and planning policy advice notes;
- Master Plans and development briefs; The Infrastructure Delivery Plan; and The Community Infrastructure Levy (CIL), spending strategic CIL funds
- Development Management, Enforcement, Building Control
- Car Parking Plans and Strategy
- Low Emissions Strategy, smoke free premises and control of pollution
- Integrated Transport Strategy
- Park and ride and district highways functioning

## **B5. Responsibilities of Senior Officers**

### **1. INTRODUCTION**

- 1.1.** Any post referred to in this part shall be deemed to include any successor post or a post which includes within the job description element's relevant to any particular delegate, which were also present in the earlier post and shall include anyone acting up, employed on an interim basis or into such a post.
- 1.2.** The Chief Executive, Directors and Heads of Service will be responsible for the execution of functions and the provision of all the services under their respective headings as set out below, having authority to act on all such matters (including the authorisation of legal proceedings and the issue and service of notices) and deal with staffing matters in their service, subject to:
  - 1.2.1. actions being taken being in accordance with the Council's Budget and Policy Framework; and
  - 1.2.2. the referral of any required decision or action which is controversial in nature to the appropriate Member decision making body.
- 1.3.** The Head of Planning and Development, Head of Legal Partnership, Head of Finance, Head of Housing and Community Services, Head of Audit Partnership, Head of Human Resources Shared Service, Head of Policy, Communications and Governance, Head of ICT Shared Service, Head of Revenues and Benefits Shared Service, Head of Environment and Public Realm and Head of Regeneration and Economic Development are all Heads of Service for the purpose of the Constitution.
- 1.4.** The Chief Executive, Directors and Heads of Service may exercise the following functions:-
  - 1.4.1. appointment and dismissal of staff below Chief Executive level;
  - 1.4.2. all exercises of discretion under Council policies relating to staff;
  - 1.4.3. secondment of staff, including under section 113 Local Government Act 1972;
  - 1.4.4. to implement approved schemes and projects and incur expenditure on items approved within the Council's approved Budget. Each Director is responsible for the supervision of the expenditure of their Directorate and for reporting to the appropriate Committee any proposed expenditure not included, or in excess of, the amount included in their estimate; and

- 1.4.5. deal with everything related to or associated with their designated areas of responsibility, except insofar as such functions are reserved to the Council, Committees or Sub-Committees from time to time.
- 1.5.** The Chief Executive, Directors and Heads of Service may authorise any other Officer of the Council to exercise their delegated functions on their behalf. This must be evidenced in writing in an Officer's job description; in a list of delegations to Officers to be maintained by the Monitoring Officer specifically for a particular function; or generally.
- 1.6.** All Officers who take delegated decisions shall keep an appropriate record of the date that the decision was taken, the principal considerations involved in reaching the decision and the reasons for the decision. In exercising delegated authority, regard must be had to:
  - 1.6.1. All relevant considerations, disregarding irrelevant considerations, ensuring that the decision is reasonable and proportionate in the circumstances of the case and particularly having regard to the Council's fiduciary duties; duty of best value; equalities duties; human rights impact if any; and other relevant statutory duties (i.e. biodiversity, public health, climate change and crime and disorder reduction).
  - 1.6.2. The lawfulness of the decision in terms of statutory powers and compliance with relevant procedural rules and other legal or procedural requirements.
  - 1.6.3. Acting for a Proper purpose, consistent with the Council's purposes and vision.
  - 1.6.4. Following financial and contract procedure rules, information and advice.
  - 1.6.5. Ensuring high standards of integrity and probity.
- 1.7.** Where an Officer considers it appropriate, the Officer shall be entitled to refer matters for decision to a more Senior Officer or to the appropriate Member body.
- 1.8.** All Directors and Heads of Service shall be responsible for health and safety at work within their area of responsibility.

## **2. Action in Response to a Major Emergency:**

The most senior Officer of the authority present will have the authority to approve any expenditure in expediting the Council's response to a major emergency affecting the Borough where it is not possible to refer the matter for decision to a more senior Officer of the Council, in

consultation with the Leader of the Council, or the Policy and Resources Committee.

### **3. The Chief Executive**

The Chief Executive has direct responsibility for the provision of the following services together with those separately listed which are undertaken in the Sections of his or her Department or other Directorates. The Chief Executive may undertake any decision in respect of these services as required.

- 3.1.** The provision of policy advice to the Council, Committees and Sub-Committees, ensuring that they receive such guidance and advice as will enable them to use the Council's resources to the best advantage in the development of its strategies and policies. Specifically to ensure that the Council has advice on the establishment and structure needed to carry out efficiently the work of the Council.
- 3.2.** The exercise of authority over all other Officers of the Council so far as this is necessary for the efficient management of the Council's functions.
- 3.3.** Supervising, co-ordinating and ensuring the implementation of the Council's decisions. Specifically to lead the Council's Corporate Leadership Team in securing a co-ordinated approach to the affairs of the Council generally.
- 3.4.** Ensuring the propriety of the Council's actions (together with the Monitoring Officer).
- 3.5.** The research and development of corporate policy options for consideration by Members.
- 3.6.** The development of beneficial relations between Members and Officers of the Council.
- 3.7.** The promotion and safeguard of the best interests of the Council locally and nationally. Specifically to liaise with national and local associations, authorities, groups, companies, organisations and individuals to further the policies and objectives of the Council.
- 3.8.** Provision of advice and support on the implementation and delivery of Best Value.
- 3.9.** The preparation and submission of the draft Strategic Plan, Sustainable Community Strategy and any other corporate plans and policies and upon approval by Council, the implementation of the Plans.
- 3.10.** Responsibility for undertaking negotiations and consultation with staff through their trade unions on all matters relating to employment.

- 3.11.** To hear and determine appeals under the Grievance, Capability or Disciplinary (Level 4) Procedures for all categories of employees.
- 3.12.** To take any action necessary in connection with any civil emergency or disaster including response, recovery and business continuity as may be required from time to time.
- 3.13.** To exercise a power delegated to any other Chief Officer of the Council when that Officer is unable or unwilling to act, or to authorise another person to exercise such functions in the absence of that Officer (for example if neither the Monitoring Officer nor the Deputy Monitoring Officer is available and willing to act).
- 3.14.** To submit responses to government and other bodies, consulting on changes to legislation and policy, as considered appropriate, following consultation with the appropriate Chairman and/or Member on the Executive.
- 3.15.** To authorise any action necessary to give effect to any decision to the Council, or any board, Committee, Sub- Committee for involvement in partnerships or outside bodies.
- 3.16.** To be responsible for corporate communications including official publicity, public relations and liaison with the press.
- 3.17.** To be the (Acting) Returning Officer for the election of Members for the Borough, for Parishes within the Borough, Members of Parliament, and any other elections or referendums as required.
- 3.18.** To exercise all Electoral Registration and Returning Officer functions, including as to polling stations, or delegate such functions, as required.
- 3.19.** To exercise all functions in relation to parishes, parish councils and community governance.
- 3.20.** To make payments or provide other benefits in case of maladministration etc. up to £10,000.
- 3.21.** To appoint Officers for particular statutory purposes (appointment of "Proper Officers").

#### **4. The Director of Finance & Business Improvement**

The Director has responsibility for the provision of the following services and may exercise any function in respect of these services as required:

- 4.1.** The Director of Finance and Business Improvement is the Council's Chief Finance Officer, responsible for the proper management of the Council's financial affairs.

- 4.2.** The Director of Finance and Business Improvement is also the Council's Senior Information Risk Owner.
- 4.3.** The provision of financial advice throughout the authority to Officers and Members.
- 4.4.** The compilation of financial accounts in accordance with statutory requirements.
- 4.5.** Compilation and submission of grant claims.
- 4.6.** The provision of general financial advice on the allocation of resources for concurrent functions.
- 4.7.** To provide through the Property and Procurement Section:-
  - 4.7.1. Policy and strategic advice to Members and Council Officers on all technical and consultancy matters.
  - 4.7.2. The procurement and supervision of a full range of architectural, building and engineering related professional services to ensure the completion of the various Council construction programmes through all work stages from inception/feasibility to completion and final account.
  - 4.7.3. Collation and holding of professional and trade references.
  - 4.7.4. Conservation and preservation of the Council's stock of civic buildings.
  - 4.7.5. Preparation and holding of archival, historic and statistical information on Council buildings.
  - 4.7.6. Community Projects relating to construction activities. Responsibility for land drainage matters.
  - 4.7.7. Flood plan advice, flood risk management co-operation and liaison with the Environmental Agency on flooding and related matters.
  - 4.7.8. Advice on procurement services.
- 4.8.** Acquisition and disposal of land and buildings, including all appropriations between purposes up to a value of £100,000.
- 4.9.** The management and maintenance of all general fund properties and all non-operational properties.
- 4.10.** Responsibility for discharging the functions in Chapter 3 of Part 5 of the Localism Act 2001 (Assets of Community Value) including determining nominations and compensation claims.

- 4.11.** The provision of a valuation service for the Council.
  - 4.12.** The provision of a property advisory service.
  - 4.13.** Authorise all special categories of sale pursuant to paragraph 6 of the Contract Procedure Rules for Land including right to buy sales; where the Council is mortgagee; non-operational land not exceeding 0.25 hectares etc.
- 5. Head of Commissioning & Business Improvement**
- The Head of Commissioning & Business Improvement is responsible for:
- 5.1.** The provision of customer services channels including face to face, telephone and website.
  - 5.2.** The development and implementation of the Council's Customer Care Strategy.
  - 5.3.** Business transformation.
- 6. Head of Finance**
- The Head of Finance is responsible for: -
- 6.1.** The maintenance of corporate financial systems and ensuring the financial integrity of all other systems.
  - 6.2.** The provision of corporate financial services.
  - 6.3.** Operation of the receipt of payments service.
- 7. Head of Policy, Communication's & Governance**
- The Head of Policy, Communication & Governance is responsible for: -
- 7.1.** To deal with stage 2 complaints.
  - 7.2.** Implementation of the Council's Performance Management System.
  - 7.3.** The provision of Public Relations Marketing, and Public Consultation Services.
  - 7.4.** Responsibility for a Communication and Engagement Strategy.
  - 7.5.** Corporate Governance.
  - 7.6.** Equalities.
  - 7.7.** Freedom of Information, complaints handling, customer feedback.
  - 7.8.** Organisation of the Mayoral function, Civic matters and Town Hall.

- 7.9.** The provision of Facilities for Members.
- 7.10.** The servicing of the Council's Committees and Sub- Committees and the Executive.
- 7.11.** The production of an annual register of electors and responsibility for the running of elections, electoral boundaries and all parish council matters.
- 7.12.** The provision of a printing service.
- 8. Director of Regeneration & Place**
- 8.1.** The Director of Regeneration and Place has responsibility for the provision of the following services and may undertake any function in respect of these services as required: -
- 8.2.** The Director of Regeneration and Place is the authorised Officer for Responsible Authority Functions under the Gambling Act 2005 and the Licensing Act 2003.
- 8.3.** Emergency Planning Function and to lead the Council's response.
- 8.4.** The operation of the Park and Ride car parks in the Borough.
- 8.5.** Decriminalised Parking service and the provision of off-street parking facilities.
- 8.6.** Undertaking consultation concerning and making traffic regulation orders.
- 8.7.** Health and Safety and Corporate Manslaughter.
- 8.8.** Taking action to foster an efficient and attractive public transport network in the Borough, including the development of the Park and Ride service and implementation of the concessionary fares scheme.
- 9. Head of Environment & Public Realm**
- The Head of Environment & Public Realm is responsible for: -
- 9.1.** The development and provision of a cleansing service including street cleansing, refuse collection, public conveniences, and building cleaning, and also including the enforcement of litter and waste control.
- 9.2.** The monitoring of Council contracts in respect of all cleansing services.
- 9.3.** Co-ordination and implementation of environmental improvement schemes in accordance with the Council's strategy.
- 9.4.** Responsibility for the development and provision of a grounds maintenance service including parks and open spaces, horticulture, arboriculture and sports pitches.



- 9.5.** The responsibility for the Vinters Park Crematorium and Maidstone Cemetery.
- 9.6.** The responsibility for the central purchasing of vehicle and transport supplies.
- 9.7.** The responsibility for running a Direct Services Organisation (DSO).
- 9.8.** Ensuring that the optimum level of the works and services provided by the Council in the areas of Highways and Sewers, Grounds Maintenance, Emergencies and any other areas as determined by the Council are undertaken.
- 9.9.** To be responsible for the Council's Emergency Response Service.
- 9.10.** To be responsible for the licensing of caravan sites.
- 9.11.** Responsibility for the provision and development of the Borough's parks and open spaces and the monitoring of all contracts in respect of grounds maintenance.
- 9.12.** Inspection of the authority's area to detect any statutory nuisance relating to litter and the service of any abatement notice in respect of a statutory nuisance if appropriate.

## **10. Head of Regeneration & Economic Development**

The Head of Regeneration & Economic Development is responsible for: -

- 10.1.** Implementation of the Economic Development and Housing & Regeneration Strategies for Maidstone Borough.
- 10.2.** The delivery of initiatives across the Borough to further the Council's corporate priority for Maidstone to have a growing economy.
- 10.3.** Implementation of the Destination Management Plan and Festival and Events Policy for Maidstone Borough.
- 10.4.** Implementation of the Council's Public Realm Design Guide and Public Arts Policy.
- 10.5.** Identification, development and mobilisation of projects to increase the quantum and resilience of the Council's income from commercial activities and its commercial property portfolio.
- 10.6.** International activities and relationships established by the Council.
- 10.7.** The contract with the external operator for the Hazlitt Theatre.
- 10.8.** The Museums in Maidstone Borough and the provision of the various facilities and activities at these sites.

- 10.9.** The development and provision of leisure facilities and activities including the contract with the external operator for Maidstone Leisure Centre.
- 10.10.** Entering into arrangements with third parties to enable the delivery of new affordable housing including authorising payments either directly or via government appointed bodies.
- 10.11.** Development of the Council's housing enabling role, including liaison with the Homes & Communities Agency and Housing Providers as appropriate.
- 10.12.** Management of the Cobtree Manor Estate Charity and the Estate.
- 10.13.** Responsibility for the management of The Queen's Own Royal West Kent Regiment Museum Trust.
- 10.14.** Management of the Lockmeadow Market.

## **11. Head of Housing & Community Services**

The Head of Housing & Community Services is responsible for: -

- 11.1.** All aspects of community safety and crime and disorder reduction.
- 11.2.** The provision of a sport play and youth development service.
- 11.3.** Ensure the Council's duties and obligations in relation to homelessness and the operation of the Council's allocation scheme are fulfilled. This includes the contracting out of homelessness review functions under Section 202 of the Housing Act 1996 (as amended).
- 11.4.** Manage all forms of temporary accommodation in connection with the Council's homelessness duties including entering into lease agreements and service of any related notices.
- 11.5.** The development of policies on social inclusion, community development and community planning.
- 11.6.** Undertaking any special housing initiatives that might arise,
- 11.7.** Ensuring that private sector housing standards are achieved, in particular as they relate to houses in multiple occupation and unfit dwellings.
- 11.8.** Operation of the grants system for renovating private sector properties.
- 11.9.** Perform the Council's duties and obligations in connection with private sector housing including enforcement measures.
- 11.10.** The management of Gypsy and traveller caravan sites.
- 11.11.** The drafting and implementing of the Council's Housing Strategy, including the preparation of the Housing Investment Programme and its submission to the Secretary of State.

- 11.12.** To liaise and negotiate with government bodies and their appointees, third parties and housing providers in order to promote the priorities identified in the Council's Housing Strategy.
- 11.13.** Compact, relationships and funding with the voluntary and community sector.
- 11.14.** The various halls used for recreational purposes throughout the Borough.
- 11.15.** Advice to the Council and other organisations on all matters relating to grants and lottery applications.
- 11.16.** The Sustainable Community Strategy and renewable energy strategy.
- 11.17.** All licensing functions (not otherwise delegated or prohibited).
- 11.18.** All gambling functions (not otherwise delegated or prohibited).
- 11.19.** To ensure that sustainable development policies and good environmental working practices are widely promoted and integrated into the day to day working practices of the Council and publicised to all sectors of the wider community.
- 11.20.** The hygiene and control of food including the provision of safe food, control of standards, meat inspection and education.
- 11.21.** The control of infectious diseases and the general health and wellbeing of the local population.
- 11.22.** The provision of a health promotion service, including home and water safety.
- 11.23.** The enforcement of the Sunday Trading Act 1994.
- 11.24.** Road closure orders.
- 11.25.** The provision of advice and taking actions to further the aim of sustainability and tackle climate change both internally within the Council and externally throughout the Borough.
- 11.26.** The inspection of the authority's area to detect any statutory nuisance and the investigation of any complaints as to the existence of a statutory nuisance.
- 11.27.** The enforcement of Street Trading Legislation (including the Maidstone Borough Act 2006 and any other functions arising under the Act).
- 11.28.** The Enforcement of Smoke Free Legislation.
- 11.29.** Pest control service, enforcement against pest concerns and the cleansing of filthy or verminous property.

- 11.30.** Development and provision of animal welfare and dog control including enforcement.
- 11.31.** Inspection of the authority's area to detect any statutory nuisance (including relating to noise in the street and waste) and the service of any abatement notice in respect of a statutory nuisance.
- 11.32.** Taking action to remove gypsies and travellers from Council land.
- 11.33.** Promoting Maidstone Borough Council's (MBC) commitment and intent towards its statutory and moral duties to safeguard children and adults who come into contact with its services and activities and ensure that they are protected from harm, exploitation and abuse.
- 11.34.** Enforcement of Health and Safety at work legislation, including the appointment of Inspectors.
- 11.35.** Dealing with issues arising from contaminated land.
- 11.36.** The discharge of any function relating to pollution control (including noise, air, land, water and private drainage) and the management of air quality.
- 11.37.** Pollution control including noise, air, land, water and private drainage and the service of any abatement notice in respect of a statutory nuisance.
- 11.38.** Making Community Protection Notices under the Antisocial Behaviour, Crime and Policing Act 2014.
- 11.39.** To make Public Space Protection Orders and Orders under the Antisocial Behaviour Act 2003.
- 11.40.** The enforcement of Section 2 of the sunbeds (Regulation) Act 2010, including the appointment of authorised officers.

## **12. Head of Planning & Development**

The Head of Planning & Development is responsible for: -

- 12.1.** Handling and determination of all applications submitted under the Town and Country Planning Acts in accordance with criteria as set out in the Constitution, including the adoption of screening and scoping opinions in relation to Environmental Statements.
- 12.2.** The enforcement of all aspects of planning control.
- 12.3.** Exercising all other functions relating to planning, conservation areas, listed buildings and trees.

- 12.4.** Taking action to remove gypsies and travellers from non- Council owned land.
  - 12.5.** Responsibility for the Council's local land charges service.
  - 12.6.** Providing heritage asset conservation and landscape advice in the determination of planning applications and policy.
  - 12.7.** Responsibility for all aspects of heritage asset conservation and Tree Preservation and advice, including: proposing buildings for listing, amendments and Orders within Conservation Areas, making Tree Preservation Orders and determining applications for works to Preserved Trees and section 211 notices on trees in Conservation Areas.
  - 12.8.** Responsibility for functions relating to High Hedges legislation.
  - 12.9.** All aspects of the preparation of statutory and non-statutory spatial planning documents on any relevant matter including planning tariff and infrastructure planning and advice to Council, developers and others on these matters.
  - 12.10.** Procuring and securing of relevant technical and consultancy advice on the matters to the above.
  - 12.11.** Authority to liaise with the highways authorities, strategic planning bodies and neighbouring authorities and other bodies on matters relevant to coordinated strategic transport and spatial planning.
  - 12.12.** Handling and determination of all applications submitted under the building regulations and enforcement of building regulations.
  - 12.13.** The exercise of control over demolitions and dangerous structures under the Public Health Acts and Building Act.
  - 12.14.** Obtaining information under Section 330 of the Town and Country Planning Act 1990.
  - 12.15.** Policy and strategic advice to Members and Council Officers on all the above.
  - 12.16.** Making representations to Government and other authorities on these matters and any new legislation or policies and guidance impacting on all the above matters for which the Officer has responsibility.
- 13. Director of Mid Kent Services**
- The Director of Mid Kent Services has line management of the following:
- 13.1.** Head of Audit Partnership
  - 13.2.** Head of Human Resources Shared Service

- 13.3.** Head of ICT Shared Service
- 13.4.** Head of Legal Partnership
- 13.5.** Head of Revenues and Benefits Shared Service

**14. Head of Audit Partnership**

The Head of Audit Partnership is responsible for: -

- 14.1.** The provision of an adequate and effective system of internal audit of the Council's accounting records and its system of internal control in accordance with the proper practices in relation to internal control as prescribed by the Accounts and Audit Regulations 2015.
- 14.2.** The maintenance the Council's Strategic Risk Register and the provision of advice and guidance on the principles and practices of Risk Management and counter-fraud.
- 14.3.** To be the principal point of contact on Public Interest Disclosure Act referrals (Whistleblowing); to arrange for investigation and action as appropriate.

**15. Head of Human Resources Shared Service**

The Head of Human Resources Shared Service is responsible for: -

- 15.1.** The provision of advice to Members and Officers of the Council on all aspects of personnel policy and issues including employment issues, conditions of service, pay and grading, pensions and superannuation discretion.
- 15.2.** The administration of the Council's scheme of job evaluation for the grading of posts.
- 15.3.** Ensuring that the Council's personnel policies and procedures comply with employment legislation and EC Directives.
- 15.4.** The approval of all staff qualification training; planning and design of in-house training services and co-ordination of the Youth Training Scheme.
- 15.5.** Ensuring the payment of salaries, wages and associated employer expenses to employees and Members, and advising on pension matters.
- 15.6.** Ensuring the appropriate development of Members and Officers.
- 15.7.** Ensuring that the Council's Health and Safety at Work policies and procedures comply with legislation and EC Directives including Fire Regulations and training.

**16. Head of ICT Shared Service**

The Head of ICT Shared Service is responsible for: -

- 16.1.** The provision of advice on the formulation of the Council's IT Strategy and the facilitation of Corporate IT activities so that they may remain within the corporate IT Strategy.
- 16.2.** The provision of a central purchasing service for all IT related functions including hardware, software and consumables.
- 16.3.** The provision of a strategic input to decisions on matters concerning new technology.
- 16.4.** Maintaining all appropriate Data Protection and other registrations with the Information Commissioner's Office.

**17. Head of Legal Partnership**

The Head of Legal Partnership is responsible for: -

- 17.1.** The provision of advice to Members and Officers of the Council on all legal issues.
- 17.2.** The provision of a legal service relating to the Council's functions.
- 17.3.** Provision of advice to Members, the Council and Committees on the operation of the Constitution.
- 17.4.** Dealing with the Local Government Ombudsman.
- 17.5.** The authorisation of Council Officers to appear on behalf of the Council in legal proceedings.
- 17.6.** Obtaining information under Section 330 of the Town and Country Planning Act 1990.
- 17.7.** The Head of Legal Partnership is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Head of Legal Partnership considers that such action is necessary or appropriate to protect the Council's interests.
- 17.8.** 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 Partnership 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.
- 17.9.** Contracts exceeding the value specified within the Financial Procedure Rules must be made under the common seal of the Council or the mobile

seal for remote use attested by the Head of Legal Partnership or other authorised signatory, unless the Head of Legal Partnership considers that certain contracts may be signed rather than sealed.

**17.10.** The Common Seal of the Council and the mobile seal for remote use will be kept in a safe place in the custody of the Head of Legal Partnership. A decision of the Council or a Committee or Sub-Committee or Officer will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal or mobile seal for remote use will be affixed to those documents which in the opinion of the Head of Legal Partnership, should be sealed. The affixing of the Common Seal or the mobile seal for remote use will be attested by the Head of Legal Partnership or any other solicitor authorised by him/her.

## **18. Monitoring Officer**

**18.1.** The Monitoring Officer has delegated authority to make changes to the Constitution which are necessitated by decisions taken by the Council; which remove inconsistency or ambiguity; which are minor; or to effect changes in the law.

**18.2.** All Monitoring Officer duties, including maintaining the registers of Members and Officers interests and gifts and hospitality; granting dispensations to speak and vote at meetings as appropriate; authority to investigate (or arrange for the investigation of) Member misconduct; and to resolve matters informally where he/she considers appropriate after consulting the Independent Person.

## **19. Head of Revenues & Benefits Shared Service**

The Head of Revenue & Benefits Shared Service is responsible for: -

**19.1.** The administration, collection and recovery of non-domestic rates and Council Tax, including determining any discretionary items in connection with local taxation or national non- domestic rates.

**19.2.** The determination, administration and making payments including arranging abatements and rebates for Council Tax Benefit and Housing Benefit including determining any discretionary items in connection with Council Tax Benefit and Housing Benefit.



**B6. Proper Officer Provisions**

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to the Clerk of a Council or the Town Clerk of a Borough.	Chief Executive	Monitoring Officer
Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to the Treasurer of a local authority.	Chief Finance Officer	Head of Finance
Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972 or in any instrument made before 26 October 1972 to the Public Health Inspector.	Director of Regeneration and Place	Head of Housing and Community Services
The following provisions of the <b>Local Government Act 1972</b> :		
Section 115(2) – the Officer who shall receive all money due from any other Officer of the Council.	Chief Finance Officer	Head of Finance

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Section 146(1) – the Officer who (upon a transfer of securities the alteration of the name of the District) shall make a statutory declaration specifying the securities and verifying the change of name and identity of the Council or shall give such a certificate as is prescribed.	Chief Finance Officer	Head of Finance
Section 151 – the Officer having responsibility for the proper administration of the financial affairs of the Council.	Chief Finance Officer	Head of Finance
<b>The following provisions of the Representation of the People Act 1983:</b>		
Section 8 and Section 52 – the Registration Officer for any constituency of part of a constituency coterminous with or situated in the Borough.	Chief Executive	Head of Policy, Communications and Governance
Section 35 (1) the Returning Officer for the election of Councillors of the District and for elections of Councillors of Parishes within the District and 52 Deputy Electoral Registration Officer.	Chief Executive	Head of Policy, Communications and Governance
Section 82 – To receive declarations of Election expenses.	Chief Executive	Head of Policy, Communications and Governance

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
The following provisions of the <b>Local Government Act 1972:</b>		
Section 83(1) – the Officer to whom a person elected shall deliver a declaration of acceptance of office in a form prescribed by rules made under Section 42 of the Act.	Chief Executive	Head of Policy, Communications and Governance
Section 84 – the Officer to whom a Member may give written notice of resignation.	Chief Executive	Head of Policy Communications and Governance
Section 86 – declare any vacancy in office.	Chief Executive	Head of Policy, Communications and Governance
Section 88(2) - the Officer who may convene a meeting for the election of Chairman of the Council following a casual vacancy in that office.	Chief Executive	Head of Policy, Communications and Governance
Section 89(1) – the Officer to whom notice shall be given of any casual vacancy occurring in the office of Councillor.	Chief Executive	Head of Policy, Communications and Governance
Section 191(2) – the Officer who shall receive an application under Section 1 of the Ordnance Survey Act 1841.	Director of Finance and Business Improvement	Head of Policy, Communications and Governance

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Section 210(6) – the Officer who shall exercise the powers relating to charities conferred by these subsections.	Director of Finance and Business Improvement	Head of Finance
Section 223 - authorise Officers to appear in legal proceedings (and Section 60 County Courts Act 1984).	Monitoring Officer	Deputy Monitoring Officer
Section 225(1) – the Officer who shall receive and retain documents deposited with the Council pursuant to the Standing Orders of either Houses of Parliament or to any enactment or instrument, and shall take such action relating to these documents as may be directed.	Director of Finance and Business Improvement	Head of Policy, Communications and Governance
Section 229(5) – the Officer who shall certify a photographic copy of a document in the custody of the Council, or of a document which has been destroyed while in the custody of the Council, or of any part of any such document.	Monitoring Officer	Deputy Monitoring Officer

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Schedule 12, Part I, para 4(3) – the Officer to whom a Member of the Council shall give notice in writing desiring summonses to attend meetings of the Council to be sent to an address specified in the notice other than his or her place of residence.	Head of Policy, Communications and Governance	Democratic Services Officer
Schedule 14, Part II, para 25(7) – the Officer who shall certify a resolution of the Council applying or disapplying provisions under the Public Health Acts 1875-1925.	Director of Regeneration and Place	Chief Executive
Section 234(1) – the Officer whose signature shall authenticate any notice, order or other document which the Council is required or authorised to issue by or under any enactment.	Monitoring Officer	Deputy Monitoring Officer
Section 236(9) – the Officer who shall send a copy of every byelaw made by the Council and confirmed to the Proper Officer of every parish to which they apply.	Head of Policy, Communications and Governance	Monitoring Officer
Section 236(10) – the Officer who shall send a copy of every byelaw made by the Council and confirmed to the Council of the County.	Head of Policy, Communications and Governance	Monitoring Officer

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Section 238 – the Officer who shall certify a printed copy of a byelaw of the Council.	Monitoring Officer	Deputy Monitoring Officer
Section 248 – to keep the roll of Freemen.	Chief Executive	Head of Policy, Communications and Governance
Section 13(3) of the Local Government Act 1972 – the Officer who together with the Chairman of the Parish Member shall be a body corporate by the name “The Parish Trustees”.	Chief Executive	Director of Finance and Business Improvement
The Officer responsible for the convening of newly created Parish Councils.	Chief Executive	Head of Policy, Communications and Governance
<b>Local Government and Housing Act 1989:</b>		
3A – To determine applications for exemption from the list of politically restricted posts.	Chief Executive	Monitoring Officer
2 - Maintain a list of politically restricted posts.	Chief Executive	Monitoring Officer
4 - Head of Paid Service	Chief Executive	Any Director
5 - Monitoring Officer	Interim Deputy Head of Legal Partnership	Team Leader Corporate Governance

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
<b>Local Government and Housing Act 1989 Sections 15-17 and Local Government (Committees and Political Groups) Regulations 1990:</b>		
9 - Regulation 9 – Receipt of Notice re Political Groups.	Chief Executive	Head of Policy, Communications and Governance
10 - Receipt of Notice of Cessation of Membership of Political Groups.	Chief Executive	Head of Policy, Communications and Governance
13 - To accept wishes of Political Groups in respect of proportionality.	Chief Executive	Head of Policy, Communications and Governance
14 - To notify Political Groups of allocations.	Chief Executive	Head of Policy, Communications and Governance
All other cases in respect of which the Strategic Director has from time to time been appointed as the Proper Officer of the Council.	Director of Finance and Business Improvement	Chief Executive
<b>Local Government (Miscellaneous Provisions) Act 1976:</b>		
Section 16 – Service of notices requiring details of any interests in land.	Directors and Heads of Service	Chief Executive
Section 41 – the Officer for certifying documents as provided for under this section.	Head of Policy, Communications and Governance	Chief Executive

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
<b>PART I PUBLIC HEALTH ENACTMENTS</b>		
<b>Public Health Act 1936 &amp; Public Health (Control of Disease) Act 1984</b>		
Section 11 - Duty of local authority to supply forms to doctors for purposes of Section 48.	Head of Housing and Community Services	Director of Regeneration and Place
Section 48 – Removal of dead body to mortuary for burial.	Head of Housing and Community Services	Director of Regeneration and Place
Section 58 – Authentication of documents.	Head of Housing and Community Services	Director of Regeneration and Place
Section 60 – Service of notices and other documents.	Head of Housing and Community Services	Director of Regeneration and Place
<b>PART II STATUTORY INSTRUMENT</b>		
Health Protection (Notification) Regulations 2010/659 Including cases of infectious disease to be notified to proper Officer and disclosure of information/notices.	Head of Housing and Community Services	Director of Regeneration and Place
Public Health (Fees for Notification of Infectious Disease) Order 1968 (SI 1968 No. 1365).	Head of Housing and Community Services	Director of Regeneration and Place
Public Health (Prevention of Tuberculosis) Regulations 1925 (SI 1925 No. 757).	Head of Housing and Community Services	Director of Regeneration and Place



<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Food Hygiene (Docks, Carriers etc.) Regulations 1960 (SI 1960 No. 1602) Article 11.	Head of Housing and Community Services	Director of Regeneration and Place
Public Health (Aircraft) Regulations 1979 No. 1434).	Head of Housing and Community Services	Director of Regeneration and Place
Public Health (Ships) Regulations 1979 (SI 1979 No. 1435).	Head of Housing and Community Services	Director of Regeneration and Place
<b>Local Government Act 1974</b>		
Part 3 – Local Government Ombudsman functions, including giving public notice of reports.	Chief Executive	Monitoring Officer
<b>Local Government Miscellaneous Provisions Act 1982</b>		
Part XI - Public Health	Head of Housing and Community Services	Director of Regeneration and Place
<b>Building Act 1984</b>		
78 - Authorise action in relation to dangerous structures.	Head of Planning and Development	Building Control Officers
The local registrar within the meaning of the Land Registration Act 2002 and Local Land Charges Act 1975 who shall register any matters specified by these Acts affecting land and situate within the district.	Head of Planning and Development	Chief Executive

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
<b>Food Safety Act 1990</b>		
Food Safety and authentication of documents	Head of Housing and Community Services	Director of Regeneration and Place
<b>Sunbeds (Regulation) Act 2010</b>		
Appointment of authorised Officer(s) for the purposes of section 7	Mid Kent Environmental Health Manager	Head of Housing and Community Services
<b>Freedom of Information Act 2000</b>		
36 – Non-disclosure where potential to prejudice the effective conduct of public affairs.	Chief Executive	Monitoring Officer
<b>Local Authorities (Referendum) (Petitions and Directions) Regulations 2000 as amended</b>		
Whole – Proper Officer function	Monitoring Officer	Head of Policy, Communications and Governance
<b>Licensing Act 2003</b>		
Whole – Proper Officer function	Director of Regeneration and Place	Head of Housing and Community Services
<b>Localism Act 2011</b>		
29 – Establish and maintain a register of members' and co-opted members' interests.	Monitoring Officer	Deputy Monitoring Officer

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
30 – 31 – Receipt of Members and co-opted members' declarations of interests and changes to those interests within 28 days.	Monitoring Officer	Deputy Monitoring Officer
32 – Sensitive Interests	Monitoring Officer	Deputy Monitoring Officer
33 – Dispensations from restrictions under Section 31(4).	Monitoring Officer	Deputy Monitoring Officer
<b>Local Authorities (Conduct of Referendums) (England) Regulations 2012</b>		
Whole – Proper Officer function	Monitoring Officer	Head of Policy, Communications and Governance
<b>Anti-Social Behaviour Act 2003 and Anti-Social Behaviour, Crime and Policing Act 2014</b>		
Whole-Proper Officer function	Head of Housing and Community Services	Director of Regeneration and Place
<b>Any other Provisions/Legislation</b>		
Any other provisions for which arrangements are not specifically made under the Scheme of Delegation.	Chief Executive to authorise	Monitoring Officer

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
Any other legislation whether made before or after this list was approved and requiring a proper Officer or authorised Officer where not otherwise stated in this list or the Council's approved scheme of delegation from time to time.	Chief Executive to authorise	Monitoring Officer
<b>RULES OF PROCEDURE</b>		
Council Procedure Rules, Committee Procedure Rules, Executive Procedure Rules,	Chief Executive or Head of Policy, Communications & Governance	
Access to Information Procedure Rules	Head of Policy, Communication & Governance	Democratic and Electoral Services Manager
<b>Part VA, Local Government Act 1972</b>		
100B (2),(7) and 100H - Excluding from the Public reports which are not likely to be considered in open session; and provision to the press/public of other documents provided to Members where the Proper Officer thinks fit.	Head of Policy, Communications and Governance	Chief Executive
100C (2) - Where part or the whole of the report has been exempt the Proper Officer shall make a written summary of the proceedings or part to provide a record without disclosing the exempt information.	Directors and Heads of Service	Democratic Services Officer

<b>Function</b>	<b>Proper Officer</b>	<b>Person to act in the event of the Proper Officer being absent or otherwise unable to act</b>
100D - Compilation of list of background documents, relied upon to a material extent in producing the report or disclosing important facts.	Directors and Heads of Service	Democratic Services Officer
100F - Deciding whether documents for inspection in connection with Committees contain exempt information under a paragraph of Schedule 12A.	Directors and Heads of Service	Democratic Services Officer
100G (optional) - Maintain a list of Members and list of delegations to Officers and the like.	Head of Policy, Communications and Governance	Democratic Services Officer

## **PART C - RULES OF PROCEDURE**

## **C1. Council Procedure Rules**

### **1. INTRODUCTION**

- 1.1.** The Rules in this Chapter regulate the business at Full Council meetings. Other member bodies are subject to other Rules of Procedure set out later in this Part.
- 1.2.** The purpose of these Rules is to ensure that the Council meeting: -
  - 1.2.1. Provides a forum for the debate of matters of concern to Local Residents; and
  - 1.2.2. Acts as a place at which Members who are not on the Executive are able to hold the Executive and others discharging functions to account.

### **2. MEETINGS**

#### **2.1. Calling Annual and Ordinary Meetings.**

Subject to Rule 3 on the timing of the Annual Meeting, these meetings shall take place in accordance with a calendar of meetings agreed by Council Resolution.

#### **2.2. Calling of Extraordinary Meetings.**

The Proper Officer shall call an Extraordinary Meeting of the Council where requested by: -

- 2.2.1. the Council by resolution;
- 2.2.2. the Mayor;
- 2.2.3. the Monitoring Officer; and
- 2.2.4. any five (5) Members.

Any meeting should be held within 21 days of the receipt of the requisition, unless a resolution of the Council requesting a meeting does so in respect of some future date.

In the event that the Mayor refuses to call or does not call a meeting within seven (7) days of receipt of such a requisition, those members of the council, on that refusal or on the expiration of those seven (7) days, as the case may be, may forthwith call an Extraordinary meeting of the Council.

### **2.3. Time & Place of Meetings**

The time and place of meetings will be determined by the Proper Officer and notified in the summons.

### **2.4. Notice of and Summon to Meetings**

The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five (5) clear working days before a meeting, the Proper Officer will publish on the Council's website and send a summons signed by him/her electronically to every Member (or on request by post or by leaving it at their usual place of residence or other address). 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. No business other than that specified in the summons to the meeting may be considered at a meeting of the Full Council.

### **2.5. Cancellation of Meetings**

In exceptional circumstances the proper officer may cancel or alter the time or location of any meeting.

## **3. THE ANNUAL MEETING OF THE COUNCIL**

### **3.1. Occurrence of the Annual Meeting.**

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

### **3.2. Business of the Annual Meeting.**

The Annual Meeting will:

- 3.2.1. elect a person to preside if the Mayor and Deputy Mayor are not present, or if the Mayor is not present and the Deputy Mayor is to be a candidate for election as Mayor;
- 3.2.2. elect the Mayor;
- 3.2.3. consider whether any items should be taken in private because of the likely disclosure of Confidential or Exempt Information;
- 3.2.4. approve and sign the minutes of the last meeting;
- 3.2.5. appoint the Deputy Mayor;
- 3.2.6. receive any announcements from the Mayor;



- 3.2.7. receive congratulations from local scholars;
- 3.2.8. elect the Leader should the post have become vacant;
- 3.2.9. receive the Leader's appointment of Members to the Executive and scheme of delegation in respect of Executive Functions;
- 3.2.10. consider any motion moved by the Leader in respect of the Administration's Programme;
- 3.2.11. agree a Scheme of Seat Allocations for the Committees;
- 3.2.12. adopt the scheme of delegation in respect of non-Executive Functions;
- 3.2.13. consider any business set out in the summons convening the meeting; and
- 3.2.14. consider matters where confidential or exempt information may be revealed.

#### **4. BUSINESS OF ORDINARY MEETINGS**

Ordinary meetings will:

- 4.1.** elect a person to preside if the Mayor and Deputy Mayor are not present;
- 4.2.** receive any declarations of interest from Members and Officers and deal with any applications for dispensations;
- 4.3.** receive any disclosures of lobbying by Members;
- 4.4.** consider whether any items should be taken in private because of the likely disclosure of Confidential or Exempt information;
- 4.5.** approve and sign the minutes of the last meeting;
- 4.6.** receive any announcements from the Mayor;
- 4.7.** receive any petitions or deputations;
- 4.8.** receive questions from, and provide answers to, Local Residents in relation to matters which in the opinion of the Member presiding at the meeting are relevant to the business of the Council;
- 4.9.** allow Local Residents to speak in accordance with Rule 13 on Public Speaking;
- 4.10.** the following will receive and respond to questions from Members in chronological order of receipt:
  - 4.10.1. The Leader;

- 4.10.2. Member on the Executive with a portfolio to which the question relates,
- 4.10.3. Other Members who chair a Committee with terms of reference to which the question relates;
- 4.11.** receive the Leader's Report on Current Issues and the Group Leaders' responses;
- 4.12.** deal with any business from the last Council meeting;
- 4.13.** consider any motion moved by the Leader in respect of the Administration's Programme where this has not hitherto been approved by the Council for the Municipal Year;
- 4.14.** receive reports from the Executive or the Committees where there are recommendations for the Council to take a decision;
- 4.15.** receive reports about the business of Joint Arrangements and external organisations which include matters for decision;
- 4.16.** consider motions in the order in which notice has been received;
- 4.17.** consider any other business specified in the summons to the meeting; and
- 4.18.** consider matters where Confidential or Exempt information may be revealed.

## **5. QUORUM AT MEETINGS**

The quorum of any meeting of the Council will be one quarter of the whole number of Members.

## **6. PRESIDING AT THE MEETING**

- 6.1.** The Mayor or in his or her absence the Deputy Mayor will preside at meetings of the Council.
- 6.2.** If both the Mayor and the Deputy Mayor are absent, the Members present at the meeting will choose another Member to preside: -
  - 6.2.1. any power or duty of the Mayor to conduct a meeting including exercising a second or casting vote, may be exercised by the Member presiding at the meeting;
  - 6.2.2. if the Mayor or Deputy Mayor arrive after the start of the meeting the Member then presiding will vacate the chair and the Mayor or Deputy Mayor will take the chair.

## **7. DURATION OF MEETINGS**

- 7.1.** Each unfinished meeting will adjourn at 10.30 pm unless a majority of Members present vote to extend the meeting to 11.00 pm at which time the meeting will stand adjourned;
- 7.2.** The time and date of the continuation of the adjourned meeting will be decided by a majority of those Members present, or if no decision is reached, by the Proper Officer in consultation with the Mayor and Leader, and it should normally take place within ten (10) working days of the meeting.

## **8. PRESENTATION OF PETITIONS**

- 8.1.** Appendix A sets out the nature of those petitions received by the Council that are to be considered by the Full Council.
- 8.2.** No more than three (3) petitions may be presented per meeting.
- 8.3.** Where a petition is presented: -
  - 8.3.1.** Only one person may speak to a petition for a maximum of five (5) minutes. They should have signed the petition, be a Local Resident and be a supporter of the body submitting the petition. This may include someone acting for that petitioner in a professional capacity.
  - 8.3.2.** At a Council meeting, at the conclusion of the speech of the presenter, a debate will take place on the petition for up to a period of twenty minutes or if the petition has at least 1,500 signatures, with no time limit on the debate. The debate should take place with the intention that the petition and the views of the Council will then be referred to the appropriate Committee. The debate will be subject to normal council debating rules with the exception that at the end of the debate no vote will be taken, but the petitioner will have an opportunity to speak for a further period of three (3) minutes responding to the issues raised in the debate.
  - 8.3.3.** If the Mayor determines that it is inappropriate to debate the petition as a separate item at Full Council, then the petition will be considered later at the same Council meeting in conjunction with any report that has been placed on the agenda concerning the matter raised in the petition.
  - 8.3.4.** Any report relating to the subject matter of the petition will be placed on the agenda immediately following the presentation of petitions or in the order petitions are presented if more than one petition is presented at the meeting.

- 8.4.** Petitions which are not to be presented in person at meetings of the Council will be reported to it. Debate shall take place as per Rule 8.3 above, save that there will be no speeches by a presenter.

## **9. QUESTIONS ON NOTICE**

- 9.1.** At every Ordinary meeting of the Council, save for the Annual meeting, there shall be: -

9.1.1. A one (1) hour session for Local Residents; followed by

9.1.2. A half-hour session for Members

to pose Questions on Notice concerning the business of the Council.

- 9.2.** The questions may be asked of: -

9.2.1. The Leader;

9.2.2. A Lead Member to whose portfolio the question relates;

9.2.3. Other Members who chair a decision-making Committee with terms of reference to which the question relates.

- 9.3.** Appendix B on Questions from Notice sets out the process for giving notice of such questions prior to the Council Meeting and record keeping subsequent to the meeting.

### **9.4. Order of Questions**

Questions will be asked of the relevant Members in the order that notice of them was received, except that the Mayor may group together similar questions.

### **9.5. Posing a Question at the Meeting**

The Mayor will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Mayor to put the question on their behalf, in which event the answer given by the relevant Member shall also be written and sent to the questioner.

### **9.6. Supplementary Questions**

A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The Mayor may reject a supplementary question if it would not have been allowed as a Question on Notice or because it does not arise directly out of the question or reply.

**9.7. Nature of Reply**

The form and content of reply to an original or a supplementary question will be at the discretion of the Member giving the reply, unless in respect of an original question a written request has been received specifying a specific form of reply or replies. He/she may decline to give a full or any reply if in his or her opinion to do so would involve an unreasonable amount of labour or cost.

**10. LEADER'S REPORT ON CURRENT ISSUES**

**10.1.** At every Ordinary Meeting of the Council except the Annual Meeting, the Leader shall report to the Council on current issues. The leaders of every other Political Group shall then have the right to respond, focusing primarily but not exclusively on the issues raised by the Leader. Each statement may last for up to five minutes.

**10.2.** After the Leader and the other Group Leaders have spoken, the Mayor will open the item to questions from Members for a period of fifteen (15) minutes. Questions may be on any subject relevant to the role of the Leader.

**11. INVITATION OF THIRD PARTIES TO COUNCIL**

11.1.1. An Ordinary Meeting of Council may invite, through the Leader or Mayor, a third party to attend a meeting to speak and answer questions on a particular item on the agenda.

11.1.2. An item on the agenda of an Ordinary Meeting of Council may be deferred if Council agrees that a third-party contribution to the discussion is necessary.

**12. MOTIONS ON NOTICE**

**12.1.** Subject to the exceptions listed in Rule 12.4 below, written notice of every motion must be delivered to the Proper Officer not later than six (6) clear working days before the meeting of the Council at which it is to be moved. Motions will be set out in the summons for the Council in the order received, with the names of the signatories, unless the Member giving notice states, in writing, that they propose to move it at a later meeting or withdraw it.

**12.2.** A Notice of Motion requires signing by at least one third of the Members of the Council where the matter is subject to the limitations in Rule 17.

**12.3.** Notices of Motions will be entered in a book open to public inspection.

**12.4.** Exceptions to the requirement for written notice include: -

- 12.4.1. Motions in respect of reports by Committees or the Executive as per Rule 14;
- 12.4.2. Procedural Motions as per Rule 15.
- 12.5.** Proposals for the Administration's Programme for the Municipal Year must similarly be made in writing and submitted to the Proper Officer by 4pm three (3) Clear Days before the day of the meeting where this is listed as an agenda item. Such proposals may only be submitted by the Leader or by a Member identifying themselves on the public record as a candidate for election as Leader at the coming meeting.
- 12.6.** Amendments to the recommended Budget, or alternative proposals, are to be made in writing and delivered to the Proper Officer by 4pm on the Monday before the meeting. In proposing any changes to the Budget any amendment must ensure that the proposal achieves a balanced budget.
- 12.7.** If a motion set out in the summons is not moved at the meeting by a Member who gave notice, or by another Member, it will be deemed withdrawn unless deferred by the Council.
- 12.8.** If the subject of a motion concerns a matter of a quasi-judicial nature, and the matter appears within the competence of a Committee or other Member body, at the meeting the Mayor shall declare the motion referred to that Committee or Member-body without debate, and the motion shall be so referred. If the subject of the motion is any other matter of a quasi-judicial nature, at the meeting the Mayor shall refer the matter to the relevant Officer(s) and declare the motion disposed of.
- 12.9.** If the subject of a motion comes within the province of any Executive Function, at the meeting: -
  - 12.9.1. The Mayor shall first allow for a debate.
  - 12.9.2. If the Member moving the motion so proposes, and the Member seconding the motion is in agreement, the Mayor shall call a vote on whether to refer the matter directly to the Executive for consideration.
    - (a) Should Council so resolve, the motion shall be referred.
    - (b) Should Council refuse to so resolve, the motion shall be deemed to have fallen.
  - 12.9.3. If there is no proposal to refer the matter directly to the Executive, the Mayor shall refer the matter to the relevant Policy Advisory Committee.
- 12.10.** If the subject of a motion concerns a matter within the competence of any other Committee: -

12.10.1. The Mayor shall first allow for a debate;

12.10.2. The Mayor shall then declare the motion referred to the relevant Committee for consideration.

**12.11.** For the purposes of Rule 12.10, any motion that seeks to amend any Provision within Part A of this Constitution, or any Rule within Part C of this Constitution, shall be regarded as within the competence of the Democracy & General Purposes Committee.

**12.12.** Every motion must be relevant to the Council's powers or duties or to a matter which affects the Borough.

**12.13.** Any motion which in the opinion of the Proper Officer after consultation with the Head of Legal Partnership is out of order, or illegal, will be submitted to the Mayor who will decide whether it is accepted and the Proper Officer will notify the Member(s) accordingly.

### **13. PUBLIC SPEAKING AT COUNCIL**

Where the meeting is open to the public, a Local Resident or a representative of a local organisation may speak at the invitation of the Mayor in respect of an item on the agenda. Notice of a request to speak must be given to Democratic Services by no later than 4pm one clear working day before the relevant meeting. Public speaking is subject to the following time limits:

**13.1.** The total time for speaking on an item on the agenda is twelve (12) minutes; within that twelve (12) minute period, each speaker has a maximum of three (3) minutes.

**13.2.** In addition to the twelve (12) minutes, a relevant Parish Council representative may be allocated a maximum of three (3) minutes each; where there are several such speakers, they will be asked by the Proper Officer to appoint a single spokesperson to represent all views.

**13.3.** When these times have expired, speakers will not be allowed to speak further unless asked by the Mayor to clarify a point of fact.

### **14. REPORTS BY COMMITTEES AND THE EXECUTIVE**

**14.1.** The Council will consider reports by Committees who are empowered to make recommendations to the Council and also reports of the Executive making recommendations. Motions concerning such reports, where the subjects of these reports are included in the Summons for the purposes of Rule 2.4, do not require notice for the purposes of Rule 12.

## **15. RULES OF DEBATE**

### **15.1. No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### **15.2. Right to require motion in writing**

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

### **15.3. Secunder's speech**

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

### **15.4. Content and length of speeches**

Speeches must be directed to the matter under discussion or to a personal explanation or point of order. No speech may exceed three (3) minutes without the consent of the Mayor, except when moving a motion submitted in accordance with Rule 12 or Rule 14 above, when the mover will be entitled to speak for five (5) minutes, or except when a Group Leader is moving his or her Group's budget proposals at the Budget Making Council, or the Leader is moving the Administration's Programme, when the mover will be entitled to speak for ten (10) minutes.

### **15.5. When a Member may speak again**

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

- 15.5.1. to speak once on an amendment moved by another Member;
- 15.5.2. to move a further amendment if the motion has been amended since he/she last spoke;
- 15.5.3. if his or her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- 15.5.4. in exercise of a right of reply;
- 15.5.5. on a point of order; and
- 15.5.6. by way of personal explanation.



**15.6. Amendment to motions**

- 15.6.1. An amendment to a motion must be relevant to the motion and will 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 or accepted by the motion's proposer and seconder, other amendments to the original motion may be moved.
- 15.6.4. If an amendment is carried, or accepted by the motion's proposer and seconder, 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. If there are no further amendments the Mayor will put the substantive motion to the vote.

**15.7. Alteration of motion**

- 15.7.1. A Member may when moving a motion of which he/she has given notice under Rule 12, alter it with the consent of the meeting and the other signatories. The meeting's consent will be signified without discussion.
- 15.7.2. A Member may alter a motion which he/she 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 Member may withdraw a motion which he/she has moved with the consent of the seconder. No Member may speak on the motion after the mover has withdrawn it.

**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. The mover of the amendment has a right of reply to the debate on his or her amendment (before the right of reply of the mover of the original motion).
- 15.9.3. 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, if he/she has spoken on it.

**15.10. Motions which may be moved during debate**

- 15.10.1. When a motion is under debate, no other motion may be moved except the following procedural motions:
  - (a) to amend a motion;
  - (b) a Closure motion (as below);
  - (c) to move;
  - (d) that the meeting continue until 11.00pm;
  - (e) to exclude the public and press in accordance with the Access to Information Rules;
  - (f) to not hear further from a Member named under Rule 16.3 or to exclude them from the meeting under Rule 16.4;
  - (g) to suspend a particular Council procedure rule;
  - (h) to give the consent of the Council where its consent is required by this Constitution;
  - (i) to extend the time limit for speeches;
  - (j) to determine the time and date of the adjourned meeting in accordance with Council procedure Rule 7.2; and
  - (k) to put the motion in parts to the vote.

**15.11. Closure motions**

- 15.11.1. A Member may move, without comment, the following motions at the end of a speech of another Member:
  - (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 Mayor thinks the item has been sufficiently discussed, he/she will give the mover of the original motion a right to reply and then put the procedural motion to the vote.

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

15.11.4. If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she 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 Member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Procedure Rules, the rest of the Constitution, or the law. The Member must indicate the Provision, Rule or law and the way in which he/she consider it has been broken. The ruling of the Mayor on the matter will be final.

### **15.13. Personal explanation**

A Member may make a point of personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Member (whether or not made at the meeting) which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

## **16. CONDUCT OF ELECTED MEMBERS**

### **16.1. Standing to speak**

When a Member speaks at Full Council they must usually stand and address the meeting through the Mayor. If more than one Member stands, the Mayor will ask one to speak and the others must sit. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of order or a personal explanation.

### **16.2. Mayor standing**

When the Mayor stands during a debate, any Member speaking at the time must stop and sit down. The meeting must be silent.

**16.3. Member not to be heard further**

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

**16.4. Member to leave the meeting**

If the Member continues to behave improperly after such a motion is carried, the Mayor may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

**16.5. General disturbance**

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as he/she thinks necessary, or may adjourn and re-convene elsewhere.

**17. PREVIOUS DECISIONS & MOTIONS**

**17.1. 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 one third of the whole number of the Council.

**17.2. 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 one third of the whole number of the Members.

**18. VOTING**

**18.1.** Unless this Constitution or the law 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.

**18.2. Mayor's casting vote**

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote, regardless of whether he/she has used his or

her first vote. There will be no restriction on how the Mayor chooses to exercise a casting vote.

### **18.3. Means of Voting**

Unless a recorded vote is demanded under Rule 18.4, the Mayor will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

### **18.4. Recorded vote**

If five Members present at a Council meeting, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

### **18.5. Right to require individual vote to be recorded**

Where any Member 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.

### **18.6. Recorded votes at Budget meetings**

Immediately after any vote is taken at a Budget Decision Meeting, on any decision related to the making of the calculation or the issuing of the Council Tax as the case may be there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

### **18.7. 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.

## **19. MINUTES**

### **19.1. Signing the minutes**

The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor 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.

### **19.2. 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 following 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.

### **19.3. Form of minutes**

Minutes will contain all motions and amendments in the exact form and order the Mayor put them and shall record all questions and answers in accordance with Rule 9.

## **20. RECORD OF ATTENDANCE**

All Members 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.

## **21. EXCLUSION OF PUBLIC & RECORDING OF MEETINGS**

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

**21.2.** Any member of the public or press attending meetings of the Council may record such meetings in open session using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media. Anyone filming a meeting is asked to focus only on those actively participating

**21.3.** Recording of any part of a meeting held in closed session is not permitted.

**21.4.** All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting signifies consent to this.

## **22. DISCLOSURE OF INTERESTS**

**22.1.** A Member with a Disclosable Pecuniary Interest or Other Significant Interest in a matter to be considered, or being considered at a meeting must:

22.1.1. disclose the interest; and

22.1.2. explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject

to Rule 22.3 below); and unless they have been granted a dispensation;

22.1.3. not participate in any discussion of, or vote taken on, the matter at the meeting unless they have been granted a dispensation; and

22.1.4. withdraw from the meeting room whenever it becomes apparent that the business is being considered; and

22.1.5. not seek improperly to influence a decision about that business.

**22.2.** A Member with an Other Significant Interest, may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. The Member will withdraw from the meeting room immediately after making representations, answering questions or giving evidence.

**22.3.** Where a Disclosable Pecuniary Interest or an Other Significant Interest has been agreed by the Monitoring Officer as being a Sensitive Interest, the Member need only disclose the existence of the interest but not its nature.

## **23. DISTURBANCE BY PUBLIC**

### **23.1. Removal of member of the public**

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

### **23.2. Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared and may adjourn the meeting and/or re-convene elsewhere.

## **24. SIGNATURES OF MEMBERS**

Where any of these Rules require a Member to sign or consent to a document or requisition to be provided to the Proper Officer, an authentic email message from that Member shall suffice. Where there is a requirement for more than one (1) Member to sign or consent to a document or requisition, the Members may indicate the same to the Proper Officer through multiple counterparts.

**25. SUSPENSION OF THESE RULES**

All of these Council Procedure Rules except Rules **16.2, 18.5, 18.6** and **19.2** may be suspended by motion on notice or without notice if at least one half of the whole number of Members are present and the majority present approve. Suspension can only be for the duration of the meeting.



## Appendix A: The Council's Petition Scheme

### Para.

### *Appendix A: Petitions*

1. The Council welcomes petitions from Local Residents. Subject to Para.2 below, all petitions received by the Council that are signed by at least 100 Local Residents will be presented or reported to the relevant Member body.
2. The Member body to which a petition is presented or reported shall depend on whether or not it pertains to an Executive Function and the number of signatories.
  - 2.1. For Executive Functions where the number of signatories is at least 200 Local Residents, the petition shall go to the Executive.
  - 2.2. For Executive Functions where the number of signatories is fewer than 200 Local Residents, the petition shall go to the relevant Committee.
  - 2.3. For non-Executive Functions where the number of signatories is at least 200 Local Residents, the petition shall go to Full Council.
  - 2.4. For non-Executive Functions where the number of signatories is fewer than 200 Local Residents, the petition shall go to the relevant Committee. Where the petition concerns a matter not otherwise within the competence of a Committee, the petition shall go to the Democracy & General Purposes Committee.
3. If so required by a signatory to a petition, it may be presented in person at meetings of the relevant Member body, subject to compliance with the following procedure:-
  - 3.1. The wording of the petition to be presented to be presented must be given in writing to the Proper Officer at least two (2) weeks before the day of the meeting. Ward Members will be notified of the wording of petitions when received;
  - 3.2. If a petitioner has submitted a petition of at least 100 signatures requesting a Senior Officer of the Council to attend, give evidence and provide information on activities for which they are responsible, then that Senior Officer will attend;

**Para.*****Appendix A: Petitions***

- 3.3. Petitions must be presented to the Proper Officer at least one (1) clear day before the day of the meeting (i.e. two days) of the relevant Member body;
  - 3.4. No more than three (3) petitions may be presented per meeting;
  - 3.5. If more than one petition is notified to the Proper Officer to the same meeting, they shall rank in order of priority according to the time of notice given;
  - 3.6. No petition may be presented relating to an application for a licence;
  - 3.7. No petition may be presented to the Annual Meeting of the Council or to any meeting of the Audit, Governance and Standards Committee.
4. Petitions which are not to be presented in person at meetings of the Council or appropriate Committee will be reported to that body.
  5. Provision will be made for a facility to submit petitions electronically.
  6. Any checking or sampling of signatories by Council Officers to verify the number of signatories shall give due consideration to the rights of younger Local Residents whose names may not yet appear on the Electoral Roll on account of their age.

## Appendix B: Questions on Notice

Para.

### *Appendix B: Questions on Notice*

1. **Notice of questions**

A question may only be asked if notice has been given by delivering it in writing (including by electronic mail) to the Proper Officer no later than close of the office one clear working day before the day of the meeting. Each question must give the name and address of the questioner and must name the relevant Member to whom it is to be put.

2. **Number of questions**

At any one meeting no person may submit more than one question.

3. **Scope of questions**

The Proper Officer may reject a question if in his or her opinion:

- 3.1. it is not about a matter for which the Council has a responsibility or that affects the Borough;
- 3.2. it is defamatory, frivolous or offensive;
- 3.3. it cannot be answered with sufficient accuracy without unacceptable disclosure of Confidential or Exempt information;
- 3.4. the Local Resident seeking to ask a question has previously withdrawn questions on three consecutive occasions, any further question from that person will be refused unless that person confirms in writing that they will be attending the meeting to ask the question. If that person does not attend the meeting after confirming they will do so, no further action will be taken with regard to that question.
- 3.5. the question has been asked at a previous meeting of the Council either in the exact or similar form and/or;
- 3.6. the question concerns a planning matter about which questions have been posed at the last two (2) meetings of the same Member body, or at two (2) out of the last three (3) such meetings;
- 3.7. the Council has resolved the issue raised and the question has been brought to a close.

**Para.**

***Appendix B: Questions on Notice***

**4. Record of questions**

The Proper Officer will enter each question in a book open to public inspection and will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include the reasons for rejection. Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting.

**6. 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 Member to whom it was to be put, will be dealt with by a written answer that is sent to the questioner. The written response will be included in the minutes with a note that a written response was given either because of a lack of time or because the relevant Member was not present.

**7. Response to Questions**

- 7.1. Where the question is discussed and answered during the meeting, the responses to the questions will not be minuted, as the Council webcasts its meetings so there is already a full record of the response. The minutes will state whether the Member responded to the question or not and will refer the public to the webcast for the full response.
- 7.2. If the webcast has failed prior to the start of the meeting, a summary of the answer will be included in the minutes.

## Appendix C: Outside Bodies

Para.

### *Appendix C: Outside Bodies*

#### **1. Appointment to Outside Bodies**

All Outside Body Appointments are to be made by the Executive, except those positions that fall within the remit of the Democracy & General Purposes Committee.

#### **2. List of Outside Bodies**

- 2.1. Kent and Medway Civilian-Military Partnership Board – Leader automatically appointed unless he/she delegates to another Member
- 2.2. Kent and Medway Economic Partnership – Leader automatically appointed unless he/she delegates to another Member
- 2.3. Kent and Medway Police and Crime Panel – Leader automatically appointed unless he/she delegates to another Member
- 2.4. Local Government Association General Assembly - Leader automatically appointed unless he/she delegates to another Member
- 2.5. One Maidstone BID Advisory Board
- 2.6. Rochester Bridge Trust
- 2.7. Upper Medway Internal Drainage Board
- 2.8. West Kent Improvement Board Elected Members Forum – Leader automatically appointed unless he/she delegates to another Member
- 2.9. Headcorn Aerodrome Consultative Committee – Headcorn Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
- 2.10. Kent Downs AONB Joint Advisory Committee
- 2.11. Kent Community Railway Partnership
- 2.12. Maidstone Cycling Campaign Forum
- 2.13. Maidstone Quality Bus Partnership – Lead Member for (portfolio) automatically appointed
- 2.14. Medway Valley Line
- 2.15. Kent Downs Line

- 2.16. Parking and Traffic Regulations Outside London Adjudication Joint Committee ("PATROLAJC")
  - 2.17. Action with Communities in Rural Kent
  - 2.18. Age UK
  - 2.19. Allington Millennium Green Trust – Bridge Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
  - 2.20. Citizens' Advice Bureau
  - 2.21. Collis Millennium Green Trust – High Street Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
  - 2.22. Cutbush and Corrall Charity
  - 2.23. Hayle Park Nature Reserve – South Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
  - 2.24. Howard de Walden Centre – East and North Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
  - 2.25. Maidstone Mediation Scheme
  - 2.26. Relate West and Mid Kent
  - 2.27. Vinters Valley Park Trust – Boxley Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
  - 2.28. Brenchley Charity – Lead Member for (portfolio) automatically appointed
  - 2.29. Maidstone Area Arts Partnership – Lead Member for (portfolio) automatically appointed
  - 2.30. Maidstone/Beauvais Twinning Association
  - 2.31. Maidstone Sea Cadets
- 3. Democracy and General Purposes Committee**
- 3.1.** South East Employers
  - 3.2.** Maidstone Street Pastors Management Committee – High Street Ward Members to be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies
  - 3.3.** Relief in Need Charities – Mayor automatically appointed "ex-officio"

## **C2. Committee Procedure Rules**

### **1. INTRODUCTION & PURPOSE**

- 1.1.** The Rules in this Chapter regulate the business of the Committees and may be cited as the Committee Procedure Rules. They also apply to any Sub-Committee with any such qualification or modification as may be specified or evident from the context.
- 1.2.** The purpose of these Rules is to ensure that the Committees: -
  - 1.2.1. Function smoothly and efficiently;
  - 1.2.2. Reflect the political balance of the Council as whole, as far as possible and in accordance with the law;
  - 1.2.3. Act as a place at which Members, including those who are not on the particular Committee, are able to raise matters of concern;
  - 1.2.4. Enhance the quality & transparency of decision-making, especially in respect of Executive Functions;
  - 1.2.5. Are accessible directly to Local Residents.

### **2. APPOINTMENTS TO COMMITTEES**

- 2.1.** Appointments to Committees are made at the Annual Council Meeting or, when a vacancy occurs, at the next available meeting of the Council, in accordance with the legislation and rules on political balance.
- 2.2.** Any Member on a Committee may give notice to the Proper Officer of his or her resignation from a particular Committee of which he/she is on.
- 2.3.** A Group Leader may request, and the Proper Officer shall give effect to, the removal from a particular Committee of a Member belonging to his or her Political Group, subject to the Group Leader also requesting that an alternative Member belonging to his or her Political Group be appointed to that Committee.

#### **2.4. Co-Option of Non-Members**

The Overview and Scrutiny Committee, the Audit, Governance & Standards Committee, or any sub-committee of either, shall be entitled to recommend to Council the appointment to it of people as co-optees.

#### **2.5. Members as Substitutes on Committees**

- 2.5.1. For each Committee, the Proper Officer shall appoint up to the number of seats allocated to that Political Group, who may act as Substitutes on that Committee.

- 2.5.2. A Member who acts as a Substitute on a Committee may sit at meetings of that Committee in place of a Member on that Committee belonging to the same Political Group ("Full Member"), where that Full Member is either absent from that meeting or opts to attend that meeting as a Visiting Member instead.
- 2.5.3. A Member attending a meeting as a Substitute will have all the powers and duties of a Member ordinarily on that Committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting for.
- 2.5.4. Members may attend meetings as Substitutes only:
  - (a) if the substitution is notified to the proper officer or the Chairman before the meeting begins;
  - (b) if the Full Member arrives after the substitution has been made, and opts to take his or her seat, and no other Full Members belong to that Political Group are absent, the substitution shall end and the Member attending as a Substitute shall cease to sit on the Committee and shall be deemed a Visiting Member.

### **3. CHAIRING OF COMMITTEES**

#### **3.1. Committee Chairmen and Vice-Chairs to be Committee Members**

No Member may serve as the Chairman or vice-Chair of any Committee unless he/she is on that Committee. Where a Member serves as Chairman or vice-Chair of a Committee, and then ceases to be on that Committee, he/she shall cease to be the Chairman or the vice-Chair (as the case may be).

#### **3.2. Policy Advisory Committees**

- 3.2.1. The Chairman of each Policy Advisory Committee for the Municipal Year shall be the appointed by the Committee. The Committee may revise this appointment during the course of the Municipal Year.
- 3.2.2. The vice-Chair of each Policy Advisory Committee shall be elected by the Members on that Committee at their first meeting of the Municipal Year using the following procedure. The purpose of this procedure is to give preference to Members who belong to non-Administration Political Groups.
  - (a) Nominations will open firstly to Members on the Committee who belong to non-Administration Political Groups.



- (b) Should more than one Member be nominated at this stage, there shall be a vote amongst all Members on the Committee to elect the vice-Chair from those nominated.
- (c) Alternatively, should just a single Member be nominated at this stage, the Member so nominated shall be declared elected vice-Chair.
- (d) Alternatively, should no Members be nominated at this stage, nominations will then be opened to all Members of the Committee and a vice-Chair elected accordingly.

### **3.3. Overview and Scrutiny Committee**

- 3.3.1. The Chairman of the Overview & Scrutiny Committee shall be elected by Members on that Committee at their first meeting of the Municipal Year using the following procedure. The purpose of this procedure is to give preference to Members belonging to the largest non-Administration Political Group.
  - (a) Nominations will open firstly to Members on the Committee who belong to the largest non-Administration Political Group.
  - (b) Should more than one Member be nominated at this stage, there shall be a vote amongst all Members on the Committee to elect the Chairman from those nominated.
  - (c) Alternatively, should just a single Member be nominated at this stage, the Member so nominated shall be declared elected as Chairman.
  - (d) Alternatively, should no Members be nominated at this stage, the process shall be attempted again with nominations opened to Members on the Committee belonging to all non-Administration Party Groups.
  - (e) Should this stage also fail to attract any nominations, the process shall be attempted again with nominations opened to all Members on the Committee.
- 3.3.2. The vice-Chair of the Overview & Scrutiny Committee shall be elected by the Members on the Committee at their first meeting of the Municipal Year with nominations open to all Members on the Committee (save for the Chairman).

### **3.4. Other Committees**

All other Committees shall elect a Committee Chairman and a vice-Chair at the first meeting of the Municipal Year with nominations open to all Members on the Committee.

### **3.5. Vacancies Arising**

A vacancy arising during the Municipal Year in respect of a Committee Chairman or vice-Chair shall be filled using the same procedure for appointment or election applying at the beginning of the Municipal Year with any election taking place at the next meeting of the Committee.

### **3.6. Chairing Meetings**

3.6.1. The Committee Chairman shall chair each meeting of that Committee. In his or her absence, the vice-Chair shall chair the meeting unless the vice-Chair opts to remain at the meeting but not take the chair.

3.6.2. Where the Committee Chairman is both absent from a meeting of the Committee, and the vice-Chair is also absent or is present but opts not to take the chair, and the meeting is nevertheless quorate, then: -

(a) The Members on the Committee who are present shall elect of their number to chair the meeting;

(b) Should the Committee Chairman or a previously absent vice-Chair subsequently arrive, he/she shall take the chair for the remaining duration of the meeting and the Member elected in (a) shall vacate the chair.

3.6.3. The process in Rule 3.6.2(a) shall apply where either the Committee Chairman or the vice-Chair has been chairing a meeting but had to leave resulting in both being absent or in the Chairman being absent and the vice-Chair opting not to take the chair.

## **4. HOLDING OF MEETINGS**

**4.1.** Ordinary meetings of the Committees shall be held according to a calendar of meetings agreed by resolution of the Council.

**4.2.** The Proper Officer may, after consulting the Chairman and vice-Chair of a Committee, cancel or postpone any meeting of that Committee.

**4.3.** The Proper Officer may, after consulting the Chairman and vice-Chair of a Committee, call a special meeting of that Committee.

**4.4.** The Proper Officer shall call a special meeting of a Committee where one is requested by:

4.4.1. the Chairman;

4.4.2. Full Council; or

4.4.3. The Monitoring Officer.

**4.5.** The Proper Officer shall call a special meeting of a Committee where: -

4.5.1. At least three (3) Members on that Committee sign a requisition for such a meeting; and

4.5.2. The requisition specifies matters for consideration that are within the terms of reference or competence of that Committee, and are: -

(a) sufficiently urgent such that it would be un-reasonable to wait until the next Ordinary meeting, or

(b) are of a size & significance relative to the forecast workload of the next Ordinary meeting such as to warrant a Special meeting.

**4.6.** The Proper Officer shall call a meeting of the Overview & Scrutiny Committee within five (5) working days of the expiry of the call-in period.

## **5. NOTICE OF MEETINGS AND BUSINESS TO BE DISCUSSED**

**5.1.** The agenda for any Committee meeting shall be set following discussion between the Committee Chairman, the vice-Chair, and Officers.

**5.2.** The agenda shall accommodate: -

5.2.1. For any Policy Advisory Committee, the Forward Plan set by the Executive;

5.2.2. For all Committees, any: -

(a) Member Agenda Item Requests,

(b) Motions referred to that Committee following Full Council,

(c) Previous resolutions of that Committee in respect of its Work Programme;

5.2.3. In respect of the Overview & Scrutiny Committee, any: -

(a) Call-in by a Member,

(b) Any Member "call for action".

### **5.3. Summons & Notice**

5.3.1. The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five (5) Clear Days before a meeting (or if a meeting of a Committee or Sub-Committee is called at

shorter notice, as soon as the meeting is called), the Proper Officer will publish on the Council's website and send a summons signed by him/her electronically to every Member of the Council (or on request by post or by leaving it at their usual place of residence/other address).

- 5.3.2. 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. Where not all of the reports are available with the summons they will be posted on the Council's website as soon as they become available and e-mailed or posted to Members.

## **6. MEMBER AGENDA ITEM REQUESTS**

- 6.1.** Any Member may ask that a particular matter is added as an item to the agenda of a Committee, subject to: -

- 6.1.1. The matter being relevant to the Committee's terms of reference;
- 6.1.2. Written notice of the request is provided to the Proper Officer by the ordinary deadline of 4pm, six (6) clear days before the meeting is to be held;
- 6.1.3. Notice may be accepted after closure of the ordinary deadline where, in the opinion of the Committee Chairman and vice-Chair, the Member is able to demonstrate that the matter: -
- (a) Only came to his or her attention around or after the ordinary deadline; and
  - (b) It is of an apparent immediacy or is likely to command sufficient public concern, that it cannot wait until the meeting of the Committee after the next one.
- 6.1.4. The matter should not be such that it is judged by the Committee Chairman and vice-Chair, in agreement, as being defamatory or offensive or otherwise unlawful, having consulted the Proper Officer and the Monitoring Officer.

- 6.2.** A Member Agenda Item Request may also be contained within a requisition signed by three (3) Members on a Committee requesting a special meeting.

- 6.3.** Where an item is added to the agenda of a Committee as a result of a Member Agenda Item Request:

- 6.3.1. The Committee shall be able to debate the principles of the matter, with or without Officer input.

6.3.2. The Member raising the Member Agenda Item Request shall have the right to both introduce the item and the right to reply to the debate at its conclusion as the last speaker on the item. This shall apply even where that Member is attending as a Visiting Member.

**6.4.** There is no expectation for Officers to provide a report concerning a Member Agenda Item Request ahead of the meeting at which the item is first discussed. Where one is provided however, the Committee has the freedom to deal with the matter like any other agenda item supported by an Officer's report.

**6.5.** Where a Member Agenda Item Request leads to consideration of the item by a Committee without an Officer's report, the Committee may only: -

6.5.1. For any type of Committee, resolve to request that an Officer's report be provided to a future meeting of the Committee, on which occasion it may then be debated and dealt with by the Committee as any other agenda item supported by an Officer's report.

6.5.2. For a Policy Advisory Committee, request that an Officer's report be prepared and submitted with the item directly to the Executive for consideration.

6.5.3. Conclude the debate with no further action agreed for the time being.

## **7. ATTENDANCE AT MEETINGS**

### **7.1. Committees Generally**

7.1.1. A Committee shall be clerked by a Democratic Services Officer.

7.1.2. A Committee may invite such further Officers as are necessary for the presentation of Officer Reports or to inform discussion in respect of agenda items.

7.1.3. A Committee may invite a third party to attend a meeting to speak and answer questions on a particular item on the agenda.

7.1.4. An item on the agenda may be deferred if the Committee agrees that a third-party contribution to the discussion is necessary.

### **7.2. At Overview & Scrutiny Committee**

7.2.1. The Overview and Scrutiny Committee or sub-committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may

require any Member on the Executive, the Chief Executive and/or any senior Officer to attend before it to explain in relation to matters within their remit:

- (a) any particular decision or series of decisions;
- (b) the extent to which the actions taken implement Council policy; and/or
- (c) their performance

and it is the duty of those persons to attend if so required.

7.2.2. The appropriate "senior Officer" shall be identified following consultation with the Chief Executive.

7.2.3. Where any member or Officer is required to attend the Overview and Scrutiny Committee under this provision, the chairman of that committee will inform the Chief Executive. The Chief Executive shall inform the member or Officer in writing giving at least 10 working days' notice of the meeting at which they are required to attend. (A shorter period of notice may be given with the agreement of the member or Officer in question.) The notice will state the nature of the item on which they are 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 member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.

7.2.4. Where, in exceptional circumstances, the member or Officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the member or Officer arrange an alternative date for attendance.

### **7.3. Visiting Members**

7.3.1. At each meeting of each Committee, it shall be an early agenda item for the Member chairing the meeting to ask any Visiting Members to introduce themselves and state the agenda item(s) to which he/she intends speaking.

7.3.2. Subject to Rules 7.3.3 & 7.3.4 below, any Member may attend any meeting of a Committee or Sub- Committee on which he/she does not sit on in order to speak on particular items provided he/she specifies those items at the point in the meeting when Visiting Members are asked to introduce themselves.

- 7.3.3. No other Member except for those on the Committee may attend and/or speak on: -
- (a) Panels or sub-committees of any Member body relating to employment functions;
  - (b) hearings in respect of individual applications before the Licensing Committee or Sub-Committee, other than to observe proceedings only for training purposes with leave of the Member chairing the meeting having consulted the legal officer attending;
  - (c) the Hearings Sub-Committee of the Audit, Governance and Standards Committee when it is considering allegations of misconduct; or any other panel hearing or appeal.
- 7.3.4. To speak on an item at the Planning Committee, notice must be given to the Proper Officer by 4pm on the preceding working day.
- 7.3.5. Visiting Members speak after the Officer introduction on an item, but before the general debate.
- 7.3.6. Having spoken, the Visiting Member will not participate further unless:
- (a) the Member chairing the meeting agrees, or
  - (b) the item arises from a motion that the Visiting Member moved at Full Council, or the item arises from a Member Agenda Item Request raised by that Visiting Member, in which event the Visiting Member shall have a right to reply at the end of the debate and immediately before any motion is put to the vote.
- 7.3.7. Where the committee resolves to exclude the press and public any visiting member shall be entitled to remain at the discretion of the chairman if he/she is satisfied, on the advice of the Monitoring Officer or their representative at the meeting, that the Visiting Member has a need to know in respect of the item being considered by the committee in private.

## **8. CONDUCT OF COMMITTEE MEETINGS**

### **8.1. Quorum**

The quorum of a meeting will be at least one quarter of the whole number of Members provided that: -

- 8.1.1. the quorum of the Trustee Committee is not less than three (3) Members;

- 8.1.2. the quorum of the Overview & Scrutiny Committee is not less than five (5) Members;
- 8.1.3. the quorum of any other Committee is not less than four (4) Members; and
- 8.1.4. The quorum of a Sub-Committee is not less than two (2) Members.

## **8.2. Standing Items**

Before any substantive items are considered, the following items shall be considered at each meeting of any Committee: -

- 8.2.1. Apologies for absence;
- 8.2.2. Notification of substitute Members sitting;
- 8.2.3. Disclosures of interest;
- 8.2.4. Declarations of lobbying from interested parties or objectors in respect of any particular agenda item;
- 8.2.5. Minutes of the previous meeting(s);
- 8.2.6. Any petitions, in accordance with Rule 9;
- 8.2.7. Any Questions on Notice from Local Residents;
- 8.2.8. Any Questions on Notice from Members.

Save that petitions and questions maybe omitted at the first meeting of the Municipal Year if convened only for the purpose of electing the Chairman and/or vice-Chair.

## **8.3. Recording of Meetings**

- 8.3.1. Any member of the public or press attending meetings of the Council may record such meetings in open session using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media. Anyone filming a meeting is asked to focus only on those actively participating
- 8.3.2. Recording of any part of a meeting held in closed session is not permitted.
- 8.3.3. All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting signifies consent to this.

## **8.4. Exclusion of the Public & Press**



In accordance with the Access to Information Procedure Rules, a Committee meeting: -

- 8.4.1. Shall go into closed session where Confidential Information is to be discussed
- 8.4.2. May go into closed session where Exempt Information is to be discussed

in relation to an item.

This means that the press and members of the public shall be excluded from the meeting.

### **8.5. Duration of Meetings**

- 8.5.1. Each unfinished meeting will adjourn at 10.30 pm unless a majority of Members present vote to extend the meeting to 11.00 pm at which time the meeting will stand adjourned;
- 8.5.2. The time and date of the continuation of the adjourned meeting will be decided by a majority of those Members present, or if no decision is reached, by the Executive in the case of a Policy Advisory Committee or the Proper Officer in the case of any other Committee, and it should normally take place within ten (10) working days of the meeting.

### **8.6. Removal of member of the public**

If a member of the public interrupt's proceedings, the Member chairing the meeting will warn the person concerned, and will order their removal from the meeting room should they continue to interrupt.

### **8.7. Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Member chairing the meeting may call for that part to be cleared and may adjourn the meeting and/or re-convene elsewhere.

### **8.8. Minutes**

- 8.8.1. The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor 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.
- 8.8.2. 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 following 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.

- 8.8.3. Minutes will contain all motions and amendments in the exact form and order the Mayor put them and shall record all questions and answers in accordance with Rule 9.

## **9. PETITIONS AT COMMITTEES**

- 9.1.** Appendix A of the Council Procedure Rules on the Council's Petitions Scheme sets out the nature of those petitions received by the Council that are to be considered by a particular Committee.
- 9.2.** No more than three (3) petitions may be presented per meeting.
- 9.3.** Where a petition is presented: -
- 9.3.1. Only one person may speak to a petition for a maximum of five (5) minutes. They should have signed the petition, be a Local Resident and be a supporter of the body submitting the petition. This may include someone acting for that petitioner in a professional capacity.
- 9.3.2. A debate will take place on the petition.
- 9.3.3. The petitioner will have an opportunity to speak for a further period of three (3) minutes responding to the issues raised in the debate.
- 9.3.4. Where the petition relates to another item on the agenda, the matter should then be dealt with alongside that other agenda item.
- 9.3.5. Where the petition is not dealt with by another item on the agenda, the Committee may resolve: -
- (a) To request an Officer's Report be provided to a future meeting of the Committee;
- (b) Where the petition pertains to an Executive Function, to request that an Officer's report be prepared and submitted with the item directly to the Executive for consideration;
- (c) To conclude the debate with no further action agreed for the time being.
- 9.4.** Petitions which are not to be presented in person at a meeting of the pertinent Committee will be reported to it. Debate and determination

shall take place as per Rule 9.3 above, save that there will be no speeches by a presenter.

## **10. QUESTIONS ON NOTICE**

**10.1.** At Ordinary meetings of any Committee, save for a meeting called at the start of the Municipal Year to elect a Committee Chairman and/or vice-Chair, there shall be: -

10.1.1. A 30-minute session for Local Residents; followed by

10.1.2. A 15-minute session for Members

to pose Questions on Notice concerning the business of the Council.

**10.2.** The questions may be asked of the Member chairing the meeting and any Lead Member who sits on the Committee.

**10.3.** Appendix B of the Council Procedure Rules on Questions on Notice shall apply to meetings of the Committees. It sets out the process for giving notice of such questions prior to the Committee meeting and record keeping subsequent to the meeting.

### **10.4. Order of Questions**

Questions will be asked of the relevant Members in the order that notice of them was received, except that the Member chairing the meeting may group together similar questions.

### **10.5. Posing a Question at the Meeting**

The Member chairing the meeting will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Member chairing the meeting to put the question on their behalf, in which event the answer given by the relevant Member shall also be written and sent to the questioner.

### **10.6. Supplementary Questions**

A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The Member chairing the meeting may reject a supplementary question if it would not have been allowed as a Question on Notice or because it does not arise directly out of the question or reply.

### **10.7. Nature of Reply**

The form and content of reply to an original or a supplementary question will be at the discretion of the Member giving the reply, unless in respect of an original question a written request has been received specifying a specific form of reply or replies. He/she may decline to give a full or any reply if in his or her opinion to do so would involve an unreasonable amount of labour or cost.

## **11. COMMITTEE DEBATE**

**11.1.** This Rule 11 applies to Committees generally save that Rule 14 takes precedence in respect of the proceedings of the Planning Committee.

### **11.2. Order**

For any item on the agenda of a Committee meeting, the order of speaking shall be: -

11.2.1. Public speaking by Local Residents;

11.2.2. Any introduction to the item, typically by an Officer but by the relevant Member in the case of a Member Agenda Item Request;

11.2.3. Statements by Visiting Members;

11.2.4. Questions, statements and/or motions by Members on the Committee.

### **11.3. Public Speaking by Local Residents**

Local Residents may speak to an agenda item at a Committee meeting subject to: -

11.3.1. Notice of wishing to speak on a particular item must be given to the Proper Officer by no later than 4pm the working day before the meeting.

11.3.2. Public speaking under this Rule shall take the form of making a statement only. Any questions from Local Residents should be made using the procedure in Rule 10.

11.3.3. The total time for Local Residents speaking on an item on the agenda is twelve (12) minutes; within that twelve (12) minute period, each speaker has a maximum of three (3) minutes.

### **11.4. Statements & Questions by Members on the Committee**

Contributions by Members on the Committee may include statements, questions to the Officers present for the item, motions, amendments, procedural motions, and points of order.

Where questions are posed to the Officers present, the Member chairing the meeting shall invite those Officers to provide answers. Where matters are raised in statements that are not covered by the Officer's report, the Member chairing the meeting shall invite the Officers to comment.

### **11.5. Motions**

Any motion must be proposed and seconded, including where recommendations are made within any Officer's report. Once a motion has been proposed and seconded, no other motion may be moved until that earlier motion has been dealt with.

### **11.6. Amendments**

Any motion maybe subject to reasonable amendment with the agreement of the Committee and/or the Members proposing & seconding the motion.

### **11.7. Procedural Motions**

A Member on the Committee may move any reasonable procedural motion, with a seconder. A procedural motion shall be dealt with immediately once it is moved and seconded.

### **11.8. Points of Order**

A Member may raise a point of order at any time. The Member chairing the meeting will hear them immediately. A point of order may only relate to an alleged breach of the Constitution or the law. The Member must indicate the Provision, Rule or law and the way in which he/she consider it has been broken. The ruling of the Member chairing the meeting on the matter will be final.

### **11.9. 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.

## **12. VOTING AT COMMITTEES**

- 12.1.** Unless this Constitution or the law 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.
  - 12.2.** If there are equal numbers of votes for and against, the Member chairing the meeting at the time will have a second or casting vote, regardless of whether he/she has used his or her first vote. There will be no restriction on how this casting vote is used.
  - 12.3.** Unless a recorded vote is demanded under Rule 12.4, the Member chairing the meeting will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.
  - 12.4.** If three (3) Members present at the meeting so request, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.
  - 12.5.** Where any Member 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.
  - 12.6.** When voting on any 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.
- 13. REPORTS BY THE OVERVIEW & SCRUTINY COMMITTEE**
- 13.1.** In exercising its policy development remit, the Overview and Scrutiny Committee will prepare a formal report containing its recommendations. This will be submitted to the Proper Officer for consideration by: -
    - 13.1.1. the executive if the proposals are consistent with the existing budgetary and policy framework, and/or
    - 13.1.2. the Council as appropriate e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework.
  - 13.2.** The report of the Overview and Scrutiny Committee shall be considered by the Council or by the Executive at its next appropriate meeting following submission to the Chief Executive, or such longer time scale as the chairman of the Overview and Scrutiny Committee may agree.
- 14. PROVISIONS RELATING TO THE PLANNING COMMITTEE**

### **14.1. Call-in to Planning Committee**

- 14.1.1. The following may call-in the determination of a Planning Application: -
- (a) A Ward Member of a Ward that the proposed development would have an impact upon;
  - (b) The Parish Council of a Parish that the proposed development would have an impact upon;
  - (c) A neighbourhood forum with an adopted or post examination Neighbourhood Plan.
- 14.1.2. The request for the application to be heard by the Planning Committee must be made in writing to the Proper Officer or the Case Officer to whom the application is assigned prior to the expiry of the Call-in Window.
- 14.1.3. For Rule 14.1.1 (a), the Call-in Window shall be the period of twenty-one (21) days from the date of the weekly list advising them of the application.
- 14.1.4. For Rule 14.1.1 (b), the Call-in Window shall be for a minimum period of twenty-one (21) days of the date of the letter of consultation advising them of the application.
- 14.1.5. For Rule 14.1.1 (c), the Call-in Window shall be for a minimum period of twenty-one (21) days of the date of the weekly list advising them of the application.
- 14.1.6. For Rules 14.1.1 (b) and (c), the Call-in Window shall extend to the period of six (6) weeks unless such a delay in exercising the call-in is likely, in all the circumstances known at the time of receipt, to cause a failure to determine the application in time, where that failure would not have occurred had the call-in been exercised within twenty-one (21) days.

### **14.2. Referral of Enforcement Matters to the Planning Committee**

- 14.2.1. A Member may use a Member Agenda Item Request to refer to the Planning Committee an act or omission of the Council in respect of enforcement following an alleged breach of planning control.
- 14.2.2. Such a request may be rejected by the Proper Officer, in consultation with the Committee Chairman and vice-Chair where: -

- (a) Enforcement issues in respect of the matter complained of has already been addressed at the Committee, the Committee took no action and requested no further update, and there have been no clear material developments that might reasonably lead to a different conclusion by the Committee;
  - (b) The matter complained of is the subject of an extant planning application, an appeal before the Planning Inspector, or proceedings have been issued in the Courts, unless the Chairman and vice-Chair judge that the matter nevertheless warrants discussion.
- 14.2.3. The procedure further differs from other Member Agenda Item Requests: -
- (a) Where reasonable notice is given of the Member Agenda Item Request, Planning Officers should endeavour to provide a short report.
  - (b) The Member raising the matter, unless themselves a Member on the Planning Committee, is limited to addressing the meeting with a single three (3) minute statement.

**14.3. Public speaking at Planning Committee meetings**

- 14.3.1. If a planning application is to be determined by the Planning Committee and a speaker wishes to address the Committee in respect of that application, he/she must give notice of that request to the proper Officer by 4 p.m. on the working day before the relevant meeting.
- 14.3.2. The following speakers will be allowed to address the Committee for each planning application or enforcement matter (except exempt reports) in the following order: -

(a) **Parished Areas**

An Objector	A petitioner, or a representative of a Residents' Association or Amenity Group, or an individual objector.
A representative of the appropriate Parish Councils	Where a representative of the Parish Council does not register to speak, a concerned resident may speak with the Chairman's discretion.



*The applicant or his/her representative	The applicant or his or her representative (incl. a supporter), or a petitioner, or a representative of a Residents' Association or Amenity Group.
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(b) **Non-Parished Areas**

A representative of a Residents' Association/Amenity Group	Where a representative of a Residents' Association or Amenity Group does not register to speak, a concerned resident may speak with the Chairman's discretion.
An Objector	A petitioner, or a representative of a second Residents' Association or Amenity Group, or an individual objector.
*The applicant or his or her representative	The applicant or his or her representative (including a supporter), or a petitioner, or a representative of a second or third Residents' Association or Amenity Group.

\* The applicant or his or her representative would have priority.

- 14.3.3. In order to avoid repetition, a petitioner may present a petition but the appropriate speaker slot will be forfeited. A petitioner may speak for three minutes.
- 14.3.4. Each category of speaker will be limited to three (3) minutes to address the Committee. He/she will not be allowed to ask a supplementary question, make a supplementary statement and will not be cross examined. Also, no written material or photographs may be handed out at the meeting.
- 14.3.5. When more than one person wants to speak for or against a planning application or more than one amenity group or organisation or residents' association wishes to speak for or against a planning application, the first person or group to register their wish to speak will be afforded that right. However, the Proper Officer shall keep a reserve list of speakers for each application. If, at the meeting the original speaker is not in attendance, a speaker from the reserve list, depending on if the

original speaker was a supporter or objector, i.e. an objector replaces an objector, taken in the order which they registered their right to speak shall be invited to address the Committee.

- 14.3.6. In addition to the public speakers above, Visiting Members may address the Planning Committee for three (3) minutes on individual matters but should give the same notice of their intention to speak to the Head of Policy, Communications and Governance as members of the public. If they do not do so, the application will not be brought forward on the agenda.
- 14.3.7. Visiting Members should sit away from the body of the Committee.
- 14.3.8. An objector or applicant may be represented by an agent at the Committee.

#### **14.4. Visiting Members –Planning Committee**

In respect of the Planning Committee, if a visiting Member gives the requisite notification to the Proper Officer by 4.00 p.m. on the day preceding the meeting, the Chairman shall seek to give the relevant application some priority in the meeting, otherwise the application will be dealt with in the normal course of the meeting.

#### **14.5. Deferral of planning decisions**

It is likely that from time to time the Planning Committee will defer a decision to a future meeting of the Committee, in order to enable the Officers to report back on any areas of concern raised by the Committee. Minor applications should only be deferred if there is a need for additional information or if there are disputed facts within the report, otherwise they should be determined as reported with the proviso that there may be occasions when the Planning Officers may seek deferral/withdrawal of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable. On the second occasion that the matter is discussed at Committee, a decision must be made.

#### **14.6. Planning Decisions which have significant cost implications**

- 14.6.1. If during consideration of an application, after a motion has been proposed and seconded, the Head of Planning and Development or their representative, in consultation with the Legal Officer present at the meeting, believes that the Planning Committee's reasons to justify refusal/the imposition of conditions would not be sustainable at appeal and would more likely than not cause significant costs to be incurred by the Council because of

unreasonable behaviour, then they will inform the Committee that if the motion is agreed it will stand deferred to the next meeting of the Committee. Following the vote, if the motion is agreed the decision will be deferred to the next meeting of the committee. The Committee itself may also agree to defer consideration of an application for the same reasons.

- 14.6.2. For the purposes of this rule significant cost is defined as the Chief Finance Officer's virement limit set out in the Financial Procedure Rules within this Constitution and relates to any punitive award of costs granted against the Council by the Planning Inspectorate or Secretary of State for unreasonable behaviour.
- 14.6.3. For the purposes of this Rule 14.6, unreasonable behaviour is defined as set out in the National Planning Guidance and/or any Guidance issued by the Planning Inspectorate or Secretary of State.

### **C3. Executive Procedure Rules**

#### **1. INTRODUCTION & PURPOSE**

- 1.1.** The Rules in this Chapter regulate the business of the Executive and its decision-making. They may be cited as the Executive Procedure Rules.
- 1.2.** The purpose of these Rules is to ensure that the Executive: -
  - 1.2.1. Functions smoothly and efficiently;
  - 1.2.2. Is transparent in its proceedings and its decision-making;
  - 1.2.3. Remains accessible to Members who are not on the Executive and to Local Residents;
  - 1.2.4. Makes most its decisions only after consideration by another Member body.

#### **2. OPERATION OF THE EXECUTIVE**

##### **2.1. Background to Executive Decisions**

The arrangements for the discharge of Executive Functions may be set out in the Executive arrangements adopted by the Council. If they are not set out there, then the Leader may decide how they are to be exercised. In either case, the arrangements or the Leader may provide for Executive Functions to be discharged by:

- 2.1.1. The Executive as a whole;
- 2.1.2. A committee of the Executive;
- 2.1.3. An individual Member on the Executive;
- 2.1.4. An Officer;
- 2.1.5. Joint Arrangements; or
- 2.1.6. Another local authority.

##### **2.2. Delegation of Functions**

- 2.2.1. At the Annual Meeting of the Council, the Leader will present to the Council for adoption a written statement of delegations in respect of Executive Functions. This shall be included in the Council's scheme of delegation in Part B of this Constitution. The document presented by the Leader shall specify the following in respect of Executive Functions in relation to the coming year:

- (a) the extent of any authority to be delegated to Executive Members individually, including details of the limitation on their authority;
  - (b) the terms of reference and Constitution of such Executive committees as the Leader recommends be appointed and the names of Members on the Executive to be appointed to them;
  - (c) the nature and extent of any intended delegation of Executive Functions to any other authority or any Joint Arrangements and the names of those Executive Members to be appointed to any joint committee for the coming year; and
  - (d) any changes in the delegation of Executive Functions to Officers and to any limitations on that delegation.
- 2.2.2. The Leader may amend the delegations at any time but must notify the Proper Officer who will report any changes to the Council and the Constitution will be amended accordingly.

### **2.3. Sub-delegation of Executive Functions**

- 2.3.1. Where the Executive, a Committee of the Executive or an individual Member on the Executive is responsible for Executive Functions, they may delegate further to Joint Arrangements or an Officer
- 2.3.2. Even where Executive Functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated the functions.

### **2.4. Conflicts of Interest**

Unless a dispensation to vote has been given:

- 2.4.1. Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Chapter D1 of this Constitution.
- 2.4.2. If every Member on the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Chapter D1 of this Constitution.
- 2.4.3. If the exercise of an Executive Function has been delegated to a Committee of the Executive, an individual Member or an Officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Chapter D1 of this Constitution.

## **2.5. Manner of Decision Making**

- 2.5.1. Key Decisions may only be made by the Executive or individual executive members (where authorised by the Leader). Where Key Decisions or Other Material Decisions are made by the Executive or by an individual Member on the Executive they shall only be made:
  - (a) At a public meeting of the Executive or other public meeting arranged for the purposes of an individual Member on the Executive making one or more such decisions.
  - (b) Save for urgent matters, where the matter has been considered and/or referred to the Executive by another Member body.
- 2.5.2. Where Executive decisions are delegated to a committee of the Executive, the rules applying to Executive decisions taken by them shall be the same as those applying to those taken by the Executive as a whole
- 2.5.3. Key Decisions and Other Material Decisions may only be made where the Access to Information Procedure Rules have been complied with.
- 2.5.4. The powers of an individual Member on the Executive shall be exercised by them personally save where they are unable to act owing to absence or illness, when they may be exercised on their behalf by another Member on the Executive who has been nominated for the purpose by the Leader and the Proper Officer has been given written notice of such nomination.
- 2.5.5. A Key Decision or Other Material Decision does not take effect until it has been signed by the Leader or a Member on the Executive, this may be in the form of a digital signature.

## **3. CONDUCT OF MEETINGS OF THE EXECUTIVE**

### **3.1. Time and Place of Meetings of the Executive**

The Executive will be scheduled to meet at least eight (8) times per year in the Calendar of Meetings to be agreed by resolution of the Council. The Executive shall meet at the Town Hall or any other location within the Borough to be determined by the Leader.

### **3.2. Public Access to meetings of the Executive**

All meetings of the Executive will be open to the public, unless the item under discussion is likely to lead to the disclosure of Confidential or Exempt Information per the Access to Information Procedure Rules.

### **3.3. Chairing of Meetings**

If the Leader is present they will chair the meeting. In his or her absence, then a person appointed to do so by those Members on the Executive present shall chair the meeting.

### **3.4. Quorum**

The quorum of a meeting of the Executive, or a committee of it, shall be three Members of the Executive.

### **3.5. Attendance**

- 3.5.1. Any Member of the Council may attend any Executive meeting. Members of the Council who are not members of the Executive may attend meetings of the Executive and any committee of the Executive including any part of any meeting closed to the public in accordance with the Access to Information Rules at the discretion of the chair where in his or her opinion, having considered the advice of the Monitoring Officer or their representative at the meeting, the member has a need to know in relation to the item being considered in private. Members may speak as Visiting Members to an item where they have given written notice of their intention to do so to the Proper Officer by 4pm on the day one (1) Clear Day before the meeting.
- 3.5.2. Members of the public may attend any Executive meeting, except when Confidential or Exempt Information is being discussed and, save for the Rules below in respect of Questions by Local Residents and Petitions, may address the meeting for up to three (3) minutes where they have given written notice of their intention to do so to the Proper Officer by 4pm on the day one (1) Clear Day before the meeting.
- 3.5.3. The Proper Officer, the Chief Finance Officer and the Monitoring Officer and their nominees are entitled to attend any meeting of the Executive or a committee of the Executive.

### **3.6. Business of Meetings**

At each meeting of the Executive the following business will be conducted:

- 3.6.1. Consideration of the minutes of the last meeting;
- 3.6.2. Declarations of interest, if any;
- 3.6.3. Petitions;

- 3.6.4. Questions on Notice from Local Residents;
- 3.6.5. Questions on Notice from Members;
- 3.6.6. Matters referred to the Executive (whether by the Overview & Scrutiny committee or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Overview & Scrutiny Procedure Rules;
- 3.6.7. Issues arising from Overview & Scrutiny;
- 3.6.8. Matters referred by any other Committee;
- 3.6.9. Any matter relating to a serious service failure or Nuisance referred by at least three (3) Members of the Council, where written notice has other been given in accordance with Committee Procedure Rule 6.1 ("Member Agenda Item Requests");
- 3.6.10. Receipt of written representations from Members of the Council; and
- 3.6.11. Matters for decision set out in the agenda for the meeting, and which shall indicate which Key Decisions are and which are not in accordance with the Access to Information Procedure rules set out in Part C of this Constitution.

### **3.7. Consultation**

All reports to the Executive from any Members of the Executive or an Officer on proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation carried out with stakeholders, the Overview & Scrutiny Committee and the relevant Policy Advisory Committee(s), and the outcome of that consultation.

### **3.8. Meeting Agenda**

- 3.8.1. Any Member on the Executive may require the Proper Officer to ensure that an item is placed on the agenda of the next available meeting of the Executive for consideration whether or not authority has been delegated to the Executive, a committee of the Executive, any individual Member on the Executive, or Officer in respect of that matter.
- 3.8.2. The Proper Officer will ensure that an item is placed on the agenda of the next appropriate meeting of the Executive where the Overview & Scrutiny Committee or the Full Council have resolved that an item be considered by the Executive.



- 3.8.3. If the volume of business for any one meeting appears excessive, the Leader, in consultation with the Proper Officer, may defer consideration to the next appropriate meeting except that items placed on the agenda by the Council may not be deferred if the Council requires them to be considered at that meeting.

### **3.9. Voting at Executive Meetings**

The Executive will decide all matters before it by simple majority. The Leader or, in his or her absence, other Member chairing the meeting, will have a second or casting vote in the event of a tie. There will be no restriction on how this casting vote is used. If any Member on the Executive present at the meeting demands 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.

### **3.10. Disturbance**

- 3.10.1. If a member of the public interrupt's proceedings, the Leader (or other Member chairing the meeting) will warn the person concerned. If they continue to interrupt, the Leader (or other Member chairing the meeting) will order their removal from the meeting room.
- 3.10.2. If there is a general disturbance in any part of the meeting room open to the public, the Leader (or other Member chairing the meeting) may call for that part to be cleared.

### **3.11. Substitution**

There shall be no substitution at any meeting of the Executive. Any Member on the Executive may, with the prior approval of the Leader which shall be notified to the Proper Officer, act as a substitute for another Member on the Executive at a meeting of a sub-committee of the Executive.

## **4. PETITIONS AT EXECUTIVE MEETINGS**

- 4.1. Appendix A of the Council Procedure Rules on the Council's Petitions Scheme sets out the nature of those petitions received by the Council that are to be considered by the Executive.
- 4.2. No more than three (3) petitions may be presented per meeting.
- 4.3. Where a petition is presented: -
  - 4.3.1. Only one person may speak to a petition for a maximum of five (5) minutes. They should have signed the petition, be a Local

Resident and be a supporter of the body submitting the petition. This may include someone acting for that petitioner in a professional capacity.

- 4.3.2. A debate will take place on the petition.
- 4.3.3. The petitioner will have an opportunity to speak for a further period of three (3) minutes responding to the issues raised in the debate.
- 4.3.4. Where the petition relates to another item on the agenda, the matter should then be dealt with alongside that other agenda item.
- 4.3.5. Where the petition is not dealt with by another item on the agenda, the Executive may resolve: -
  - (a) To request an Officer's Report be provided to a future meeting, at which point it will be treated as any other agenda item with an Officer's Report;
  - (b) To conclude the debate with no further action agreed for the time being.
- 4.4.** Petitions which are not to be presented in person at a meeting of the pertinent Committee will be reported to it. Debate and determination shall take place as per Rule 4.3 above, save that there will be no speeches by a presenter.
- 4.5.** Where a Policy Advisory Committee has debated a Petition concerning an Executive Function and has resolved to send the matter to the Executive, that item shall be dealt with like any other agenda item.

## **5. QUESTIONS ON NOTICE AT MEETINGS OF THE EXECUTIVE**

- 5.1.** Appendix B of the Council Procedure Rules ("Questions on Notice") shall apply to meetings of the Executive. It sets out the process for giving notice of such questions prior to the Executive meeting and record-keeping subsequent to the meeting.
- 5.2.** At any meeting of the Executive, the session for Questions on Notice from Local Residents shall be limited to 30 minutes and the session for such questions from Member shall be limited to 15 minutes.
- 5.3.** The questions may be asked of the Leader or of any individual Lead Member and must concern the business of the Council in so far as it relates to Executive Functions.

#### **5.4. Order of Questions**

Questions will be asked of the relevant Members in the order that notice of them was received, except that the Leader may group together similar questions.

#### **5.5. Posing a Question at the Meeting**

The Leader will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Leader to put the question on their behalf, in which event the answer given by the relevant Member shall also be written and sent to the questioner.

#### **5.6. Supplementary Questions**

A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The Leader may reject a supplementary question if it would not have been allowed as a Question on Notice or because it does not arise directly out of the question or reply.

#### **5.7. Nature of Reply**

The form and content of reply to an original or a supplementary question will be at the discretion of the Member giving the reply, unless in respect of an original question a written request has been received specifying a specific form of reply or replies. He/she may decline to give a full or any reply if in his or her opinion to do so would involve an unreasonable amount of labour or cost.

### **6. CALL-IN**

- 6.1.** When a decision (other than a Minor decision) is taken by the Executive, an individual Member on the Executive, a committee of the Executive, or made by an Officer with delegated authority from the Executive, or an Area Committee or under Joint Arrangements, that decision shall be notified to all members of the Council as soon as possible after it is taken (normally within two working days) and shall be made available at the main offices of the Council.
- 6.2.** That notice will bear the date on which it is published and will specify that the decision will come into force and may then be implemented on the expiry of five (5) working days after publication of the decision unless it is called in.
- 6.3.** During that period the Proper Officer shall call in a decision for scrutiny by the committee if so requested by:

- 6.3.1. the Chairman of the Overview & Scrutiny Committee; or
- 6.3.2. any three (3) Members of the Council.

Such a request must be made in writing and must state the reason the call-in is believed to be necessary. On receipt of such a request within five (5) working days of publication of the decision, the Proper Officer shall notify the decision-taker of the call-in and shall within five (5) working days of the expiry of the call-in period, call a meeting of the Overview & Scrutiny Committee. Pending that meeting, the decision shall stand deferred and shall not be implemented.

- 6.4.** If, having considered the decision, the Overview & Scrutiny Committee is still concerned about it, then it may refer it back to the decision-making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to Full Council. If referred to the decision maker they shall then reconsider it, amending the decision or not, before adopting a final decision.
- 6.5.** If following a call-in of the decision, the Overview & Scrutiny Committee does not refer the matter either to Council or back to the decision-making person or body, the decision shall take effect on the date of the Overview & Scrutiny meeting.
- 6.6.** If the matter was referred to Full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the Rule 6.7 below. However, if the Council does object, it has no locus to make decisions in respect of an Executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision-making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it.
- 6.7.** If the Council does not decide to refer the decision back to the decision-making body or person, the decision shall take effect on the date of the Council meeting.
- 6.8.** A decision-making person or body can be required to reconsider any particular decision only once.

## **7. Call-in and Urgency**

- 7.1.** The call-in procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice

the Council's or the public's interest. The record of the decision and notice by which it is made public shall state whether, in the opinion of the decision-making person or body, the decision is an urgent one, and therefore not subject to call-in. The decision proposed shall be regarded as reasonable in all the circumstances and be treated as a matter of urgency unless the Chairman of Overview & Scrutiny and the political group leaders by simple majority, disagree. Decisions taken as a matter of urgency must be reported to the next appropriate meeting of the Council by the Proper Officer, together with the reasons for urgency.

- 7.2.** 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. CONSIDERATION OF REPORTS BY THE EXECUTIVE**

- 8.1.** If the Proper Officer refers an Overview & Scrutiny Committee report to Council, he/she shall also serve a copy on the Leader with notice that the matter is to be referred to Council. When the Council meets to consider any referral from the Overview & Scrutiny Committee on a matter which would have an impact on the budget and policy framework, it shall also consider the response of the Executive on the Overview & Scrutiny Committee proposals.

- 8.2.** Overview & Scrutiny Committee will have access to the Executive's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from the Overview & Scrutiny Committee following a consideration of possible policy/service developments, the committee will at least be able to respond in the course of the Executive's consultation process in relation to any key decision.

## **9. APPOINTMENT TO OUTSIDE BODIES**

- 9.1.** The Executive is responsible for the appointment of representatives to all Outside Bodies, except those within the remit of the Democracy & General Purposes Committee. The list of Outside Bodies can be found in Appendix C to the Council Procedure Rules.

## **C4. Access to Information Procedure Rules**

### **1. SCOPE**

- 1.1.** These rules apply to all meetings of the Council, Committees, Panels and Sub-Committees including meetings of the Executive and its sub-committees (together called meetings).
- 1.2.** Whilst these rules set out the rights of members of the Council and members of the public to (1) attend member meetings and (2) to see Council documents, the statutory schemes are complex and take precedence in the event of any conflict with the rules.

### **2. ADDITIONAL RIGHTS TO INFORMATION**

- 2.1.** These Rules do not affect any more specific rights to information given elsewhere in this Constitution or by the law.

### **3. RIGHTS OF MEMBERS OF THE PUBLIC TO ATTEND AND RECORD MEETINGS**

- 3.1.** Members of the public may attend all meetings subject only to the exceptions in these Rules and subject to the lawful power to exclude members of the public in order to maintain orderly conduct or to prevent misbehaviour at a meeting, or in the interests of health and safety.
- 3.2.** Members of the public attending meetings of the Council and Committees in open session may record the meeting using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media.
- 3.3.** Recording of any part of a meeting held in closed session is not permitted. Anyone filming a meeting is asked to only focus on those actively participating.
- 3.4.** All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting amounts to consent to this.
- 3.5.** The Chairman of the meeting has the discretion to halt any recording for a number of reasons including disruption caused by the filming, recording or its transmission or the nature of the business being conducted.
- 3.6.** Questions should be addressed to the Democratic Services Team at [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk) (members of the press should contact the Press Office).

**4. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

**4.1. Confidential information – requirement to exclude 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, or information subject to any other duty of confidentiality which should not be disclosed to the public, would be disclosed.

**4.2. Exempt information – discretion to exclude public.**

4.2.1. 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 (see below) would be disclosed.

4.2.2. Where a 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, or the person who is the subject of the hearing requests that the matter is determined in private and no other consideration outweighs that request.

**4.3. 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 disclosed to the public by Court Order.

**4.4. Meaning of Exempt Information.**

Exempt Information means information falling within the following categories and not subject to any of the conditions:

<b>Category</b>
1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).*

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 any employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:- a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime.

#### **4.5. Conditions**

- 4.5.1. C (1) Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under—
- (a) the Companies Acts (as defined in section 2 of the Companies Act 2006);
  - (b) the Friendly Societies Act 1974;
  - (c) the Friendly Societies Act 1992;
  - (d) the Co-operative and Community Benefit Societies Act 2014;
  - (e) the Building Societies Act 1986; or
  - (f) the Charities Act 2011.
- 4.5.2. C (2) Information is not exempt 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.

4.5.3. C (3) Information which—

- (a) (a) falls within any of paragraphs 1 to 7; and
- (b) (b) is not prevented from being exempt by virtue of conditions (1) or (2)
- (c) 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.

**5. NOTICES OF MEETINGS**

- 5.1.** The Council will give at least five (5) Clear Days' notice of any meeting by posting details of the meeting at the offices of the Council unless the meeting is called at shorter notice, when details of the meeting will be posted as soon as it is called. This is subject to additional rules in the case of Key Decisions by the Executive which are referred to at 11 below.

**6. RIGHTS OF THE PUBLIC TO ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

- 6.1.** The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five (5) Clear Days before the meeting. If an item is added to the agenda later, 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 has been sent out, the Proper Officer shall make each such report available to the public as soon as the report is completed and sent to Members. Agendas and papers may be viewed on the Council's website.

**7. RIGHTS OF THE PUBLIC TO SUPPLY OF COPIES**

The Council will supply copies of:

- 7.1.** Any agenda and reports which are open to public inspection;
- 7.2.** Any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 7.3.** If the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item
- 7.4.** To any person on payment of a charge for postage and any other costs, or electronically without charge.

**8. RIGHTS OF THE PUBLIC TO ACCESS TO MINUTES ETC. AFTER THE MEETING**

**8.1.** The Council will make available for public inspection copies of the following for six (6) years after a meeting:

- 8.1.1. 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 Information or Confidential Information or information subject to any other duty of confidentiality;
- 8.1.2. 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;

**8.2.** the agenda for the meeting; and

**8.3.** reports relating to items when the meeting was open to the public.

## **9. BACKGROUND PAPERS**

**9.1.** The author of a report will set out in every report which is not Confidential Information or Exempt Information or subject to any other duty of confidentiality a list of those documents ("Background Papers") relating to the subject matter of the report and where they can be inspected which in his or her opinion:

- 9.1.1. Disclose any facts or matters on which the report or an important part of the report is based; and
- 9.1.2. Which have been relied on to a material extent in preparing the report;
- 9.1.3. But this does not include published works or those which disclose Exempt or Confidential information or information subject to any other duty of confidentiality.

### **9.2. Public inspection of Background Papers.**

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

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

**10.1.** Where reports are likely to contain Exempt or Confidential Information or information subject to any other duty of confidentiality requiring it not to be disclosed, those Officers preparing them shall attempt to structure them in such a manner as to separate such information in sections, appendices or annexes away from key information concerning the matter and any decision to be made.

**10.2.** If the Proper Officer thinks fit, the Council may exclude access by the public to reports, or to parts of reports, which in his or her opinion contain information which, in accordance with Rule 4, the meeting would be likely to enter a closed session in order to discuss. Such reports or appendices will be marked "Not for publication" together with the category of information likely to be disclosed.

## **11. DECISIONS BY THE EXECUTIVE**

**11.1.** Rules 1–10 apply to the Executive and its committees.

**11.2.** Subject to Rule 15 (general exception) and Rule 16 (special urgency), a Key Decision may not be taken unless: -

11.2.1. A Notice of Forthcoming Key Decisions has been published in connection with the matter in question at least 28 clear days before the key decision is made;

11.2.2. Where the decision is to be taken at a meeting of the executive or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

**11.3.** Contents of Notice of Forthcoming Key Decisions

11.3.1. The Notice of Forthcoming Key Decisions will contain matters which will be subject of a key decision to be taken by the Executive, a committee or area committee of the executive, individual members of the executive, officers, or under joint arrangements in the course of the discharge of an executive function.

11.3.2. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) The matter in respect of which a key decision is to be made;
- (b) Where the decision maker is an individual, their name and title, if any and where the decision maker is a body, its name and details of membership;
- (c) The date on which, or the period within which, the decision will be taken;
- (d) A list of the documents submitted to the decision maker for consideration in relation to the matter;
- (e) The address from which, subject to any prohibition or restriction on their disclosure, copies of or extracts from any document listed is available;

- (f) That other documents relevant to those matters may be submitted to the decision maker; and
- (g) The procedure for requesting details of those documents (if any) as they become available. It will also state that a Key Decision is about to be made on behalf of the Council.

#### **11.4. Publication of Notice of Forthcoming Key Decisions**

At least 28 clear days before a key decision is made, the Notice of Forthcoming Key Decisions referring to that decision must be made available for inspection by the public at the offices of the Council and on the website, this will take the form of a Forward Plan and will include other material decisions.

#### **11.5. Urgency**

Where the publication of the intention to make a Key Decision is impracticable, the decision may only be made if:

- 11.5.1. The Proper Officer has given notice to the Chairman of the Overview and Scrutiny Committee, or if there is no such person, each Member on that committee in writing, by notice, of the matter about which the decision is to be made and why compliance with Rule 11.4 is impracticable;
- 11.5.2. The Proper Officer has made a copy of that notice available to the public at the offices of the Council and published it on the website; and
- 11.5.3. At least five (5) clear days have elapsed since the Proper Officer complied with Rules 11.5.1.
- 11.5.4. As soon as reasonably practicable after the Proper Officer has carried out the steps in 11.5.1 and 11.5.2 he or she must:
  - (a) Make Available at the Council offices a notice setting out the reasons why compliance with 11.2.1 and 11.3.1 is impracticable
  - (b) Publish that notice on the Council's website.

#### **11.6. Special Urgency**

- 11.6.1. If by virtue of the date by which a key decision must be taken, Rule 11.55 cannot be followed then the decision can only be taken if the decision maker obtains the agreement of the Chairman of the Overview and Scrutiny Committee or, if they are unable to act, of the Mayor or Deputy Mayor that the making of the decision is urgent and cannot reasonably be deferred.

- 11.6.2. As soon as reasonably practicable after obtaining the above agreement, a notice setting out the reasons that the decision is urgent and cannot reasonably be deferred shall be made available to the public at the offices of the Council and published on the website.

## **12. JOINT ARRANGEMENTS**

- 12.1.** If all the members of a joint committee are Members on the Executive in each of the participating authorities then its access to information regime is the same as that applied to the Executive of the lead authority.
- 12.2.** If the joint committee contains members who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

## **13. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS**

- 13.1.** Subject to Rule 13.2 below, Overview and Scrutiny Committee (and its sub-committees) will be entitled to copies of any document which is in the possession or control of the Executive (or its committees) and which contains material relating to:

- 13.1.1. Any business transacted at a public or private meeting of the Executive or its committees; or
- 13.1.2. Any decision taken by an individual Member on the Executive; or
- 13.1.3. Any decision taken by an officer of the authority exercising an Executive function.

### **13.2. Limit on rights**

An overview and scrutiny committee will not be entitled to:

- 13.2.1. Any document that is in draft form;
- 13.2.2. Any part of a document that contains Exempt Information or Confidential Information, unless that information is relevant to an action or decision they are reviewing or scrutinising or to any review contained in any programme of work of the committee; or
- 13.2.3. The advice of a political adviser.

- 13.3.** Copies of documents requested under this rule must be supplied within 10 clear days of receipt of the request. Where the Executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document it must provide the

overview and scrutiny committee with a written statement setting out its reasons for that decision.

#### **14. MEMBERS' RIGHTS TO INSPECT DOCUMENTS AND TAKE COPIES**

- 14.1.** An elected Member is entitled by virtue of his or her office to have access to all documents in the Council's possession where it contains information which he/she has a need to know, and where the need to know is not outweighed by any other legal duties which would normally require the document not to be provided to the Member, such as Data Protection law and confidentiality duties. All members will have any additional rights to access information provided by section 100F of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 14.2.** All information obtained from an inspection and any copy document received shall be treated as confidential to the Member and shall be for his or her use as a Member of the Council only.

#### **15. Determination**

- 15.1.** Any question on the right of a member to access documents shall in the first instance be determined by the Proper Officer. The member shall complete a written declaration setting out why they believe that they have a need to know the information. Where the information is to be provided to a Member meeting, this declaration shall be provided to the Proper Officer at least three clear working days before the meeting at which the material is to be considered.
- 15.2.** If the Proper Officer is satisfied that the member has the need to know the information the member will be provided with that information unless the need to know is outweighed by any other legal duties which would normally require the document not to be provided to the Member. If the Proper Officer determines that the member does not have the need to know and is not otherwise entitled to the information, and the information is to be provided to a Member meeting, then the member may raise a request with the member body which is considering the information to which the request relates. That member body will consider the member's request and declaration and the Proper Officer's reasons for declining the request and shall determine whether the Member has a need to know in accessing any part of that meeting held in closed session or any papers for that meeting. In reaching its decision the member body shall take legal advice from the Monitoring Officer or his/her representative at the meeting. The member body decision will be made at the meeting in private session at the meeting where the information is being considered by it or at the first available meeting after the member's request has been determined by the Proper Officer.

## **16. Considerations**

**16.1.** Provision 3.4 of Chapter A2 provides the circumstances in which Members would be likely to have the need-to-know information.

**16.2.** Other considerations which must be taken into account in reaching a decision on whether to provide the information to the Member making the request include:

16.2.1. Where the Council has been given information by a Government Department on terms which preclude disclosure to individual Members or information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;

16.2.2. Where the information or document sought is about an individual or contains personal data and the proposed disclosure would not accord with the principles relating to lawful processing of personal data in Article 5. UK GDPR;

16.2.3. Where the information concerns a matter in which the Member has a Disclosable Pecuniary or other Interest;

16.2.4. Where disclosure is sought for a purpose other than a material purpose connected with the Council's exercise of its functions;

16.2.5. Where disclosure could give rise to a breach of a duty of confidence owed by the Council to a third party; or

16.2.6. Where disclosure could prejudice any tender being carried out by the Council or negotiations between the Council and another party on the terms of a proposed contract.

**16.3.** Consideration should be given to other methods of safeguarding information before elected Members are refused access to information and documents. These other methods include: -

16.3.1. Redacting personal and/or commercial data from any document;

16.3.2. Allowing Members to inspect documents at the Council's offices, with or without the ability to make notes, but without taking copies; and

16.3.3. Requiring personal undertakings from Members as to confidentiality before providing information or documents on an individual basis.

## **17. Monitoring**

The Proper Officer shall report annually to the Democracy & General Purposes Committee on the functioning of these Rules in respect of

Members' Access to Information, including the number of instances where requests were declined and the rationale for such decisions.



## **C5. Maidstone Crime & Disorder Reduction Rules**

### **1. Introduction**

**1.1.** The Crime and Disorder Act 1998 requires various 'Responsible Authorities' to work together to develop and implement a Crime and Disorder Reduction Strategy for the area as well as a strategy for combatting the misuse of drugs, alcohol and other substances and a strategy for reducing re-offending. The Responsible Authorities are the Council, along with:

- 1.1.1. Kent County Council;
- 1.1.2. Kent Police and Crime Commissioner;
- 1.1.3. Kent Chief Constable;
- 1.1.4. Kent Fire and Rescue Authority;
- 1.1.5. Clinical Commissioning Groups; and
- 1.1.6. Probation providers

**1.2.** In exercising their functions the Responsible Authorities must also co-operate with various other bodies, known as 'Co-operating Authorities' including:

- 1.2.1. Parish Councils
- 1.2.2. NHS Trusts/NHS Foundation Trusts
- 1.2.3. Governing bodies of schools
- 1.2.4. Proprietors of independent schools
- 1.2.5. Governing bodies of an institution
- 1.2.6. Social landlords

**1.3.** The Safer Maidstone Crime and Disorder Reduction Partnership fulfils this function.

**1.4.** Every local authority must also establish a committee with responsibility for Crime and Disorder matters that has the power to:

- 1.4.1. Review decisions made or action taken by the Responsible Authorities in connection with their crime and disorder functions; and
- 1.4.2. Make reports or recommendations to the authority with regard to the discharge of these functions.

- 1.5.** The Council has adopted the following rules and protocols for when the Overview & Scrutiny Committee exercises the crime and disorder functions.

## **2. Working Assumptions**

This document assumes:

- 2.1.** The continued operation of the Police and Justice Act 2006;
- 2.2.** The continued existence of a Crime and Disorder Committee function within the Maidstone Borough Council Overview & Scrutiny Committee;
- 2.3.** The existence of a Crime and Disorder Reduction Partnership for the Borough of Maidstone (currently the Safer Maidstone Partnership);
- 2.4.** A partnership approach, working with responsible authorities within the Borough (and, where appropriate, beyond) as a "critical friend".

## **3. Purpose**

The purpose of this document is to ensure effective interaction between the Safer Maidstone Partnership and the Crime and Disorder Committee to:

- 3.1.** Enhance the public accountability of the Safer Maidstone Partnership;
- 3.2.** Establish acceptable and appropriate ways of working between the two bodies; and
- 3.3.** Develop and maintain a positive working relationship for the benefit of the residents of the Borough of Maidstone.

## **4. Principles**

The protocols are based on the following principles:

- 4.1.** The Safer Maidstone Partnership should focus on supporting the reduction of crime and anti-social behaviour and reducing fear of crime and anti-social behaviour in the Borough of Maidstone.
- 4.2.** Safer Maidstone Partnership should seek to minimise any unnecessary additional administrative burdens on responsible authorities.
- 4.3.** Crime and Disorder Committee agendas need to be developed in conjunction with the Safer Maidstone Partnership.
- 4.4.** It is the intention of the Crime and Disorder Committee to require the Safer Maidstone Partnership to demonstrate added value in the work it does.

## **5. Statutory Role**

The Crime and Disorder Committee has the statutory power to:

- 5.1.** Consider Member Calls for Action made in relation to community safety matters (that is the ability for any Member to refer a matter to the Crime and Disorder Committee for consideration and for the Committee to place the matter on the agenda and consider the matter);
- 5.2.** Review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions; and
- 5.3.** Make reports or recommendations to the local authority with respect to the discharge of those functions.

## **6. Responsibility for Joint Working**

Maidstone Borough Council has a responsibility to work with Kent County Council and other district councils on community safety issues where this is possible, for example through joint development of work programmes.

## **7. Communication**

- 7.1.** The Crime and Disorder Committee and the Safer Maidstone Partnership will each nominate a named Officer to be the main point of contact. That Officer will direct all correspondence to the appropriate person.
- 7.2.** The Democratic Services Team will inform the Safer Maidstone Partnership of all Committee work programmes on a six-monthly basis to give Partners the opportunity to comment on any items that they feel appropriate to their own work. The Safer Maidstone Partnership will also be invited to propose future work items for the Crime and Disorder Committee where it wishes to do so, though the Committee is under no obligation to take these on.
- 7.3.** The Safer Maidstone Partnership will inform the Crime and Disorder Committee of its forthcoming work on a six-monthly basis and consult the Committee on its work where appropriate. In particular, the Safer Maidstone Partnership should consult the Crime and Disorder Committee on its Partnership Plan.
- 7.4.** Both parties will inform the other of structure changes and significant changes to priorities or future plans to ensure accuracy of information.

## **8. Information Sharing**

- 8.1.** The Safer Maidstone Partnership will distribute public minutes of full Partnership, Policy group and Strategy group meetings to members of

the Crime and Disorder Committee as soon as these are agreed.

- 8.2.** The Crime and Disorder Committee may also request informal notes of delivery group meetings where this is relevant to work being carried out by the Committee.
- 8.3.** The Safer Maidstone Partnership is required to respond to requests for information by the Crime and Disorder Committee "as soon as reasonably possible". These requests from Members should be well focussed and thought through.
- 8.4.** Information provided to the Crime and Disorder Committee by responsible authorities should be depersonalised and should not include any information that would be reasonably likely to prejudice legal proceedings or current or future operations of the responsible authority. These requirements cannot be bypassed by Schedule 12A of the Local Government Act 1972 i.e. by putting an item onto Part II of a committee agenda.

## **9. Meeting Procedures and Protocols**

- 9.1.** The Committee has a duty to meet at least once a year and is recommended to meet at 6 monthly intervals to ensure the ongoing building and maintenance of knowledge.
- 9.2.** Review task and finish groups may meet outside of these formal meetings with the requirement to report findings in full at a Crime and Disorder designated meeting of the Overview & Scrutiny Committee.
- 9.3.** Officers or employees of responsible authorities and co-operating persons or bodies are required to attend meetings of the Crime and Disorder Committee to answer questions or provide information. The Committee will endeavour to give at least one month's notice to persons requested to attend. The person required must attend on the specified date unless they have a reasonable excuse not to.
- 9.4.** Prior to meetings between the Crime and Disorder Committee and the Safer Maidstone Partnership, the Democratic Services Team will:
  - 9.4.1. Agree meeting dates as far in advance as possible;
  - 9.4.2. Provide meeting paperwork at least 5 working days prior to the meeting;
  - 9.4.3. Provide the Safer Maidstone Partnership with a list of proposed questions or key areas of inquiry.
- 9.5.** When representatives of the Safer Maidstone Partnership are invited to attend meetings of the Crime and Disorder Committee, the following protocols will apply:

- 9.5.1. Committee Members should endeavour not to request detailed information from representatives of the Safer Maidstone Partnership at meetings of the Committee, unless they have given prior notice through the appropriate Officer. If, in the course of question and answer at a meeting of the Committee, it becomes apparent that further information would be useful, the representative being questioned may be required to submit it in writing to members of the Committee through the appropriate Officer.
  - 9.5.2. In the course of questioning at meetings, representatives of the Safer Maidstone Partnership may decline to give information or respond to questions on the ground that it is more appropriate that the question be directed to a more senior representative.
  - 9.5.3. Representatives of the Safer Maidstone Partnership may decline to answer questions in an open session of the Committee on the grounds that the answer might disclose information which would be exempt or confidential as defined in the Local Government (Access to Information) Act 1985. In that event, the Committee may resolve to exclude the media and public in order that the question may be answered in private sessions.
- 9.6.** Committee members may not criticise or adversely comment on any individual representative of the Safer Maidstone Partnership by name.
  - 9.7.** A record will be made of the main statements of witnesses appearing before the Committee and will be agreed with the witness prior to publication or use by the Committee. Committee meetings may be electronically recorded and webcast.
- 10. Reporting and Recommendations**
- 10.1.** Section 19(2) of the Police and Justice Act 2006 states that where the Crime and Disorder Committee makes a report or recommendations, a copy shall be provided to each of the Responsible Authorities.
  - 10.2.** In accordance with Section 19(8) of the Police and Justice Act, the authority, person or body to which a copy of the report or recommendations is passed shall:
    - 10.2.1. Consider the report or recommendations;
    - 10.2.2. Respond to the Crime and Disorder Committee indicating what (if any) action it proposes to take; and
    - 10.2.3. Have regard to the report or recommendations in exercising its functions.

- 10.3.** The relevant partner (or partners, including the full Safer Maidstone Partnership) will have 28 days to formally respond to any recommendations made by the Committee, or if this is not possible as soon as reasonably possible thereafter. The relevant partner(s) will inform the Crime and Disorder Committee Chairman if delays are expected.
- 10.4.** The Democratic Services Team will ensure that drafts of Committee reports are made available for comment by the Safer Maidstone Partnership Strategy Group and any adverse comments or concerns reported to the Committee before the final report is published.
- 10.5.** The Chairman of the Safer Maidstone Partnership will be given advance notice of the date of publication of the report and consulted on the text of any accompanying press release.
- 11. Co-option**
- 11.1.** The Crime and Disorder Committee may co-opt additional members as it sees appropriate. These co-optees will be non-voting. The relevant Responsible Authority will be consulted as to the most suitable person prior to co-option, and the membership of the co-optee can be withdrawn at any time.
- 11.2.** In addition to Co-option, the Crime and Disorder Committee will invite the Chief Inspector from Kent Police (Maidstone) to attend committee meetings when items on community safety are being considered.

**12. Changing the Rules and Protocols**

These rules and protocols will be reviewed on an annual basis, at the first meeting of the Crime and Disorder Committee each Municipal Year by the Committee and the Safer Maidstone Partnership Chairman to ensure that they remain fit for purpose. The Overview & Scrutiny Committee may change these rules and protocols as considered appropriate and the Monitoring Officer may update these rules (in the same way as the rest of the Council's Constitution) to deal with any changes in legislation and to remove ambiguity or inconsistency etc.

## **C6. Financial Procedure Rules**

### **1. GENERAL**

- 1.1.** Financial Procedure Rules regulate the Council's financial affairs and maintain an acceptable standard of financial administration. Financial Procedure Rules are Council policy and must be complied with.
- 1.2.** No exceptions from any of the provisions of these Financial Procedure Rules will be made other than by agreement of the responsible Committee or Officer, whose reasons will be recorded in the decision record.
- 1.3.** These Financial Procedure Rules should be read in conjunction with the Council's Contract Procedure Rules and delegations to Officers in Part B of the Constitution.

### **2. FINANCIAL ADMINISTRATION - RELEVANT LEGISLATION**

#### **2.1. Section 151 Officer**

- 2.1.1.** Section 151 of the Local Government Act 1972 states "Every Local Authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their Officers has responsibility for the administration of these affairs".
- 2.1.2.** The Chief Finance Officer is, for the purposes of Section 151 of the Local Government Act 1972, responsible for the proper administration of the Council's financial affairs.

#### **2.2. Responsibilities of the Section 151 Officer**

- 2.2.1.** Section 114 of the Local Government Finance Act 1988 states the person (referred to as the Chief Finance Officer of the Authority) having responsibility for the administration of the financial affairs of a relevant authority under Section 151 of the Local Government Act 1972, shall: -
- 2.2.2.** Make a report under this section if it appears to him/her that the Authority, the Executive, a Committee or Officer of the Authority, or Joint Committee on which the Authority is represented:-
  - (a)** has made or is about to make a decision which involves or would involve the Authority incurring expenditure which is unlawful;
  - (b)** has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Authority; or

- (c) is about to enter an item of account, the entry of which is unlawful.
- (d) Make a report under this section if it appears to him/her that the expenditure of the Authority incurred or to be incurred in a financial year is likely to exceed the resources available to it to meet that expenditure (including sums borrowed).

### **3. ESTIMATES**

#### **3.1. Medium Term Financial Strategy**

- 3.1.1. The Chief Finance Officer will prepare and maintain a Medium-Term Financial Strategy giving a five year forward assessment (for the next budget year and the following four years) of revenue and capital commitments based on present levels of service and efficiency, and reflecting decisions taken on new commitments.
- 3.1.2. Directors and their duly authorised Officers will, in consultation with the Chief Finance Officer, when giving consideration to significant individual proposals, also give consideration to resulting future commitments.
- 3.1.3. Reports to Members will include the following information:
  - (a) The revenue consequences of a decision over a five-year period;
  - (b) In the case of capital expenditure the results of an options appraisal and the difference between any unique potential funding option and the option as agreed in the Treasury Management Strategy; and
  - (c) The implications of the new commitment for the medium-term financial strategy.

#### **3.2. Annual Estimates**

- 3.2.1. In order to set a budget requirement as required by Local Government Finance Acts, annual revenue and capital estimates will be submitted by the Chief Finance Officer to the Council for approval. Such estimates will be prepared in accordance with the requirements of the Chief Finance Officer.
- 3.2.2. The Chief Finance Officer will provide annual guidelines including a timetable relating to the production of the annual estimates. Directors and duly authorised Officers will produce all estimates that form part of their service responsibilities strictly in accordance with such guidelines.



- 3.2.3. Discretionary fees and charges will be reviewed and fixed each year by the Committee responsible for the function or the Service Director as appropriate having considered a report from the Director or duly authorised Officer in conjunction with the Chief Finance Officer, as part of the estimate cycle.
- 3.2.4. In addition, any Officer of the Council will provide any information the Chief Finance Officer requires for the preparation of the annual estimates.
- 3.2.5. The relevant Member on the Executive will co-ordinate the estimates and will then make budget recommendations to Council.
- 3.2.6. Following approval by the Council the estimates will be used by the Chief Finance Officer, Directors and duly authorised Officers for the control of expenditure and the recovery of income. All monitoring will occur in the Financial Management System.

#### **4. AUTHORITY FOR THE INCURRING OF EXPENDITURE**

##### **4.1. General Authority**

- 4.1.1. Directors and their duly authorised Officers have authority to incur expenditure on items approved within the Council's Budget. Each Director will be responsible for the supervision of the expenditure of their Directorate and for reporting to the appropriate Committee any proposed expenditure not included, or in excess of, the amount included in their estimate.
- 4.1.2. A Committee or Officer will, before incurring any expenditure not included in an approved estimate, consider the use of virement up to the sum shown in the Financial Limits Appendix between budget heads (also listed at the end of these Rules) or, if virement is not possible, submit to the Committee or Chief Finance Officer a request for a transfer from balances accompanied by a detailed statement in support of the expenditure, as long as the amount being taken from balances does not take balances below the minimum level set by Council. Any amount above or below these figures will require the approval of Council.
- 4.1.3. The Chief Finance Officer will keep the income and expenditure of the Council under review and throughout the year give the Committees and appropriate Director or duly authorised Officer, such information as is necessary.

## **4.2. Acceptance of Tenders**

- 4.2.1. The Chief Finance Officer has authority to accept tenders and quotations in excess of the sum shown in the Financial Limits Appendix on the recommendation of the appropriate Director or duly authorised Officer: -
- (a) Directors are authorised to accept tenders and quotations not exceeding the relevant sums shown in the Financial Limits Appendix, subject to the criteria detailed in paragraph 4.2.1 (b) or (c) below.
  - (b) If the tender or quotation figure is within the financial provision;  
or
  - (c) Subject to prior consultation with the relevant Member on the Executive including proposals for funding, where:
    - (i) The tender or quotation figure is within the financial provision but the lowest tender is not to be accepted; or
    - (ii) In the case of construction contracts, although the tender figure exceeds the financial provision it does not exceed such provision by more than 10%.
- 4.2.2. Directors are authorised to accept quotations in excess of the limit for quotations shown in the Financial Limits Appendix, referred to in paragraph 4.2.1 above, where:
- (a) The quotation is below the limit set for the Chief Finance Officer;
  - (b) The relevant Director is satisfied that, on seeking quotes, it was reasonable to expect a quote would be returned that was within the specified limit for quotations; and
  - (c) The quote meets the criteria detailed in paragraph 4.2.1 (b) or (c) above.
- 4.2.3. All Committees have authority to incur expenditure, including the acceptance of tenders in excess of the sums shown in the Financial Limits Appendix, when the delegation to the Chief Finance Officer has not been exercised.

## **4.3. Revenue Overspending & Virement**

When a Director or duly authorised Officer proposes to consider an overspend or under-recovery, the following will apply:

- 4.3.1. If a saving cannot be made from the same service budget, then an overspend or under-recovery may only occur if the appropriate Director or duly authorised Officer can produce a

compensating saving from other service budget(s) under their control, subject to the Chief Finance Officer's approval to virement. The limit of the Chief Finance Officer's approval is shown in the attached Financial Limits Appendix;

- 4.3.2. The Executive and Committees have the power of deferred virement, which is to spend immediately on projects while accepting the requirement to specifically identify the funding budget at some later time during the financial year. The overall limit for the deferred virement is given in the Financial Limits Appendix;
- 4.3.3. Where the authority of the Chief Finance Officer has been exceeded, the Executive and all Committees have authority to approve virement up to the sum shown in the Financial Limits Appendix;
- 4.3.4. The Chief Finance Officer may approve revenue supplementary estimates up to the sum shown in the Financial Limits Appendix;
- 4.3.5. Where the Borough Emergency Coordinator has determined that an emergency exists or an incident has created the need to implement the Council's Business Continuity Plan, the Chief Finance Officer, in consultation with the Leader of the Council, may approve revenue supplementary estimates specific to expenditure on that situation, up to the sum shown in the Financial Limits Appendix;
- 4.3.6. Any proposal outside of 4.3.1 to 4.3.3 above, or not approved by the Chief Finance Officer, will be submitted for the prior approval of the relevant Member on the Executive, accompanied by a financial comment from the Chief Finance Officer on the effects of the proposal.
- 4.3.7. After consideration of paragraph 4.8 above, if virement is not possible or is insufficient, a Committee may make a request for a transfer from balances to the relevant Member on the Executive. The request will be accompanied by a detailed statement in support of the expenditure as long as the amount being requested from balances does not reduce the level of balances below the minimum level set by Council. Any amount above these figures will require the approval of Council.
- 4.3.8. The Chief Finance Officer will report periodically to the relevant Member on the Executive. on the total amount of virement and transfer from balances already approved during the financial year.

#### **4.4. Carry Forward of Resources**

- 4.4.1. The Chief Finance Officer is authorised to carry forward to the next financial year resources allocated to specific projects which cannot be spent in the existing financial year subject to the following conditions:
  - (a) The minimum carry forward is the sum set out in the Financial Limits Appendix;
  - (b) The resources carried forward must be capable of being and must be spent within the next financial year; and
  - (c) The resources must be allocated to specific projects only and must not be available as unallocated resources or for normal running costs.
- 4.4.2. The ability to carry forward resources will not be available if, in overall terms, it has been identified that the cash allocation is overspent.
- 4.4.3. The decisions made by the Chief Finance Officer under this delegation must be reported to the relevant Member on the Executive. when the provisional revenue outturn for the previous financial year is reported.
- 4.4.4. When the Chief Finance Officer is unwilling to exercise the delegation, the matter will be put to the relevant Member on the Executive. for authority to carry forward the resources.

#### **4.5. Capital Overspending**

- 4.5.1. When virement is required it is the responsibility of the appropriate Director or duly authorised Officer to find compensating savings on schemes within the Capital Programme. The scheme identified must be underspent at completion and the savings identified must be achievable in the financial year in which the virement is proposed.
- 4.5.2. The Executive or a Committee has authority to approve any virement proposed by the appropriate Director or duly authorised Officer where compensating savings are found from within the Executive or the same Committee's budget.
- 4.5.3. When a request or proposal for additional finance cannot be met by compensating savings within the Executive or the same Committee, a report by the Director or duly authorised Officer,

accompanied by a comment from the Chief Finance Officer on the financial effects of the proposal, will be submitted for approval to the relevant Member on the Executive.

- 4.5.4. If, after consideration of paragraphs 4.5.1 to 4.5.3, virement cannot be found or is insufficient, a report on alternative funding proposals by the Director or duly authorised Officer, accompanied by a comment from the Chief Finance Officer on the financial effects of the proposal, will be submitted to the Council for consideration and if thought fit approval.

## **5. TREASURY MANAGEMENT**

### **5.1. General Management**

- 5.1.1. This Council has adopted CIPFA's Code for Treasury Management in Local Authorities.
- 5.1.2. All money in the hands of the Council will be aggregated for the purpose of Treasury Management and will be under the control of the Chief Finance Officer.
- 5.1.3. All executive decisions on borrowing, investing, or financing are delegated to the Chief Finance Officer who is required to act in accordance with the adopted code of practice as detailed in paragraph 5.1.1 and the Council's Treasury Management Strategy as detailed below.

### **5.2. Treasury Management Strategy**

- 5.2.1. The Chief Finance Officer will prepare and maintain a Treasury Management Strategy for the forthcoming three years. This strategy will be reported annually to the relevant Member on the Executive and approved by Council.
- 5.2.2. The strategy will follow the recommendations of the code of practice mentioned in paragraph 5.1.1 but allowing for the specific circumstances of the Council where these affect treasury management. In addition the strategy will set the "prudential indicators" as required to be set by the Local Government Act 2003.
- 5.2.3. The Chief Finance Officer will also report either to the relevant Member on the Executive or Audit, Governance and Standards Committee not less than once each financial year on the activities of the Treasury Management operation and on the exercise of the Treasury Management powers delegated to him/her. At least one report will be an Annual Report on

Treasury Management for presentation on or around 30th June in the succeeding financial year.

## **6. ACCOUNTING PROCEDURES**

- 6.1.** All accounting records and procedures of the Council will be subject to the approval and overall control of the Chief Finance Officer.
- 6.2.** The Chief Finance Officer will be responsible for keeping the Council's accounts having regard to statutory requirements, regulations and codes of practice in force at any one time. The Accounts and Audit Regulations 2015 require that the authority has a sound system of internal control which: -

- (a) *facilitates the effective exercise of its functions and the achievement of its aims and objectives;*
- (b) *ensures that the financial and operational management of the authority is effective; and*
- (c) *includes effective arrangements for the management of risk.*

- 6.3.** Every year the authority must review the effectiveness of its systems of internal control and prepare an annual governance statement.
- 6.4.** The Chief Finance Officer will have sole responsibility for claiming Government grants and subsidies. All Officers of the Council will provide any information required by the Chief Finance Officer to submit or substantiate such claims.

## **7. AUDIT**

- 7.1.** Internal Audit is an assurance function that primarily provides an independent and objective opinion to the organisation on the control environment comprising risk management, control and governance by evaluating its effectiveness in achieving the organisation's objectives, in line with the Public Sector Internal Audit Standards. The Council has adopted an Internal Audit Charter that provides more details of this role and reporting relationships.
- 7.2.** Internal Audit is a statutory requirement for all local authorities, as set out in the Accounts and Audit Regulations 2015 which state that: -

A relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and

governance processes, taking into account public sector internal auditing standards or guidance.

Any Officer or member of a relevant authority must, if required to do so for the purposes of the internal audit—

- (a) make available such documents and records; and
- (b) supply such information and explanations as are considered necessary by those conducting the internal audit.

- 7.3.** The Chief Executive, on behalf of the Council, is responsible for ensuring that an adequate and effective internal audit exists and has appointed a Head of Internal Audit Partnership to achieve this. The Head of Internal Audit Partnership reports to the Director of Finance and Business Improvement (as client for the service), but also has unrestricted access to the Leader of the Council, the Chairman of the Audit, Governance and Standards Committee and the Chief Finance Officer.
- 7.4.** The Head of Internal Audit Partnership will produce a strategic internal audit plan covering a three/four-year period and an annual programme. The plan will be reported to Audit, Governance and Standards Committee for approval. The Council has also approved an Internal Audit Charter which is available from the Head of Internal Audit Partnership.
- 7.5.** The Head of Internal Audit Partnership has authority to:
- 7.5.1. Enter at all reasonable times any premises or land under the control of the Council;
  - 7.5.2. Access all records, documents and correspondence relating to any financial and other transactions of the Council;
  - 7.5.3. Require and receive such explanations as are necessary concerning any matter under examination; and
  - 7.5.4. Require any Officer of the Council to produce cash or any other Council assets under their control.
- 7.6.** When any matter involves, or is thought to involve, irregularities concerning cash, property or other assets and interests of the Council or there is any suspected irregularity in the exercise of the functions of the Council, the Director or duly authorised Officer concerned will immediately notify the Head of Internal Audit Partnership who will take the steps that he/she considers necessary to investigate and report in accordance with the Council's Anti-Fraud and Corruption Policy.

**7.7.** A report which provides a summary of the work of Internal Audit will be submitted to the Audit, Governance and Standards Committee on a six-monthly basis. Progress against the Audit plan will be shown.

**7.8.** If any severe control weakness is identified by Internal Audit and not immediately rectified, a report will be submitted to the next meeting of the Audit, Governance and Standards Committee. If the matter is considered by the Chief Finance Officer or the Chief Executive to be of such importance and materiality that it should be brought to the more immediate attention of Members, a special meeting will be convened or matters will be reported to the relevant Member on the Executive.

## **8. RISK MANAGEMENT**

**8.1.** The Head of Internal Audit Partnership will maintain and publish guidance and policies on sound risk management. The Chief Executive will maintain a strategic risk register. This register will be subject to annual review by the Corporate Leadership Team and annual approval by the relevant Member on the Executive.

**8.2.** Directors or duly authorised Officers must conform to the Council's policies on risk management and are responsible for ensuring that:

8.2.1. Strategic risks are identified and reported to the Chief Executive for inclusion in the strategic risk register;

8.2.2. Service specific operational risk registers are maintained for all services. Such registers should be maintained and updated on an annual basis; and

8.2.3. All employees follow guidance and policies on risk management, understand the nature of risk and accept responsibility for risk associated with their area of authority.

**8.3.** Where appropriate risk management issues should form a key part of all planning processes including strategic plans, service plans and project plans.

## **9. PROCUREMENT OF GOODS, SERVICES AND WORKS**

**9.1.** Procurement of Goods, Services and Works shall be in accordance with the Contract Procedure Rules.

**9.2.** Contracts, including official orders, will not be issued for work, goods or services unless the cost is covered by an approved annual or supplementary estimate and the arrangement represents good value for money for the Council.



- 9.3.** Except where the Contract Procedure Rules apply, periodical or petty cash payments are made, or in instances complying with paragraph 9.4 below, official orders, raised in the Financial Management System, will be issued in all instances for works, goods and services.
- 9.4.** For items of an obligatory and continuous nature, such as electricity or telephone charges, other than for the initial commitment, it is not necessary to raise an official order. However, a register detailing the location, usage, and amount of any charges must be maintained and regularly reconciled to the Financial Management System by the administrator of the register.
- 9.5.** Official orders will describe:
- 9.5.1. For materials and simple services not covered by a separate contract
- (a) The nature and quantity of the work, goods or services required;
  - (b) The quality of the work, goods or services where this can be quantified and is a factor in the placing of the order;
  - (c) Any contract or agreement or agreed prices relating thereto;
  - (d) The total cost.
- 9.5.2. For services and high value materials and works where a formal contract is in place
- (a) Clear reference to the contract including reference number, name and date.
- 9.6.** Official orders will be authorised in the Financial Management System by the authorised Officer as approved by the Chief Finance Officer and defined in the Delegated Authorities Matrix.
- 9.7.** The duties of requesting orders and the receipting of goods and services must not be performed by the same Officer as the approval of official orders and the certifying of invoices.
- 9.8.** It will not be possible to issue a verbal order except in cases of genuine emergency or other special circumstances that has been specifically approved by the Director or duly authorised Officer. Such approval will be subject to the completion of an advisory purchase order within the Financial Management System as soon as possible. Such purchase orders will clearly state that a verbal order has already been given.
- 10. FIXED TERM SUPPLY CONTRACTS**
- 10.1.** The Council operates certain fixed term supply contracts with specified suppliers who are chosen as a result of competitive tendering. The

purpose is to obtain the supply of goods and materials at prices most advantageous to the Council.

- 10.2.** Individual purchases of goods and materials supplied under these contracts are subject to the requirements to raise official orders as detailed in paragraph 9 above regardless of the fact that a fixed term contract exists.

## **11. PAYMENT OF INVOICES**

- 11.1.** Invoices for the purpose of this Financial Procedure Rule include invoices from suppliers raised against purchase orders along with other items such as certificates, utility bills, reimbursements and payment requisitions.

- 11.2.** Authorisation of the purchase order and the receipt of goods or services will be accepted by the Chief Finance Officer as authorisation for payment of an invoice where the following are true:

11.2.1. Official orders will be authorised in the Financial Management System by the authorised Officer as approved by the Chief Finance Officer and defined in the Delegated Authorities Matrix;

11.2.2. Goods or services received transaction[s] have been created in the Financial Management System to match the invoice; and

11.2.3. The invoice has a value no greater than 110% of the goods/services received value, as per the unit price approved on the purchase order.

- 11.3.** Official orders will be authorised in the Financial Management System by the authorised Officer as approved by the Chief Finance Officer and defined in the Delegated Authorities Matrix. Invoices will not be authorised for payment unless:

11.3.1. The goods or services have been received, examined and approved for quality and quantity, or the work has been done satisfactorily;

11.3.2. For items of an obligatory and continuous nature not requiring the raising of a purchase order, details of the payments have been recorded in the appropriate register (see paragraph 9.4);

11.3.3. The expenditure is:

- (a) Within the Budget; or
- (b) Approved in accordance with Financial Procedure Rule 4, or in accordance with Financial Procedure Rule 12.2; and
- (c) In accordance with the Council's Contract Procedure Rules.

- 11.3.4. The prices, arithmetic, coding and treatment of VAT are correct, and any discount, credit or other allowances to which the Council is entitled have been deducted correctly;
  - 11.3.5. The invoice has not been certified for payment previously and is a proper liability of the Council; and
  - 11.3.6. The appropriate and proper entries have been made in a stores' stock record or inventory.
- 11.4.** Where paragraph 11.3 applies, confirmation that the requirements for payment have been met will be by the Director or duly authorised Officer authorising the invoice concerned in one of the following ways:
- 11.4.1. Where the invoice has been processed in the Financial Management System and approval has been requested electronically, by the acceptance of that invoice within the Financial Management System; or
  - 11.4.2. By signature on the original invoice in all other cases. Such invoices will be authorised and passed to the Chief Finance Officer in time to enable payment 30 days from receipt of the invoice by the Council, unless alternative terms are required and explicitly agreed.
- 11.5.** The Chief Finance Officer will examine, in so far as he/she considers necessary, invoices passed to him/her for payment and be entitled to have access at all times to such documents as appear to him/her to be necessary for the purpose of the examination and be entitled to such information and explanation as he/she thinks necessary.
- 11.6.** Each Director or duly authorised Officer will, after 31 March of each year and by such date as is necessary, give the Chief Finance Officer schedules of all invoices outstanding relating to that Directorate, and when such invoices are subsequently certified for payment, shall identify them accordingly.

## **12. PAYMENT BY CERTIFICATE**

- 12.1.** When a contract (including official orders) provides for payments to be made on an interim or stage basis, the Responsible Officer will set up and maintain a contract file including details of award, waivers, contract, payments, variations, extensions and correspondence.
- 12.2.** Interim or stage payments will be authorised only on a certificate signed by:-
  - 12.2.1. The appropriate Director or duly authorised Officer concerned; and

12.2.2. The named Supervising Officer or Engineer or Contract Administrator, whichever is appropriate, showing the total amount of the contract, the value of work executed to date, retention money, amount paid to date, the amount now certified and any deduction of liquidated damages.

**12.3.** The appropriate Director or duly authorised Officer will issue the final certificate for a contract or accepted estimate, provided the regulations relating to any overspending have been complied with. The appropriate Director or duly authorised Officer will be fully responsible for the accuracy of the final account supporting such final certificate. The Chief Finance Officer will inspect selected contracts during the currency of the work both on and off site and the appropriate Director or duly authorised Officer will provide the Chief Finance Officer with such vouchers/documents or other assistance as required.

### **13. VARIATIONS TO CONTRACTS**

**13.1.** Every variation on a contract (including official orders) will be authorised in writing by the appropriate person (referred to in 11.2) for that purpose.

**13.2.** If variations to a contract seem likely to result in the original contract sum (including any contingency sum) being exceeded, the main items will be reported, on each occasion, by the Director or designated duly authorised Officer to the Chief Finance Officer as soon as possible, and no variation will be certified in respect of additional costs to the original contract sum unless:

13.2.1. Such additional costs have been approved by the Executive or the appropriate Committee; or

13.2.2. The effect of any additional costs do not result in the final value of completed work exceeding 5% of the original contract sum, and the Chief Finance Officer is satisfied the Director or duly authorised Officer is able:

- (a) In the case of any scheme funded from capital, to find compensatory savings from other schemes within the approved Capital Programme which will be underspent on completion; and
- (b) In the case of any scheme funded from revenue, to find specific savings equivalent to the excess within the approved Revenue Budget.

**13.3.** Financial Procedure Rule 13.2 will not restrict the action of the appropriate person to issue a variation for additional costs exceeding the original contract sum if this would result in a stoppage of the contractual works or a breach of the contractual conditions or such other

circumstances, which in the opinion of the Director or duly authorised Officer concerned, would prejudice the Council's financial interests. The Chief Finance Officer will be notified immediately wherever variations are issued in such circumstances.

- 13.4.** The circumstances for issuing such a variation will be reported to the Executive or the appropriate Committee by the Director or duly authorised Officer concerned, with comment, concerning the financial implications, from the Chief Finance Officer.

#### **14. COLLECTION & RECEIPT OF BANKING**

- 14.1.** The collection of all monies due to the Council, including the arrangements for dealing with postal remittances and monies collected by the Council on behalf of other parties will be under the overall control of the Chief Finance Officer.
- 14.2.** All monies received by the Council, or its Officers, must be accounted for and receipted in a form and manner agreed by the Chief Finance Officer.
- 14.3.** All receipts, tickets or other similar documents or stationery dealing with the receipt of monies will be subject to the approval of the Chief Finance Officer.
- 14.4.** All monies received on behalf of the Council will be passed without delay (or in accordance with a frequency approved by the Chief Finance Officer) to the Chief Finance Officer or banked direct in the Council's name.
- 14.5.** All monies received by the Council on behalf of a third party, will be accounted for and paid to the third party without delay, or in accordance with any agreement or instruction by the Chief Finance Officer, after deduction of any amounts due in respect of commission or other allowance due to the Council. Such commission or other allowance will be accounted for and paid in accordance with Financial Procedure Rule 14.4.
- 14.6.** Each Director or duly authorised Officer will furnish such particulars, as the Chief Finance Officer may require, of charges to be raised on sundry debtor accounts for work done, goods supplied, services rendered by the Council or other monies due to the Council.

#### **15. WRITING OFF DEBTS**

- 15.1.** Amounts due to the Council, including the council tax, business rates and rents, may be written off by the Chief Finance Officer or an Officer authorised by him/her after submission for such purposes by the Director or duly authorised Officer concerned, provided both Officers are satisfied recovery is impracticable, and the amount for any one debtor does not exceed the sum shown in the Financial Limits Appendix.

- 15.2.** Amounts due to the Council, including the council tax, business rates, or other sums which exceed the sum shown in the Financial Limits Appendix for any one debtor require the approval of the relevant Member on the Executive, prior to being written off.
- 15.3.** Submissions for write-off will be signed by the Director, or duly authorised Officer, whose names will be notified in writing to the Chief Finance Officer.

## **16. BANKING ARRANGEMENTS & CONTROL OF CHEQUES**

- 16.1.** All financial arrangements with the Council's bankers and other financial institutions concerning the Council's bank accounts will be made under the direction of the Chief Finance Officer. Financial arrangements include: bank accounts, debit and credit card merchant accounts, electronic payment schemes and other transaction processing schemes.
- 16.2.** The Chief Finance Officer will be authorised to operate such subsidiary bank accounts as he thinks necessary.
- 16.3.** Stocks of cheques ordered from the Council's bankers or authorised printers will only be on the authority of the Chief Finance Officer who shall make proper arrangements for the security of cheques.
- 16.4.** All cheques drawn on behalf of the Council:
- 16.4.1. For amounts below the sum shown in the Financial Limits Appendix, may contain a printed facsimile signature of the Chief Finance Officer or may be signed by Officers specifically authorised by the Council; and
- 16.4.2. For amounts exceeding the sum shown in the Financial Limits Appendix, shall be signed by the Chief Finance Officer or Officers specifically authorised by the Council.
- 16.5.** Each payment in a BACS direct credit file, that exceeds the sum shown in the financial limits Appendix, will require approval of the Chief Finance Officer or Officers specifically authorised by the Council prior to being processed to the BACS system.
- 16.6.** The Chief Finance Officer will be responsible for the maintenance of proper records to account for all cheques received from the Council's bankers or authorised printers and all cheques issued, spoilt or cancelled.
- 16.7.** The Chief Finance Officer will ensure that a reconciliation of cash books and bank accounts is made not less frequently than monthly, by a person other than those authorised to sign cheques in 16.4.

## **17. PETTY CASH IMPREST & CASH FLOATS**

- 17.1.** The issue and use of petty cash imprest and cash floats will be under the overall control of the Chief Finance Officer. Petty cash expenditure must be limited to minor items.
- 17.2.** Vouchers must be obtained to support all items expended and must be presented, together with the standard summary of expenditure form, duly coded for reimbursement. Vouchers are to be supported by receipts in required VAT format and the total reimbursement certified by a duly authorised Officer.
- 17.3.** Each Director or duly authorised Officer will, at the end of each financial year complete and provide to the Chief Finance Officer a certified statement confirming all imprest and cash floats and the names of the Officers directly responsible for/in possession of the amounts involved.

## **18. CREDIT & PURCHASING CARDS**

- 18.1.** The issue and use of credit cards and purchasing cards will be under the overall control of the Chief Finance Officer.
- 18.2.** Card backed purchases should be limited to minor items where purchase by card affords reduced cost or increased value for money for the Council over and above that available by use of standard purchase order procedures as outlined in section 9 above.
- 18.3.** In all cases receipts must be obtained and where relevant these must be VAT receipts. Card statements must be reconciled to receipts, coded and authorised by a Director or duly authorised Officer. All documentation must then be passed without delay to the Chief Finance Officer.
- 18.4.** When cards are used to purchase goods and services on the internet or by other electronic means, transactions must occur through a Council Laptop or PC connected to the internet through the Council's network.

## **19. ESTABLISHMENT, SALARIES & WAGES**

- 19.1.** The Head of Human Resources Shared Service will maintain an Establishment Record of the agreed employment levels for Officers within each section. The record will show the grade applicable, post holder and current pay point on the pay scale and any allowances and additional emolument attached to the post.
- 19.2.** Each Director will maintain an Establishment Record of the employment levels for workers within their Directorate. The record will show the post title or number, pay rate applicable, post holder and any allowances and additional emolument attached to the post.
- 19.3.** The payment of all salaries, wages, bonuses, pension, compensation or other emoluments to employees or former employees will be made under

the control of the Head of Human Resources Shared Service, subject to any specific directions of the Chief Finance Officer.

- 19.4.** The Head of Human Resources Shared Service will be responsible for the day-to-day administration of salaries and wages.
- 19.5.** Directors or designated duly authorised Officers will notify the Head of Human Resources Shared Service as early as possible of all appointments, dismissals, resignations, absences from duty (other than for usual or special leave), transfers and changes which may affect the remuneration of employees.
- 19.6.** The Head of Human Resources Shared Service will be provided with, for all new appointments, all information necessary to maintain records of service, superannuation, income tax and national insurance liability.
- 19.7.** The Head of Human Resources Shared Service will report proposals relating to pay and conditions of service to the Chief Executive (except where there are specific delegations as set out in Part B of the Constitution) and will prepare the Pay Policy Statement for submission to Council before 31 March each year for the forthcoming year.
- 19.8.** Timesheets (and other time-related records, controls and procedures) will be in a form approved by the Chief Finance Officer.
- 19.9.** Starters and Leavers Forms, Overtime Claims and Subsistence/Allowance Claims will be signed by the Director or duly authorised Officer and notified in writing to the Head of Human Resources Shared Service. Timesheets and other time related records shall be certified by a responsible person authorised by the appropriate Director or duly authorised Officer.
- 19.10.** The Head of Human Resources Shared Service will maintain a Staff Handbook which will contain items relating to conditions of service.

## **20. TRAVELLING & SUBSISTENCE**

- 20.1.** All certified claims for payment of car allowances, subsistence allowances, travelling and incidental expenses will be in a form approved by the Chief Finance Officer.
- 20.2.** The certification by or on behalf of the Director will mean that the certifying Officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred, and the allowances are properly payable by the Council.

## **21. INSURANCES**



- 21.1.** The Chief Finance Officer shall effect all insurance cover and maintain necessary records.
  - 21.2.** Before taking any action which might represent an insurable risk to the Council, a Director or duly authorised Officer will consult the Chief Finance Officer.
  - 21.3.** Each Director or duly authorised Officer will give prompt notification to the Chief Finance Officer of the extent and nature of all new risks in respect of assets purchased by, loaned to or bequeathed to the Council where the Council has an insurable interest and provide such details of identification as the Chief Finance Officer deems necessary to record the item.
  - 21.4.** Each Director or duly authorised Officer will notify the Chief Finance Officer immediately in writing of any loss, claim, liability or damage covered by insurance in connection with the Directorate, or of any irregularity or other occurrence which might give rise to a claim against the Council. The Chief Finance Officer will process all claims to the Council's insurers.
  - 21.5.** When undertaking work for third parties, Directors must ensure that adequate indemnities are obtained from the third parties' insurers or from the Council's insurers to cover potential liabilities, as appropriate, and that evidence of any indemnity is provided to the Chief Finance Officer.
- 22. STOCK**
- 22.1.** Each Director and duly authorised Officer will be responsible for the care, custody and accountability of any stock under his/her area of control.
  - 22.2.** Stock will not be held in excess of reasonable requirements and will be reviewed periodically by each Director or duly authorised Officer concerned.
  - 22.3.** Stock records will be kept in a form approved by the Chief Finance Officer.
  - 22.4.** Stocktaking will be carried out at least once in each financial year by the Section concerned. The Director or duly authorised Officer involved will ensure that the stocktaking is undertaken by sufficient senior and impartial Officers to secure an independent and reliable result.
  - 22.5.** The Chief Finance Officer is entitled to check stock and will be supplied with such relevant information required for the accounting, costing and financial records of the Council.

- 22.6.** Write-offs and adjustments to deficiencies to stock balances will be subject to the approval of the Chief Finance Officer or an Officer authorised by him/her, provided the value of each item involved does not exceed the sum shown in the Financial Limits Appendix and the Chief Finance Officer or his/her authorised Officer is satisfied the reason(s) for the write-offs and adjustments are reasonable.
- 22.7.** When the value of write-off or adjustment exceeds the sum shown in the Financial Limits Appendix for any one item, the item(s) will require the approval of the Chief Finance Officer or the relevant Member on the Executive.

### **23. PROPERTY**

- 23.1.** The Head of Finance will maintain a register of all land and property owned or leased to or by the Council in a form approved by the Chief Finance Officer.
- 23.2.** The Head of Legal Partnership will have custody of all title deeds and keep them under secure arrangements as agreed with the Chief Finance Officer.
- 23.3.** Assets purchased by the Council will, as far as practical, be marked effectively as Council property.
- 23.4.** Directors and duly authorised Officers will have responsibility for introducing and maintaining adequate security for personnel, buildings, cash and confidential information. Full instructions on security matters will be given to appropriate staff.
- 23.5.** The Chief Finance Officer will be consulted on the adequacy of security arrangements relating to cash and valuable items.
- 23.6.** Inventories of the Council's property (other than stock) will be kept by each duly authorised Officer concerned and in a manner and form approved by the Chief Finance Officer.
- 23.7.** Duly authorised Officers will be responsible for making sufficient arrangements for the safekeeping of any lost property.
- 23.8.** Scrap, surplus or obsolete items which may have a value, will be disposed of at auction, normally via the appropriate purchasing Officer. Where the auction of items is not considered to be the appropriate method of disposal, the manner of disposal will be determined by the appropriate Director or duly authorised Officer following consultation with the Chief Finance Officer.
- 23.9.** Wherever possible, an independent valuation of the item will be obtained, which will form the basis of any disposal value.

**24. INFORMATION TECHNOLOGY**

- 24.1.** All Directors and duly authorised Officers must conform to the Council's IT Strategy and consult with the Head of Finance when appropriate.
- 24.2.** Any development of new systems that involve a financial operation or produce output that may influence the allocation of resources must be subject to the approval of the Chief Finance Officer regarding mutually acceptable minimum standards of control.
- 24.3.** Standalone systems which contain financial information which details, supports or affects the accounts of the Council, must be reconciled to the Financial Management System on a monthly basis by the relevant Systems Administrator.
- 24.4.** Directors and duly authorised Officers are responsible for the control of their own computer systems and the security and privacy of any data contained within them, which must accord with the Data Protection legislation.
- 24.5.** Directors and duly authorised Officers will make sound arrangements to ensure the continuation of service in the event of a disaster affecting their IT systems.
- 24.6.** All Directors and duly authorised Officers must ensure that they and their staff conform to the Council's Computer Security Policy. This includes the need to adhere to the specified arrangements relating to the use of passwords.
- 24.7.** Directors and duly authorised Officers must ensure that they and their staff conform to the Council's Internet Acceptable Use Policy.
- 24.8.** Directors and duly authorised Officers must ensure that their systems of data handling and security are in accordance with the Council's IT Strategy.

**25. PARTNERSHIPS**

- 25.1.** All partnerships must be developed as set out in the Council's Partnership Strategy.
- 25.2.** Any partnership that involves a financial operation or includes consequences that may influence the Council's resources will be subject to the approval of the Chief Finance Officer.
- 25.3.** Before entering into a partnership arrangement Directors or duly authorised Officers will ensure that there is a documented and sound business case for such a partnership. The business case must include:
  - 25.3.1. Details of the need for the partnership;

- 25.3.2. An analysis of the options available and the reason for rejection of alternatives;
  - 25.3.3. Details of any market testing of the service provision;
  - 25.3.4. Details of the financial and performance benefits to the Council and its partners;
  - 25.3.5. An exit strategy for all members of the partnership;
  - 25.3.6. Insurance and indemnity arrangements that have been accepted by the Chief Finance Officer;
  - 25.3.7. A risk assessment of the partnership, its activities, and the exit strategy; and
  - 25.3.8. Details of monitoring processes, financial controls, and performance criteria that are at least similar in structure to those expected of the Council by the Council's Constitution.
- 25.4.** All partnership arrangements must offer demonstrable financial and/or performance improvements to Council services.

**26. FINANCIAL LIMITS RELATING TO CONTRACT & FINANCIAL PROCEDURE RULES**

Financial limits will be reviewed and agreed on an annual basis by the Chief Finance Officer after taking account of relevant inflation indices and following consultation with Directors. The current financial limits are attached as an Appendix to these Financial Procedure Rules.

## Financial Limits Appendix

### Para. **FINANCIAL LIMITS RELATING TO CONTRACTS & FINANCIAL PROCEDURE RULES**

1. In the case of contracts for the provision of goods, materials or services for a period exceeding one year, the financial limits specified in this Appendix shall be for the actual or estimated price or value for the provision of such goods, materials or services for the full period of the contract.

#### 2. **CONTRACTS**

##### **Contract Procedure Rules**

All contracts to the value of £25,000 or more must be included on the Council's Contract Register.

Thresholds for Tenders are set out in Section 3 of the Contract Procedure Rules.

The Common Seal of the Council shall be affixed to contracts over £1 million and construction contracts over £75,000, unless in the opinion of the Monitoring Officer exceptional circumstances require the contract to be sealed.

##### **Financial Procedure Rules**

- 4.2 The overall limit for virement is £100,000.
- 4.4 The Chief Finance Officer is authorised to accept tenders or quotations on the recommendation of the Director or duly authorised Officer and subject to the conditions shown in Financial Procedure Rules in excess of £75,000. Directors are authorised to accept tenders not exceeding this sum.
- 4.7 All Committees, the Executive and Individual Members of the Executive are authorised to incur expenditure, including the acceptance of tenders, where the delegation to the Chief Finance Officer has not been exercised, in excess of £75,000.
- 4.8 (a) The limit of the authority for the Chief Finance Officer to authorise virement is £50,000 per item.
- 4.8 (b) The overall limit for deferred virement and  
& (c) Executive/Committee virement is £100,000.
- 4.8 (d) The limit to the authority for the Chief Finance Officer to authorise supplementary estimates is £50,000 per item.
- 4.8 (e) The limit to the authority of the Chief Finance Officer to authorise supplementary estimates in relation to a confirmed

emergency or the activation of the Business Continuity Plan is £100,000 per emergency.

4.11(a) The minimum carry forward is £6,000.

15.1 & 22.6 The limit to the authority of the Chief Finance Officer or an Officer authorised by him/her to write-off individual amounts due to the Council including the council tax, business rates and housing rents and to authorise adjustments to stores balances is £12,000 per item.

15.2 & 22.7 The approval of the relevant Member on the Executive is required before amounts can be written off or stores balances can be adjusted in excess of £12,000 per item.

16.4(a) Any payment to a single supplier which exceeds £40,000 & (b) requires authorisation of a bank signatory.

### 3. AGREED COUNCIL BUDGET HEADS

No	Description		Previous Committee – To be updated with new Executive Member details
1.	Alcohol Entertainment & Taxi Licensing	5EN	Communities, Housing and Environment
2.	Animal & Public Health	5EN	Communities, Housing and Environment
3.	Balances	7BL	Balances
4.	Building Control	6PT	Strategic Planning and Infrastructure
5.	Capital Grants & Contributions	3CS	Policy & Resources
6.	Cemetery, Cremation & Mortuary Services	5EN	Communities, Housing and Environment
7.	Community Development	2CL	Communities, Housing and Environment
8.	Community Safety	2CL	Communities, Housing and Environment
9.	Corporate Management	1LD	Policy & Resources
10.	Corporate Support Services	3CS	Policy & Resources
11.	Culture and Heritage	4EC	Economic Regeneration and Leisure
12.	Democratic Representation & Management	3CS	Policy & Resources
13.	Development Control	6PT	Strategic Planning and Infrastructure
14.	Economic Development	4EC	Policy & Resources
15.	Elections	3CS	Policy & Resources
16.	Emergency Planning	3CS	Policy & Resources
17.	Environment Safety & Routine Maintenance	6PT	Strategic Planning and Infrastructure

<b>No</b>	<b>Description</b>		<b>Previous Committee – To be updated with new Executive Member details</b>
18	Environmental Health and Protection	5EN	Communities, Housing and Environment
19	Environmental Services	5EN	Communities, Housing and Environment
20	External Interest Payable	3CS	Policy & Resources
21	Flood Defence & Land Drainage	5EN	Communities, Housing and Environment
22	General Grants, Bequests & Donations	2CL	Communities, Housing and Environment
23	Health & Safety	5EN	Communities, Housing and Environment
24	Housing Benefit	3CS	Policy & Resources
25	Housing General fund	2CL	Communities, Housing and Environment
26	Interest & Investment Income	3CS	Policy & Resources
27	Local Land Charges	6PT	Strategic Planning and Infrastructure
28	Local Tax Collection	3CS	Policy & Resources
29	Noise and Pest Control	5EN	Communities, Housing and Environment
30	Non-Distributed Costs	3CS	Policy & Resources
31	Open Spaces	2CL	Communities, Housing and Environment
32	Parking Services	6PT	Strategic Planning and Infrastructure
33	Pensions Fund Management	3CS	Policy & Resources
34	Planning Policy	6PT	Strategic Planning and Infrastructure
35	Precepts & Levies	3CS	Policy & Resources
36	Public Conveniences	5EN	Communities, Housing and Environment
37	Public Health	2CL	Communities, Housing and Environment
38	Public Transport	6PT	Strategic Planning and Infrastructure
39	Recreation & Sport	2CL	Economic Regeneration and Leisure
40	Street Cleansing	5EN	Communities, Housing and Environment
41	Tourism	4EC	Economic Regeneration and Leisure
42	Travellers sites	2CL	Communities, Housing and Environment
43	Waste and Recycling Collection	5EN	Communities, Housing and Environment
	Appropriation Account		Policy & Resources
	Pensions Fund Appropriation		Policy & Resources
	Council Tax Requirement		Policy & Resources
	Business Rates		Policy & Resources





## **C7. Contract Procedure Rules: General**

### **1. INTRODUCTION**

It is the responsibility of the Chief Executive and the Service Directors to ensure that all purchases of goods, services and works comply with:

- 1.1.** Legal requirements
- 1.2.** EU Directives [XX EUWA]
- 1.3.** The Public Contracts Regulations 2015 (all amendments and Procurement Policy Notes that have been applied later)
- 1.4.** The Council's Constitution including these Contract Procedure Rules, the Finance Procedure Rules and the Scheme of Delegation
- 1.5.** Compliance with the Council's decision-making process
- 1.6.** An appropriately signed Procurement Plan is in place prior to the commencement of any procurement over £75,000 contract sum.

### **2. GENERAL PRINCIPLES APPLYING TO ALL PROCUREMENTS**

- 2.1.** These Contract Procedure Rules apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2.** These Contract Procedure Rules apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3.** These Contract Procedure Rules do not apply to:
  - 2.3.1. Employment contracts
  - 2.3.2. Contracts relating solely to the purchase or sale of interests in land
  - 2.3.3. Contracts for retention of legal representation and the appointment of expert witnesses in legal proceedings
  - 2.3.4. Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies
  - 2.3.5. Joint Arrangements to collaborate with other authorities that involve the delegation of functions.
- 2.4.** All purchases however small shall be in writing, this will be either in the form of an approved written contract or for smaller purchases an electronic order.

- 2.5.** Each Director shall be responsible for the purchasing undertaken by their Directorate and shall appoint a named Responsible Officer for each procurement. (Responsible Officer's duties are laid out in appendix A).
- 2.6.** Shall comply with the Council's decision-making processes including complying with the Scheme of Delegation.

### **3. THRESHOLDS**

The financial values, procurements must comply with the following flow charts which form part of the Contracts Standing Orders: -

- 3.1.** £0 to £10,000 - At least one written quote in advance of ordering - see flowchart A
- 3.2.** £10,001 to £74,999 - At least three written quotes in advance - see flowchart B
- 3.3.** £75,000 and above - Formal tender process - see flowchart C

### **4. SUBMISSION AND OPENING OF TENDERS**

- 4.1.** In accordance with flowchart C for all contracts over £75,000 and also where appropriate for those below £75,000, a formal tender process will be followed.
- 4.2.** All tenders shall be submitted electronically using the e-sourcing tool in use by the Council.
- 4.3.** Late tenders shall not be accepted unless the Director of Finance and Business Improvement is satisfied that there is sufficient evidence that exceptional circumstances apply.

### **5. PLACING CONTRACTS**

- 5.1.** As required under section 9 of the Financial Procedure Rules all external expenditure except those specifically exempted shall be supported by a contract and/or official order, for those contracts over £75,000 the type of contract will be defined in the Procurement Plan.
- 5.2.** Details to be included in a contract/order are dependent on the risk and value associated with that order (refer to section 9.5 in Financial Regulations).

### **6. EXTENSIONS AND VARIATIONS**

- 6.1.** Where extensions to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.

**6.2.** Any extension must be:

6.2.1. Fully documented.

6.2.2. Subject to a written report in an approved format to be submitted to a Director which shall include reasons for the extension which demonstrate that the need for the extension is genuinely beneficial.

6.2.3. Subject to approval by the Director who shall record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely beneficial.

**6.3.** Any extension must take into account:

6.3.1. Probity

6.3.2. Best value/value for money principles.

**6.4.** For contracts subject to the Public Contracts Regulations, any extension must meet the conditions set out in the Public Contracts Regulations in addition to the more general requirements set out above.

**6.5.** Where an extension or variation are required to a contract, which does not allow for these then a waiver procedure must be followed.

**7. WAIVERS**

**7.1.** The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £10,000 may be waived in the following circumstances.

7.1.1. For contracts which are not subject to the EU Rules, the work, supply or service 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

7.1.2. the circumstances set out in Regulation 6 apply (whether or not the contract is of a type which is subject to the application of the Public Contracts Regulations); or

7.1.3. the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or

7.1.4. at the discretion of the Head of Finance who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.

- 7.2.** A Responsible Officer who seeks a waiver of Contract Procedure Rules other than Procedure Rules 7.1.3 shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Procedure rules is set out in the Council's Purchasing Guide.
- 7.3.** All waivers from these Contract Procedure Rules must be:
- 7.3.1. Fully documented
  - 7.3.2. Subject to a written report in an approved format to be submitted in advance to the appropriate Director which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
  - 7.3.3. Subject to approval in advance by the appropriate Director who shall consult the relevant Committee Chairman or relevant Member on the Executive, and record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 7.4.** All decisions on waivers must take into account:
- 7.4.1. Probity
  - 7.4.2. Best value/value for money principles.
- 7.5.** For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.
- 7.6.** A waiver shall not be applied for reasons of poor contract planning.
- 8. APPROVAL AND EXECUTION OF CONTRACTS**
- 8.1.** Contract award approval is to be in accordance with Delegated Authorities, all contracts must be executed and issued prior to commencement of contract.
- 8.2.** Contracts will be executed by hand unless over £1m, a construction contract over £75,000 or considered to be essential by the Monitoring Officer.
- 9. ELECTRONIC SIGNATURES**
- 9.1 Electronic signatures may be used by both the Council and the Supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Director of Finance and Business Improvement.

- 9.2 Electronic signatures will, in line with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter into a contract by and with the Council, insofar as the e-signature is a true representation of the authorised person's written signature and (a) and (b) below apply (to the Supplier), in which case an e-signature and a signature will be referred to as the same.
- (a) the Contract will be entered into in relation to being either under seal or under hand; and
  - (b) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.

## **10. REVIEW AND CHANGES TO THESE CONTRACT PROCEDURE RULES**

These Contract Procedure Rules shall be reviewed and updated on a regular basis. Save in the case of revisions to the appropriate Public Contract Regulations Thresholds, amended Contract Procedure Rules shall be agreed and adopted by the Council. Revisions to the EU Thresholds shall be updated by the Chief Finance Officer.

## Appendix A: Responsible Officer's required actions for a procurement

The Responsible Officer will be the Officer named in the Procurement Plan or by the Director responsible for the budget or in the absence of the above the Officer responsible for the budget expenditure is being made against subject to delegated authority being adequate.

Action	£0 - £10,000	£10,001 - £74,999	£75,000 +
Procurement Plan	Not required	Optional	Procurement Plan must be completed seek advice from Procurement Team, signed by Head of Commissioning & Business Improvement
Tender Documentation	Ensuring tender documentation contains a clear specification, contract terms and evaluation criteria	Ensuring tender documentation contains a clear specification, contract terms and evaluation criteria	Ensuring tender documentation contains a clear specification, contract terms and evaluation criteria, seek advice from the Procurement Team and Legal if required.
Advertising	Optional but recommended to advertise on KentBusiness Portal (Advert will be raised by Procurement Team)	Optional but recommended to advertise on Kent Business Portal (Advert will be raised by Procurement Team)	Required for all tenders over £75,000 on Kent Business Portal additionally for all tenders over £181,000 services or £4,511,00 works a notice is required in the

<b>Action</b>	<b>£0 - £10,000</b>	<b>£10,001 - £74,999</b>	<b>£75,000 +</b>
			Find a Tender Service, seek advice at the earliest possible stage from the Procurement Team (Advert will be raised by Procurement Team)
Audit Trail	Ensure written record of all information is stored in a shared area and kept for timescale in accordance with the Council's Records Retention Schedule.	Ensure written record of all information is stored in a shared area and kept for timescale in accordance with the Council's Records Retention Schedule.	Ensure written record of all information is stored in a shared area and kept for timescale in accordance with the Council's Records Retention Schedule.
Evaluation	Carry out evaluation in accordance with the requirements of the tender, record results.	Carry out evaluation in accordance with the requirements of the tender, record results.	Carry out evaluation in accordance with the requirements of the tender, record results.  Procurement Team will support and provide moderation if required.

<b>Action</b>	<b>£0 - £10,000</b>	<b>£10,001 - £74,999</b>	<b>£75,000 +</b>
Award	Obtain and record authorisation to award contract from appropriate Officer before awarding contract. Notify suppliers if successful or unsuccessful provide feedback if requested.	Obtain and record authorisation to award contract from appropriate Officer before awarding contract. Notify suppliers if successful or unsuccessful provide feedback if requested.	Complete Award Report and get approval to award in accordance with the Finance Procedure Rules. Notify suppliers if successful or unsuccessful provide feedback in letters.  For tenders above Public Contracts Regulations thresholds a more formal process is required and support should be sought from the Procurement Team
Contract	Ensure contract or order is in place before works start, in accordance with the contract terms included in the tender.	Ensure contract or order is in place before works start, in accordance with the contract terms included in the tender.	Ensure contract or order is in place before works start, in accordance with the contract terms included in the tender.
Contract Register	Optional	If contract is more than £25k then it should be added to the contract register including the name of the Contract Manager the Procurement Team can assist in adding to the	Add contract register including the name of the Contract Manager the Procurement Team can assist in adding to the register.



<b>Action</b>	<b>£0 - £10,000</b>	<b>£10,001 - £74,999</b>	<b>£75,000 +</b>
		register.	
Contract Management	Name contract manager responsible for the delivery of the goods or service, where no manager is named it will be assumed that the Responsible Officer is fulfilling that role.	Name contract manager responsible for the delivery of the goods or service, where no manager is named it will be assumed that the Responsible Officer is fulfilling that role.	Name contract manager responsible for the delivery of the goods or service, where no manager is named it will be assumed that the Responsible Officer is fulfilling that role.
Contract File	Set up and maintain contract file including details of award, waivers, contract, payments, variations, extensions and correspondence.	Set up and maintain contract file including details of award, waivers, contract, payments, variations, extensions and correspondence.	Set up and maintain contract file including details of award, waivers, contract, payments, variations, extensions and correspondence.

## **C8. Contract Procedure Rules: Land Transactions**

### **1. DEFINITIONS**

In all the Rules relating to the sale, purchase, management and development and appropriation of land the following definitions apply:

- 1.1.** Land shall mean land and buildings.
- 1.2.** Sale shall mean the disposal of any interest in land including the grant of a lease or tenancy of any duration.
- 1.3.** Purchase shall mean the acquisition of any interest in land including the taking of a lease or tenancy of any duration.
- 1.4.** Development shall mean development as defined by the Town & Country Planning Acts.

### **2. SALE OF LAND**

- 2.1.** Subject to Rule 6 all sales of land and buildings are to be authorised by the relevant Member on the Executive unless authority has been delegated to Officers. All operational land must be declared surplus prior to sale.
- 2.2.** The method of sale will be decided by the Director of Finance and Business Improvement in consultation with the Leader.

### **3. SALES BY PUBLIC AUCTION**

A reserve price shall be determined by the Director of Finance and Business Improvement having consulted with the Leader and the land shall not be sold at the auction for a price lower than the reserve price. The results of the auction shall be reported to the Chairman of Policy and Resources Committee subsequent to the auction. The Director of Finance and Business Improvement is authorised to sell a property by private treaty subsequent to the auction at not less than the reserve price.

### **4. SALES BY TENDER**

- 4.1.** Advertisements containing particulars of the land offered for sale by tender and of the date by which tenders are to be received shall be inserted by the Director of Finance and Business Improvement in a local newspaper circulating in the Borough, and such other publications as he/she shall consider appropriate in the circumstances as well as placed on the Council's website and any other relevant websites.
- 4.2.** Tenders received shall be dealt with in accordance with Rule 7.

## **5. SALES BY PRIVATE TREATY**

In a case where the Director of Finance and Business Improvement has agreed that the land should be disposed of by private treaty either to a specified purchaser or persons or by public invitation to negotiate, the Director of Finance and Business Improvement, or a member of his/her staff, shall conduct the negotiations and shall ensure that a written record is kept of the negotiations, such note to be made immediately following the negotiations. Negotiations shall normally take place in the Council's offices, at the offices of the Council's solicitors or agents or the offices of the prospective purchaser or his or her solicitors or agents or at the property in question within normal office hours.

## **6. SPECIAL CATEGORIES OF SALE**

**6.1.** Rules 2 to 5 shall not apply to the following special categories of sale ("the special categories"):-

- 6.1.1. sales under the right to buy scheme.
- 6.1.2. sales of dwellings in the possession of the Council as mortgagee.
- 6.1.3. sales of non-operational land not exceeding .025 hectares.
- 6.1.4. sales of sites for electricity substations and gas governors.
- 6.1.5. the grant, surrender and renewal of licences, easements, wayleaves and rights of way.
- 6.1.6. the grant, surrender and renewal of leases and tenancies where the land concerned has previously been let on a lease or tenancy.
- 6.1.7. a transfer to the Highway Authority of land forming part of the highways and highway verges to be adopted by the Highway Authority.

**6.2.** In the case of transactions falling within the special categories all necessary action shall be taken by the Director of Finance and Business Improvement in line with Council policy objectives subject in the case of 6.1.3 to prior consultation with the Leader.

## **7. RULES FOR THE PURCHASE OF LAND**

**7.1.** The purchase of land shall be authorised by the Director of Finance and Business Improvement in consultation with the Leader and he/she will set an upper limit on the acquisition price or lease rental and stipulate any condition that he/she would wish to apply to the purchase; or the relevant Member on the Executive, depending upon value.

- 7.2.** Negotiations for the acquisition shall be conducted by the Director of Finance and Business Improvement or a member of his/her staff who shall ensure that a written record is kept of the negotiations, such note to be made immediately following the negotiations.
- 7.3.** The outcome of the negotiations shall be reported back to the Leader.
- 7.4.** Such negotiations shall normally take place in the Council's offices or at the offices of the vendor/lessor or his/her solicitors or agents or at the property in question within normal office hours.

## **8. RULES FOR MANAGEMENT & DEVELOPMENT OF LAND**

- 8.1.** The management and development of all operational land shall be the responsibility of the Director of Finance and Business Improvement.
- 8.2.** The management and development of all non-operational land shall be the responsibility of the Director of Finance and Business Improvement in consultation with the Leader.
- 8.3.** Investment strategy shall be determined by the relevant Member on the Executive and shall have regard to the CIPFA Prudential Code for Capital Finance for local authorities.
- 8.4.** All land shall be managed in accordance with the current policies of the Council and all consents or approvals given to tenants, licensees and occupiers shall be subject to the grant of any necessary planning permission, listed building consent and consent under the Building Regulations which it will normally be the responsibility of the tenant or licensee or occupier to obtain.
- 8.5.** Before any development is allowed to commence on Council owned land all necessary planning permissions and listed building consents must first have been obtained by the Council, the tenant, the licensee, the occupier or the developer as the case may be.

## **9. APPROPRIATION OF LAND**

- 9.1.** All appropriations of land from within the responsibility of one Member on the Executive another shall be authorised by the Director of Finance and Business Improvement.
- 9.2.** The appropriate Committee Chairman or relevant Member on the Executive shall be informed of details of the appropriation figure.
- 9.3.** Unless the Head of Finance determines otherwise, the date of appropriation shall be the date of his/her decision.

**10. DISPOSAL AND APPROPRIATION OF OPEN SPACE**

- 10.1.** The following additional procedures shall apply where it is proposed to dispose of or appropriate Open Space.
- 10.2.** Before making a final decision on the proposed appropriation or disposal of Open Space the Director of Finance and Business Improvement shall advertise the proposal in accordance with the provisions of the relevant Act and shall consider any representations made as a result of the advertisement in making any decisions.

## **C9. Officer Employment Procedure Rules**

### **1. RECRUITMENT & APPOINTMENT**

#### **1.1. Declarations**

1.1.1. A candidate for any Council appointment will, when making application, inform the duly authorised Officer or Head of Human Resources Shared Service of any relation they know to be a Member or senior Officer of the Council. A candidate who knowingly fails to disclose a relationship will be disqualified for the appointment and if appointed be liable to dismissal without notice. A Member or senior Officer of the Council will inform the Chief Executive of any relationship known to him/her with any person he knows is a candidate for an appointment. The Chief Executive will report any such disclosure to the Council or appropriate Member or Officer making the appointment.

1.1.2. This rule will be included in any form of application.

1.1.3. For the purpose of this rule "senior Officer" means any Council Officer designated Grade 14 or above. Persons will be deemed to be related if they are husband, wife, civil partner, co-habiting partner, son, daughter, grandson, grand-daughter, brother, sister, nephew or niece of a Member/candidate.

#### **1.2. Seeking support for an appointment**

1.2.1. Canvassing of Members directly or indirectly for any job appointment will disqualify the candidate. Every advertisement inviting applications and application form will include a note to this effect.

1.2.2. A Member shall not solicit for any person any Council appointment or give a written testimonial of a candidate's ability, experience or character for an application for appointment with the Council.

### **2. RECRUITMENT OF HEAD OF PAID SERVICE & DIRECTORS**

Where the Council proposes to appoint a Head of Paid Service or Director and it is not proposed that the appointment be made exclusively from among the existing Officers, the Council will:

#### **2.1. Draw up a statement specifying:**

2.1.1. The duties of the Officer concerned; and

2.1.2. Any qualifications or qualities to be sought in the person to be appointed;

- 2.2.** 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; and
  - 2.3.** Make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
- 3. APPOINTMENT OR DISMISSAL OF HEAD OF PAID SERVICE, OR DISMISSAL OF THE CHIEF FINANCE OFFICER OR MONITORING OFFICER**
- 3.1.** The Full Council will approve the appointment of the Head of Paid Service, Chief Finance Officer or the Monitoring Officer following the recommendation of such an appointment by a Panel appointed by the Employment Committee. The authority must approve the appointment before an offer of appointment is made to that person.
  - 3.2.** If a complaint of misconduct is received about the Chief Executive, Chief Finance Officer or Monitoring Officer, the complaint will be dealt with in accordance with The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
  - 3.3.** The dismissal of any of the Head of Paid Service, the Chief Finance Officer or Monitoring Officer may only be made by the Council following consideration and recommendation by an advisory Panel drawn from the Employment Committee, to include at least two, Independent Persons appointed under section 28(7) of the Localism Act 2011. (Note: At least two Independent Persons must be invited to the Panel and if the Council does not have more than one Independent Person, the Panel should invite such Independent Persons who may have been appointed to other authorities as they consider appropriate.) The Council must appoint to the Panel such relevant independent persons who have accepted an invitation, in accordance with the following priority order:
    - 3.3.1. an independent person who has been appointed by the authority and who is a local government elector;
    - 3.3.2. any other independent person who has been appointed by the authority;
    - 3.3.3. an independent person who has been appointed by another authority or authorities.
  - 3.4.** Before taking a vote at a Council meeting on whether or not to approve such a dismissal, the authority must take into account, in particular:
    - 3.4.1. any advice, views or recommendations of the Panel;

- 3.4.2. the conclusions of any investigation into the proposed dismissal;  
and
- 3.4.3. any representations from the relevant Officer.

**3.5.** The authority must approve the dismissal before notice of dismissal is given to that person.

3.5.1. **Procedure: Investigation**

- (a) It is in the interests of all parties that the proceedings be conducted expeditiously and fairly.
- (b) In the exercise of its function, the Panel is to receive and consider any complaint/allegations made. It may:
  - (i) make such enquiries of the relevant officer or any other person as it considers appropriate;
  - (ii) request additional information, explanations or documents from any person;
  - (iii) invite or receive representations from any person.
- (c) The Panel having carried out such steps as it considers appropriate and having heard representations from the Chief Officer, Head of Service or Designated Statutory Officer (DSO) or his/ her adviser shall decide whether the issues:
  - (i) require no further formal action, or
  - (ii) should be referred to an Independent Investigator (II).
- (d) In considering whether the threshold in deciding to appoint an II has been met the Panel will assess whether:
  - (i) if the allegations are proved it would be such as to lead to the dismissal or other action which would be recorded on the officer's personal file;
  - (ii) there is evidence in support of the allegation/issue sufficient to require further investigation.
- (e) In deciding whether the threshold for the appointment of an II has been reached the Panel may carry out such preliminary investigations as it considers appropriate or necessary or authorise officers to do so. This shall be solely for the purpose of establishing whether or not the threshold for appointing an II to carry out an investigation has been met.
- (f) Before deciding to appoint an II or suspend a DSO the Panel shall invite the representations of the DSO unless it is



impracticable to do so. The DSO shall have the right to be accompanied at the Panel Meeting.

- (g) Any matters of discipline referred to the Panel shall be dealt with under the JNC Scheme of Conditions of Service for Chief Officers.
- (h) The Panel may determine on behalf of the Council to either exonerate the employee or, if they find misconduct to determine the form of disciplinary action that may be appropriate.

### 3.5.2. **Procedure: Receiving the II's Report/ Hearing**

- (a) The Committee should receive any report produced by an II in relation to a DSO, Chief Officer or Head of Service within one month of the receipt of the report by the Council.
- (b) The officer shall have the right to attend and be accompanied at the Committee Meeting which considers the II's report.
- (c) The Committee shall consider the II's report and shall invite representations from the officer and/or his/her representative. The Committee may impose disciplinary sanctions as set out in the Council's disciplinary procedures, the JNC Terms and Conditions Handbook for Chief Officers and the JNC Terms and Conditions Handbook for Chief Executives. In conducting any hearing the Committee shall have regard to the model disciplinary procedure in the JNC handbook for Chief Executives and the ACAS Code of Practice.

## 4. **APPOINTMENT OF DIRECTORS**

Appointment of Directors is the responsibility of the Employment Committee.

## 5. **OTHER APPOINTMENTS**

### 5.1. **Officers below Director level**

Appointment of Officers below Director level will be delegated to the Chief Executive or his/her nominee and may not be made by Members. Discipline of Chief Officers other than the Statutory Officers above is also the responsibility of the Chief Executive.

### 5.2. **Political assistants**

No appointment will be made to any post allocated to a political group until each of the groups which qualify for one has been allocated a post. No allocation of a post will be made to a political group which does not qualify for one. Only one post will be allocated to any political group.

**6. DISCIPLINARY ACTION**

Members will not be involved in any disciplinary action nor dismissal against any Officer (other than the Statutory Officers mentioned above) except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of disciplinary action or capability from decisions made by the Chief Executive or the involvement of Members in consultation with the Chief Executive in relation to disciplinary matters.

## **C10. Budget and Policy Framework Rules**

### **1. FRAMEWORK FOR EXECUTIVE DECISIONS**

The Council will be responsible for the adoption of its budget and policy framework. Once a policy or budget within that framework is in place, it will be the responsibility of the Executive to implement it.

### **2. PROCESS FOR DEVELOPING THE FRAMEWORK**

The process by which the budget and policy framework shall be developed is:

- 2.1.** In each year before a plan/strategy/budget needs to be adopted, the Executive will publish initial proposals for the budget and policy framework, having first canvassed the views of local stakeholders as appropriate, in a manner suitable to the matter under consideration. Details of the Executive's consultation process shall be included in relation to each of these matters the key decision notification and published at the Council's main offices and on its website.
- 2.2.** Any representations made to the Executive shall be taken into account in formulating the initial proposals, and shall be reflected in any report dealing with them. If the matter is one where the Overview and Scrutiny Committee has carried out a review of policy, then the outcome of that review will be reported to the Executive and considered in the preparation of initial proposals.
- 2.3.** The Executive's initial proposals shall be referred to the Overview and Scrutiny Committee, for further advice and consideration. The proposals will be referred by sending a copy to the proper officer who will forward them to the chairman of the Overview and Scrutiny Committee. The Overview and Scrutiny Committee shall canvass the views of local stakeholders if it considers it appropriate, in accordance with the matter under consideration, and having particular regard not to duplicate any consultation carried out by the Executive. The Overview and Scrutiny Committee shall report to the Executive on the outcome of its deliberations. The Overview and Scrutiny Committee shall have one month to respond to the initial proposals of the Executive, unless the Executive considers that there are special factors that make this timescale inappropriate. If it does, it will inform the Overview and Scrutiny Committee of the time for response when the proposals are referred to it. If the response period covers a significant holiday period or election then the period may be extended in order to give the Overview and Scrutiny Committee sufficient time to consider the proposals.
- 2.4.** Having considered the report of the Overview and Scrutiny Committee, the Executive if it considers it appropriate, may amend its proposals,

before submitting them to the Council Meeting for consideration. It will also report to Council on how it has taken into account any recommendations from the Overview and Scrutiny Committee.

## **2.5. POLICY FRAMEWORK**

### 2.5.1. Before the Authority:

- (a) Amends the draft plan or strategy;
- (b) Approved, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted; or
- (c) Adopts (with or without modification the plan or strategy, it must inform the Executive Leader of any objections which it has to the draft plan or strategy and must give to him/her instructions requiring the Executive to reconsider, in the light of those objections, the draft plan or strategy submitted to it.

### 2.5.2. Where the authority gives instructions in accordance with paragraph 2.5.1, it must specify a period of at least five working days beginning on the day after that date on which the executive leader receives the instructions on behalf of the executive within which the executive leader may:

- (a) (i) submit a revision of the draft plan or strategy as amended by the executive (the —revised draft plan or strategy), with the executive's reasons for any amendments made to the draft plan or strategy, to the authority for the authority's consideration; or
- (b) (ii) inform the authority of any disagreement that the executive has with any of the authority's objections and the executives' reasons for any such disagreement.

### 2.5.3. When the period specified by the authority, referred to in paragraph 2.5.2, has expired, the authority must, when:

- (a) amending the draft plan or strategy or, if there is one, the revised plan or strategy;
- (b) approving, for the purpose of its submission to the government for approval, any plan or strategy (whether or not in the form of a draft or revised draft) of which any part is required to be submitted; or
- (c) adopting (with or without modification) the plan or strategy, take into account any amendments made to the draft plan or strategy that are included in any revised draft plan or strategy,

the executive's reasons for those amendments, any disagreement that the executive has with any of the authority's objections and the executive's reasons for that disagreement, which the executive leader submitted to the authority, or informed the authority of, within the period specified.

## **2.6. BUDGET MAKING**

- 2.6.1. Subject to paragraph 2.6.5, where, before 8th February in any financial year, the authority's executive submits to the authority for its consideration in relation to the following financial year:
- (a) Estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49, of the Local Government Finance Act 1992;
  - (b) Estimates of other amounts to be used for the purposes of such a calculation;
  - (c) Estimates of such a calculation; or
  - (d) Amounts required to be stated in a precept under Chapter IV of Part I of the Local Government Finance Act 1992, and following consideration of those estimates or amounts the authority has any objections to them, it must take the action set out in paragraph 2.6.2.
- 2.6.2. Before the authority makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph 2.6.1(a), or issues a precept under Chapter IV of Part I of the Local Government Finance Act 1992, it must inform the executive leader of any objections which it has to the executive's estimates or amounts and must give to him instructions requiring the executive to reconsider, in the light of those objections, those estimates and amounts in accordance with the authority's requirements.
- 2.6.3. Where the authority gives instructions in accordance with paragraph 2.6.2, it must specify a period of at least five working days beginning on the day after the date on which the executive leader receives the instructions on behalf of the executive within which the executive leader may:
- (a) Submit a revision of the estimates or amounts as amended by the executive (—revised statements or amounts), which have been reconsidered in accordance with the authority's requirements, with the executive's reasons for any amendments

made to the estimates or amounts, to the authority for the authority's consideration; or

- (b) Inform the authority of any disagreement that the executive has with any of the authority's objections and the executive's reasons for any such disagreement.
- 2.6.4. When the period specified by the authority, referred to in paragraph 2.6.3, has expired, the authority must, when making calculations (whether originally or by way of substitute) in accordance with the sections referred to in paragraph 2.6.1(a), or issuing a precept under Chapter IV of Part I of the Local Government Finance Act 1992, take into account:
- (a) Any amendments to the estimates or amounts that are included in any revised estimates or amounts;
  - (b) The Executive's reasons for those amendments;
  - (c) Any disagreement that the executive has with any of the authority's objections; and
  - (d) The Executive's reasons for that disagreement, which the executive leader submitted to the authority, or informed the authority of, within the period specified.
- 2.6.5. Paragraphs 2.6.1 to 2.6.4 shall not apply in relation to:
- (a) Calculations or substitute calculations which an authority is required to make in accordance with section 52I, 52J, 52T or 52U of the Local Government Finance Act 1992; and
  - (b) Amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with section 52J or 52U of that Act.
- 2.6.6. Immediately after any vote is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.
- 2.6.7. In paragraph 2.6.6:
- (a) Budget decision means a meeting of the relevant body at which it –
    - (i) Makes a calculation (whether originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ of the Local Government Finance Act 1992(b); or

- (ii) Issues a precept under Chapter 4 of Part 1 of that Act, and includes a meeting where making the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting;
  - (b) References to a vote are references to a vote on any decision related to the making of the calculation or the issuing of the precept as the case may be.
- 2.6.8. In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in year changes to the policy framework which may be undertaken by the Executive, in accordance with paragraphs 5 and 6 of these rules (virement and in year adjustments). Any other changes to the budget and policy framework are reserved to the Council.

### **3. DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

- 3.1.** Subject to the provisions of paragraph 5 (virement) the Executive, Committees of the Executive, individual Members of the Executive and any officers, Area Committees or joint arrangements discharging executive 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 to 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 Executive, Committees of the Executive, individual Members of the Executive and any officers, Area Committees or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Finance 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.

### **4. URGENT DECISIONS OUTSIDE THE POLICY AND BUDGETARY FRAMEWORK**

- 4.1.** The Executive, Committees of the Executive, individual Members of the Executive and any officers, Area Committees or joint arrangements discharging executive 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:

- 4.1.1. If it is not practical to convene a quorate meeting of the full Council; and
- 4.1.2. If the Chairman of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency.
- 4.1.3. The reasons why it is not practical to convene a quorate meeting of full Council and the Chairman 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 chairman of the Overview and Scrutiny Committee the consent of the Mayor, and in the absence of both the Deputy Mayor, will be sufficient.

- 4.2. Following the decision, the decision taker will, provide to the decision taker a full report to the next available full 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 shall set out all the budget heads
- 5.2. Steps taken by the Executive, Committees of the Executive, Individual Members on the Executive and any officers, Are Committees or joint arrangements discharging executive functions to implement Council policy shall not exceed those budgets allocated to each budget head. Except that:
  - 5.2.1. Such bodies or individuals shall be entitled to vire across budget heads in accordance with the conditions and limits set out in the Financial Procedure Rules at C6 in this Constitution; and
  - 5.2.2. The Executive have the ability to transfer from balances which will form part of the annual budget, any amount which would not take balances below a minimum level to be determined each year by Council.
- 5.3. Beyond that limit, approval to any virement across budget head shall require the approval of full Council.

## **6. IN YEAR CHANGES TO POLICY FRAMEWORK**

- 6.1. The responsibility for agreeing the policy and budgetary framework lies with the full Council, and decisions by the Executive, Committees of the Executive, individual Members of the Executive and any officers, Area



Committees or joint arrangements discharging executive 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 those changes:

- 6.1.1. Which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- 6.1.2. Necessary to ensure compliance with the law, ministerial direction or government guidance; or
- 6.1.3. In relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

## **7. CALL-IN OF DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

- 7.1.** Where the Overview and Scrutiny Committee is of the opinion that an executive decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer.
- 7.2.** In respect of functions which are the responsibility of the Executive, the Monitoring Officer's report and/or Chief Finance Officer's report shall be to the Executive with a copy to every Member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet to decide what action to take in respect of the Monitoring Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
- 7.3.** If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 5 days of the request by the Overview and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and advice of the Monitoring Officer and/or the Chief Finance Officer. The Council may either:
  - 7.3.1. Endorse a decision or proposal of the Executive decision maker as falling within the existing budget and/or policy framework. In

this case no further action is required, save that the decision of the Council be minuted and circulated to all Members in the normal way;

- 7.3.2. Amend the Council's Financial Rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that Executive function and agree to the decision with immediate effect. In this case no further action is required save that the decision of the Council be minuted and circulated to all Members in the normal way; or
- 7.3.3. 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, require the Executive to reconsider the matter in accordance with the advice of the Monitoring Officer/Chief Finance Officer.

**PART D - CODES**

## **D1. Members' Code of Conduct**

### **Preamble**

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) 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.
- (C) 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.
- (D) 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.
- (E) In accordance with section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:
  - (i) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a Member.
  - (ii) Fail to disclose the interest at Meetings where the interest is not entered in the Authority's register.
  - (iii) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the Authority's register and is not the subject of a pending notification.
  - (iv) Take part in discussion or votes, or further discussions or votes, at Meetings on matters in which you have the interest which are being considered at the meeting.
  - (v) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority.
  - (vi) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.

- (vii) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) 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.

## 1. Interpretation

### 1.1. In this Code:

**“Associated Person”** means (either in the singular or in the plural):

- (a) a family member or any other person 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 such persons, any firm in which they are a partner, or any company of which they are directors; or
- (c) any person or body in whom 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).

**“Authority”** means Maidstone Borough Council.

**“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.

**"Code"** means this Code of Conduct.

**"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) and 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.

**"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.

**"Interests"** means Disclosable Pecuniary Interests and Other Significant Interests.

**"Meeting"** means any meeting of:

- (a) the Authority;

- (b) any of the Authority's committees, sub-committees, joint committees and/or joint sub-committees.

**"Member"** means a person who is an elected Member of the Authority and includes a Co-opted Member.

**"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) may reasonably be regarded as affecting 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 (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgement of the public interest.

**"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.

**"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

You must comply with this Code whenever you act in your capacity as a Member or Co-opted Member of the Authority.

## 3. General Obligations

**3.1.** You must, when using or authorising the use by others of the resources of the Authority:

- 3.1.1. act in accordance with the Authority's reasonable requirements; and

- 3.1.2. ensure that such resources are not used improperly for political purposes (including party political purposes).

**3.2.** You must not:

- 3.2.1. bully any person;
- 3.2.2. 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 (including yourself) has failed to comply with this Code;
- 3.2.3. do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- 3.2.4. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (a) you have the written consent of a person authorised to give it; or
  - (b) you are required by law to do so; or
  - (c) 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
  - (d) the disclosure is reasonable and in the public interest; and made in good faith and in compliance with the reasonable requirements of the Authority;
- 3.2.5. prevent another person from gaining access to information to which that person is entitled by law;
- 3.2.6. conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
- 3.2.7. use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

**4. Registering Disclosable Pecuniary Interests**

- 4.1.** You must, before the end of 28 days beginning with the day you become 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, you must, before the end of 28 days beginning with the day you become 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 you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you 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, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become 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, you must comply with the disclosure procedures set out below.

**5.2.** Where you are present at a meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the meeting, you must:

5.2.1. disclose the Interest; and

5.2.2. 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 or are acting under para 5(4):

5.2.3. not participate in any discussion of, or vote taken on, the matter at the Meeting; and

5.2.4. withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and

5.2.5. not seek improperly to influence a decision about that business.

**5.3.** Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority, you must:

5.3.1. notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and

5.3.2. 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

5.3.3. not seek improperly to influence a decision about the matter.

**5.4.** Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:

5.4.1. not participate in any discussion of, or vote taken on, the matter at the Meeting; and

5.4.2. withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

## **6. Sensitive Interests**

**6.1.** Where you consider that the information relating to any of your 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.** You 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 5.3 will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

## **7. Gifts & Hospitality**

**7.1.** You 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 you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been

elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.

- 7.2.** Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you 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 you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- 7.3.** You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you 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. Dispensation**

- 8.1.** The Monitoring Officer may, on a written request (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 Monitoring Officer considers that:
  - 8.2.1. 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
  - 8.2.2. 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
  - 8.2.3. granting the dispensation is in the interests of persons living in the Authority's area; or
  - 8.2.4. it is otherwise appropriate to grant a dispensation.
- 8.3.** A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

- 8.4.** Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

## **Annex 1: The Seven Principles of Public Life**

### ***Annex 1: Nolan Principle***

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you 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:** Holders of public office should act solely in terms of the public interest.

**INTEGRITY:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**OBJECTIVITY:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**ACCOUNTABILITY:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**OPENNESS:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**HONESTY:** Holders of public office should be truthful.

**LEADERSHIP:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Annex 2: Disclosable Pecuniary Interests

### *Annex 2: Disclosable Pecuniary Interests*

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 a Member of the relevant authority

**“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

<b>Interest</b>	<b>Description</b>
Employment, office, trade, profession or vacation	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 Relations (Consolidation) Act 1992.</p>
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> <ul style="list-style-type: none"> <li>• under which goods or services are to be provided or works are to be executed; and</li> <li>• which has not been fully discharged.</li> </ul>
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> <ul style="list-style-type: none"> <li>• the landlord is the relevant authority; and</li> <li>• the tenant is a body in which the relevant person has a beneficial interest.</li> </ul>

Securities	<p>Any beneficial interest in securities of a body where:</p> <ul style="list-style-type: none"><li>• that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</li></ul> <p>either</p> <ul style="list-style-type: none"><li>• the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body;</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• 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.</li></ul>
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## **D2. Code Complaints**

### **1. Context**

- 1.1.** These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that Maidstone Borough Council has adopted for dealing with complaints that an elected Member or co-opted Member or Parish Councillor has failed to comply with the Code of Conduct.

### **2. Interpretation**

- 2.1.** 'Borough Council' means Maidstone Borough Council.
- 2.2.** 'Code of Conduct' means the Code of Conduct, which the Borough and Parish Council have 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 Members' Code of Conduct.
- 2.5.** 'Hearing Panel' means the panel appointed by the Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6.** 'Independent Person' means a person or persons appointed by the Council under section 28(7) of the Localism Act 2011:
- 2.6.1. whose views must be sought and taken into account by the Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;
- 2.6.2. who may be consulted by the Subject Member about the complaint.
- 2.7.** '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 Council, an Officer of another authority or an external investigator.
- 2.8.** The 'Monitoring Officer' is a senior Officer appointed by the 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 or other person nominated by the Monitoring Officer to act on his/her behalf.

**2.9.** 'Parish Council' means the relevant parish council within the Borough of Maidstone.

**2.10.** 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.

**2.11.** 'Subject Member' means an elected member or co-opted member of the Borough or Parish Council against whom a complaint has been made alleging a breach the Members' Code of Conduct.

### **3. Appointment of Independent Person**

**3.1.** The Council shall appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.

**3.2.** The Independent Person (and any substitute) shall be treated as if they were a Member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members and in respect of the receipt of allowances.

### **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.

**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, you:

- 5.1.1. fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
  - 5.1.2. fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 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;
  - 5.1.3. fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - 5.1.4. fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - 5.1.5. take part in discussions or vote at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
  - 5.1.6. 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 their 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, within 10 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 Hearing Panel 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 Hearing Panel to have breached the Code of Conduct, the Hearing Panel 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 Hearing Panel.

**14. Revision of these Arrangements**

The Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel 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, in accordance with the principles of natural justice.

## **ANNEX 1: Procedure on Receipt of a Complaint**

**Para.** *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 Borough 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 Borough 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, within 10 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 complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (g) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (h) 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; or the alleged misconduct took place so long ago that the complaint should not be pursued;
- (i) 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;
- (j) The complaint is about a deceased person;
- (k) The complaint is about a person who is no longer a Borough 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, within 10 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] of the complaint.

**2.2.** The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4

below). Views received from the Subject Member [and/or Parish Clerk] after the 10-working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.

### **3. Asking for additional information**

- 3.1.** 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.** The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough or Parish Councillor 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, Governance and Standards Committee (see paragraph 4 of Annex 4 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 Borough or Parish Council and there is no other avenue left to deal with it short of investigation. 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 will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 3 to these Arrangements.

- 4.4.** If the complaint identifies potential criminal conduct or a potential 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. In such cases, 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 or where the complaint is suspended in accordance with paragraph 4.4 above;
- (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.** Within 20 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 (appended to this Annex 2):

- (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 Hearing Panel; 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 Borough 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 assess 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 and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant 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 is 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 Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough 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, within 15 working days of receipt of the complaint 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.** These Arrangements enable the Monitoring Officer, in consultation with the Independent Person, to resolve complaints informally, either before or after investigation. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member 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 Borough 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 lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the Borough or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough or Parish Council procedures etc;

- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough 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 Members; 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 Members including the whole Borough 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 Borough or Parish Council's procedures;
- (f) Conflict management;
- (g) Development of the Borough or Parish Council's protocols;
- (h) Other remedial action by the Borough 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, Governance and Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action.

**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, Governance and Standards Committee.

## **COMPLAINT FORM**

[To be completed]

EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g. REFERRAL FOR INVESTIGATION

*Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature, or may be personal information.*

### **Complaint No:**

(a) Complaint

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of Member], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to refer the complaint for investigation.

(a) Potential breaches of the Code of Conduct identified

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

Notification of decision

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- [Clerk to the relevant Parish or Town Council]
- Kent County Council's Monitoring Officer (applicable only where the Subject Member is serving at both Borough and County level)

(b) What happens now

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

(c) (iii) Appeal There is no right of appeal against the Monitoring Officer's decision.

### **Additional Help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

Signed:      Date Print name:

Monitoring Officer Address xxx

## **ANNEX 2: Procedure for Investigating the Complaint**

### **Para. *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 details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, 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] [Hearing Panel].

## **2. The draft report**

**2.1.** On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.

**2.2.** Following review 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 clearly labelled '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 received any responses from the Subject Member and/or the Complainant, 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:
- (a) Take no action; or
  - (b) Seek informal resolution; or
  - (c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 2 to these Arrangements.

## **ANNEX 3: Hearing Panel Procedure**

**Para.**

### ***Annex 3: Hearing Panel Procedure***

#### **1. Rules of procedure**

- 1.1.** The Hearing Panel consists of three voting elected Members plus one non-voting Parish Councillor when a Parish Councillor is the subject of a complaint drawn from the Audit, Governance and Standards Committee, one of whom shall be elected as Chairman.
- 1.2.** The quorum for a meeting of the Hearing Panel is three elected Members plus one non-voting Parish Councillor when a Parish Councillor is the subject of a complaint.
- 1.3.** The Independent Person's views must be sought and taken into consideration before the Hearing Panel 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 Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 1.4.** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. 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 Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.
- 1.5.** Once a hearing has started, the Borough Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 1.6.** All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.7.** Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel 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 Hearing Panel 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.[1]

**2. Right to be accompanied by a representative**

The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow Member, 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 Chairman;
- (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 1.11 above);
- (e) Introduction by the Chairman, of members of the Hearing Panel, 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 Chairman 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 Hearing Panel 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 their 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 Hearing Panel may question the Investigating Officer upon the content of their 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 Hearing Panel 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 Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

**3.8.** Deliberations of the Hearing Panel

Deliberation in private

- (a) The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Hearing Panel 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 Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

**3.9.** Announcing decision on facts found

- (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the

Panel considers that there has been a breach of the Code of Conduct

- (b) Where the Hearing Panel considers that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.
- (c) When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
  - (i) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
  - (ii) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (iii) Has there been a breach of trust?
  - (iv) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - (v) What was the result/impact of failing to follow the Borough or Parish Council's Code of Conduct?
  - (vi) How serious was the incident?
  - (vii) Does the Subject Member accept that they were at fault?
  - (viii) Did the Subject Member apologise to the relevant persons?
  - (ix) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - (x) Has the Subject Member previously breached of the Borough or Parish Council's Code of Conduct?
  - (xi) Is there likely to be a repetition of the incident?
- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.

- (e) If evidence presented to the Hearing Panel highlights other potential breaches of the Borough or Parish Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

### **3.10. Final Decision**

- (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
  - (i) the Panel's 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;
  - (ii) the sanctions (if any) to be applied;
  - (iii) the recommendations (if any) to be made to the Borough or Parish Council or Monitoring Officer;
  - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

## **4. Range of possible sanctions**

**4.1.** Subject to paragraph 4.4 below, where the Hearing Panel 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) Censuring the Subject Member or;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of an ungrouped Subject Member, to the Borough or Parish Council that they be removed from committees or sub-committees of the Council;
- (c) Instructing the Monitoring Officer [or recommending to the Parish Council] to arrange training for the Subject Member;
- (d) Recommending to the Borough or Parish Council that the Subject Member be removed from one or more outside

appointments to which they have been appointed or nominated by the Borough or Parish Council;

- (e) Recommending to the Borough 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;
- (f) Recommending to the Borough or Parish Council the exclusion of the Subject Member from the Borough or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough or Parish Council committee and sub-committee meetings;
- (g) Reporting the Panel's findings to the Borough or Parish Council for information;
- (h) Instructing the Monitoring Officer to apply the informal resolution process;
- (i) Sending a formal letter to the Subject Member;
- (j) Recommending to the Borough or Parish Council to issue press release or other form of publicity;
- (k) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

**4.2.** The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

**4.3.** The Hearing Panel may specify or recommend that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

## **5. Publication and notification of the Hearing Panel's decision and recommendations**

**5.1.** Within 10 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Borough Council's website.

**5.2.** Within 10 working days of the announcement of the Hearing Panel'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;
- (d) Kent County Council's Standards Committee (applicable only where the Subject Member is serving at both Borough and County level);
- (e) the Borough Council's Audit, Governance and Standards Committee (applicable only where the Subject Member is serving at both Borough and County level).

**5.3.** The Monitoring Officer will report the Hearing Panel's decision and recommendations to the next ordinary meeting of the Audit, Governance and Standards Committee for information.

[1] Janik v Standards Board for England & Adjudication Panel for England (2007)



**TEMPLATE - DECISION NOTICE (of Hearing Panel)****Complaint No: xxxx**

On [insert date], the Hearing Panel of Maidstone Borough Council considered a report of an investigation into the alleged conduct of [insert name of Member], a member of [insert authority name]. A general summary of the complaint is set out below.

**Complaint summary**

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel]

**Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

**Findings**

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s): [Summarise the finding of facts and the Hearing Panel's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel's findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

**Sanctions applied**

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

**Appeal**

There is no right of appeal against the Hearing Panel's decision.

**Notification of decision**

This decision notice is sent to the:

- Member [name of Member]
- Complainant
- Monitoring Officer
- [Clerk to the xxxx Parish Council];

- Kent County Council's Monitoring Officer [applicable only where the Member is serving at both Borough and County level]

**Additional help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

**Signed:****Print name:**

Chairman of the Hearing Panel

### **D3. Local Code on Planning Matters**

**Adopted by the Council on 23 October 2002**

**Amended by Planning Committee on 17 March 2004 and by Standards Committee on 5 April 2004**

**Further Amended by Planning Committee on 27 April 2005 and by Standards Committee on 27 April 2005 and by Council on 27 April 2005**

**Further Amended by the Planning Committee 19 January 2006  
Further Amended by Council on 26 July 2006**

**Further Amended by Council on 25 April 2007**

**Further Amended by the Monitoring Officer in June 2007 and July 2013 and to take into account the new Code of Conduct, the Localism Act 2011 and the Officer restructure**

**Further Amended with effect from 23 May 2015 as a result of the Council's change to Committee Governance**

**Further Amended with effect from 6 December 2017 following the abolition of the Planning Referrals Committee**

**Further Amended by Council on 15 July 2020**

**Further Amended by Council on 30 September 2020**

#### **1. BACKGROUND TO THE CODE**

- 1.1.** The Code is based on the Local Government Association publication "Probity in Planning; the Role of Members and Officers" which was produced to help ensure that planning authorities make planning decisions in an open, impartial manner, with sound judgement and for justifiable reasons. This Code has been updated many times to take account of new legislation and the change in governance model of the Council in May 2015. Public disquiet over aspects of the planning system, reflected in inquiries into the conduct of Brent, North Cornwall, Warwick and Bassetlaw Councils, emphasised the need for a code which would set out best practice and produce more standard procedures for the consideration of planning matters. The need for such a Code was also endorsed by the Nolan Committee on Standards in Public Life. The code applies to Members in relation to planning applications, local development plan documents and planning enforcement.

#### **2. THE GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS**

- 2.1.** Members and Officers have different, but complementary, roles. Both serve the public but Members are responsible to the electorate, whilst Officers are responsible to the Council as a whole. Officers advise Members and the Council, and carry out the Council's work. They are

employed by the Council, not by individual Members and it follows that instructions may only be given to Officers through a decision of the Council or a Committee or Sub-Committee. Any other system which develops is open to question. A successful relationship between Members and Officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust which underpins it, must never be abused or compromised.

**2.2.** Both Members and Officers are guided by Codes of Conduct. The Codes of Conduct adopted by Maidstone Borough Council, provide standards and guidance for Members and Officers and they are set out at D1 and D5 of this Constitution. Members and Officers are obliged to register and declare certain interests as well as relationships. In addition, staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. The Council's Codes and Procedure rules govern the conduct of Council business.

2.2.1. The Code of Conduct for Members was adopted by Maidstone Borough Council on 5 July 2012. It sets out the requirements on Members in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but it also deals with a Members' relationships with other Members, staff and the public, which will impact on the way in which Members participate in the planning process. Of particular relevance to Members serving on planning committees or who become involved in making a planning decision (relating to an application, enforcement or planning policy) is the requirement that a Members:

*"Must not, use or attempt to use your position as a Members **improperly** to confer on or secure for yourself or any other person, an advantage or disadvantage;" (Paragraph 3.2.7 of the Members' Code).*

2.2.2. Members serving on the Planning Committee or who otherwise become involved in making a planning decision must represent their constituents as a body and vote in the interests of the whole Borough. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Planning Committee should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Members who do not feel that they can act in this way should

consider whether they are best suited to serving on the Planning Committee. Members should also be very cautious about accepting gifts and hospitality. The Code requires any Members receiving any gift, benefit or hospitality or a series of gifts, benefits and hospitality in their official capacity as Members, over the value of £100, to provide written notification of the details to the Monitoring Officer of the Council within 28 days of its receipt. Receipt of the gift must also be declared at meetings of the Council by the recipient, where it relates to the matter being considered (if the gift was received in the last 3 years).

- 2.2.3. Similarly, Officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of a minimal level and declare its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the Council's register of gifts and hospitality whether or not accepted. This register is reviewed regularly by Directors of the Council.
- 2.2.4. Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as certain political activity and serving on another Council.
- 2.2.5. A requirement for staff to act impartially is a requirement of the Employees' Code of Conduct. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Members in the Model Code. Members are placed under a requirement by paragraph 3.2.3 of the Code:

<p>"Not to do anything that compromises or is likely to compromise the impartiality or integrity of those who work for, or on behalf of, the authority"</p>
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- 2.2.6. The Council has agreed that no Members will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies, procedures, legislation and guidance relevant to this Committee as specified by the Committee. This training must be completed to an agreed programme set by the Committee annually with a due date for completion. New members must receive training, but the programme may include no training provision for experienced members unless there have been relevant changes to legislation, policies, or guidance.

- 2.2.7. If a Members has not completed the specified training by the due date, the Members will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Policy, Communications and Governance will keep a record of the training requirements of this Committee and of Members' compliance with the requirements.

### **3. REGISTRATION OF INTERESTS BY MEMBERS**

- 3.1.** The Localism Act 2011 and the Code place requirements on Members relating to the registration and declaration of their interests and sets out the consequences for the Members' participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Members should review their situation regularly. Advice may be sought from the Council's Monitoring Officer on these issues.
- 3.2.** Ultimate responsibility for fulfilling the requirements rests individually with each Members.
- 3.3.** A register of Members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection and be published on the Council's website. A Members must provide the Monitoring Officer with written details of relevant interests within 28 days of his or her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Members becoming aware of such changes.

### **4. DECLARATION OF INTERESTS**

- 4.1.** The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act – it being a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's Code.
- 4.2.** Where a Members considers he/she has a DPI or OSI in a matter, he/she must always declare it, not participate or vote on the matter and must withdraw from the room when the matter is discussed.
- 4.3.** If the Council allows members of the public to address meetings, then a Members with an OSI may attend a meeting to make such representations, but must leave the room immediately after making those representations. If a Members wishes to take advantage of this, they should seek guidance from the Monitoring Officer.
- 4.4.** Translated to a Members' involvement in planning issues, the interests test will require a Members to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal

interests of the Members, his or her family, friends or employer (other than the limited right to attend meetings to make representations and then leave).

- 4.5.** In certain circumstances a Members with a DPI or OSI may seek a dispensation to participate, notwithstanding their interest, from the Monitoring Officer.
- 4.6.** The Lead Member for (portfolio) is responsible for economic development. Members on that Committee may be members of the authority's Planning Committee or other decision-making body for planning matters. There may be occasions when such Members will wish to press for a particular development which they regard as beneficial to the development of the area. Should those Members be able to vote on any planning application relating to that development?
- 4.7.** The appropriate action is not clear cut and may depend on the particulars of the case. However, the general advice would be that a Members in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he/she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, a Members may be seen as the chief advocate on behalf of the authority for the development in question. In such circumstances, the appropriate approach is likely to be that the Members is able to speak in favour of the development but should not vote on the relevant application, (unless the Members has conducted high-profile, active lobbying for a particular outcome, in which case he/she should not participate in the debate nor vote on the application).
- 4.8.** Any Member who is also a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Planning Committee when considering taking up an appointment on that Committee, but provided that the Members does not believe him/herself to be under an obligation to vote in the same way as the Parish Council recommends, dual membership should not be a bar to sitting on the Planning Committee when considering such applications.
- 4.9.** However, such membership should be notified to the Committee. If the application has actually been made by another Council of which the Members is a member or a senior member of staff, the interest is likely to be an Other Significant Interest.

## **5. DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS AND OFFICERS; AND COUNCIL DEVELOPMENT**

**5.1.** Proposals to their own Authority by serving and former Members and Officers and their close associates and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or development plan proposals.

**5.2.** It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

5.2.1. Members who act as agents for people pursuing a planning matter with the Authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council which they serve, they should take no part in its processing.

5.2.2. Proposals for a Council's own development must be treated in accordance with Government advice.

5.2.3. Applications submitted by Members and Officers, and for Council development, should be dealt with by the Planning Committee.

5.2.4. Proposals for a Council's own development should be treated in the same way as those of private developers, in accordance with DoE Circular 19/92, particularly in relation to Officers' advice.

## **6. LOBBYING OF AND BY MEMBERS**

**6.1.** It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Members or to a Member of the Planning Committee. As the Nolan Committee's Third Report states:

*"It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves" (paragraph 288).*

**6.2.** Any code of conduct which fails to take account of the realities of the political/representative process will not carry credibility with experienced elected Members.

**6.3.** However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Members being called in question. When being lobbied,



Members of the Planning Committee should take care about indicating that they have already made up their mind on the issue before they consider the matter in Committee when full information about the application will be considered by Members. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the Head of Planning and Development in order that their opinions can be included in the report to the Planning Committee or the delegated report. If they do express an opinion, they should make it clear that they will reserve their position as to how they will vote until the meeting of the Planning Committee which considers the application. The Localism Act (Section 25) does provide that a decision maker is not to be taken to have, or to appear to have, a closed mind when making a decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, and the matter was relevant to the decision. However, to avoid allegations of bias, prejudice or pre-determination, which could lead to the Council's decision being quashed, Members should be careful not to have, or appear to have had, a closed mind when dealing with planning applications.

- 6.4.** It should be remembered that the reports on North Cornwall and Warwick were both greatly concerned with the issue of lobbying. In both cases, lobbying had caused considerable public mistrust of the Councils.
- 6.5.** Members, and Members of the Planning Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a planning application will be processed and determined in a transparently open and fair manner, in which Members making the decision will take account of all the Officers' advice and representations made before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality and risks challenge to the decision taken.
- 6.6.** Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Council that any Members has breached the Code of Conduct.
- 6.7.** In reality, of course, Members will often form a view about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Planning Committee's proceedings (as set out in the paragraph above) is that

Members of the Planning Committee should not finally make up their mind or openly declare which way they intend to vote in advance of the Planning Committee meeting.

- 6.8.** Political reality suggests that it is often important to distinguish between the role of the Planning Committee Member who is, and who is not, a Ward Members for the area affected by a particular planning application.
- 6.9.** A Planning Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Planning Committee meeting before declaring one way or the other.
- 6.10.** A Planning Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Members responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Members to argue convincingly when the Planning Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Planning Committee.
- 6.11.** Although not amounting to an interest according to the Code of Conduct, the proper course of action for such a Members would be to make an open declaration and not to vote. In most cases short of such high-profile, active lobbying for a particular outcome (in which case the Members on the Planning Committee should not participate in the debate or vote on the matter), it should be possible for a Members to give some support to a particular body of opinion whilst waiting until the Planning Committee before making a final decision, and making it clear to those lobbying that he/she will not finally decide how to vote until the Planning Committee meeting.
- 6.12.** Members must make oral declarations at Committee of significant contact with Applicants and Objectors (lobbying).
- 6.13.** It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement, when taking decisions on planning matters, to take account of all arguments in an open-minded way.
- 6.14.** It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Members, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct and the law relating to bias/predetermination.

- 6.15.** Given that the point at which a decision on a planning application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Planning Committee meeting must not be used to decide how Members should vote. (The view of the Ombudsman in relation to the former national Code was that the use of political whips to seek to influence the outcome of a planning application could amount to maladministration. There is nothing in the Code of Conduct which would serve to change this advice).
- 6.16.** Unless they have decided to play no role in the determination of the application, Members of the Planning Committee should avoid organising support for or opposition to a planning application, and avoid lobbying other Members. Such actions can easily be misunderstood by parties to the application and by the general public.
- 6.17.** Members should not put improper pressure on Officers for a particular recommendation or delegated decision and should not do anything which compromises, or is likely to compromise, their impartiality.
- 6.18.** Members who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Members.
- 6.19.** Members and Officers shall avoid indicating the likely decision on an application or otherwise committing the Council during contact with Applicants and Objectors; but Officers may indicate what their recommendation to Committee will be, however this should be accompanied by a statement that it will be for the Committee to decide the outcome and that the recommendation cannot be relied upon as a decision.
- 6.20.** Where a Member receives written representations directly in relation to a planning application, he/she should pass the correspondence to the Head of Planning and Development in order that those representations may be taken into account and referred to in any Committee report.
- 6.21.** Unless they have an interest in the item being discussed, members of the Planning Committee are encouraged to remain in the meeting for the whole time that an item is being debated and are strongly encouraged not to vote on the matter unless they have done so.
- 6.22.** Members of the Planning Committee should not leave the meeting to discuss decisions just taken with Applicants/Objectors, since to do so may give the wrong impression to the public.

## **7. PRE-APPLICATION DISCUSSIONS**

- 7.1.** Discussions between a potential Applicant and Council Officers prior to the submission of an application can be of considerable benefit to both parties. It is encouraged by the Local Government Association and the National Planning Forum with the recognition of the need to allow and encourage Members to be champions of their local communities. Member engagement in pre-application discussions on major development may be necessary to allow Members to fulfil their role. However, it would be easy for such discussions with Members to become, or be seen (especially by Objectors) to become, part of a lobbying process.
- 7.2.** In order to avoid such perceptions, pre-application discussions should take place within clear guidelines. The following guidelines have been adopted by the Council to govern such discussions:
- 7.2.1. The Human Rights Act requires a fair and impartial tribunal to determine the rights of individuals. This applies to the work of Councils' Planning Committee. If a balance is to be struck between impartiality and the wish to be seen as engaged, positive, open and transparent, Members need to exercise caution in engaging with Applicants. In engaging with Applicants, the principles of the Code of Conduct should remain in the forefront of the Members' minds.
  - 7.2.2. If a Member, particularly of Planning Committee, argues strongly in favour of or against an application prior to it being considered by Committee such that their mind is or appears to be closed when they attend Committee, they should take no part in the determination of the application. The proper place for the determination of an application is at the Planning Committee once Members have heard all the evidence and representations in relation to that application.
  - 7.2.3. However, to enable Members to participate in pre-application discussions, they should be aware of the distinction between giving and receiving information and engaging in negotiations in their discussions with Applicants or their agents regarding planning proposals, legal agreements or any other planning matters.
  - 7.2.4. Members of Planning Committee should be invited to pre-application meetings to give support to non-Planning Committee Ward Members. To assist all Members to participate successfully in pre-application discussions, planning training will be offered to all Members.

- 7.2.5. Pre-application meetings relating to major applications could take place in a number of different situations:-
- (a) A - A meeting between a Developer and the community at which Members are present, most likely as a Ward Member.
  - (b) B - A presentation by the Developer to all Members including Members of the Planning Committee.
  - (c) C - A specific meeting to discuss the detail of a proposal and obtain advice.
- 7.2.6. For the purposes of this Guidance, major applications are those which relate to:-
- (a) residential development of 10 or more dwellings or where the site area is larger than 0.5 hectares;
  - (b) commercial development where the floor space is larger than 1000 sq. metres; or
  - (c) any development where the site area is larger than 1 hectare.
- 7.2.7. In all of these meetings Members, if they wish to remain impartial, should observe the following guidance:-
- (a) The purpose of the meeting is for the Developer to outline its proposals and for Members to question the Developer on factual matters. In relation to C outlined above, it is for the Officers to provide:-
    - (i) Policy advice
    - (ii) Advice on technical/design matters.
  - (b) The aim of these discussions is to improve the understanding of all parties including that of the Developer.
  - (c) Members should maintain an impartial role (unless they choose not to, and understand the consequences of that) and should avoid expressing a final view on the application or giving advice. However, Members have a legitimate role as representatives of the local community and it is correct that they should ask questions and express concerns about a development on behalf of the local community.
  - (d) Questions to clarify aspects of a proposal or the expressions of policy or detailed concerns are legitimate, so long as they do not develop into negotiations.
  - (e) Where appropriate, such meetings described at B and C may take place on site but they will need to be carefully managed by

the Planning Officer present to ensure that impartiality is maintained, as well as providing a written record of the meeting.

- (f) In relation to meetings within A and B, it should be clear at the outset of the meeting that the discussions are not binding and that the views expressed are not part of the determination process. However, in relation to pre-application meetings falling within C, the Developer will be looking for unequivocal advice on policy, technical matters and the detail of the scheme in order to form a view as to whether the proposal is acceptable. In this type of meeting Members will be able to ask questions about all aspects of the scheme but should not enter into negotiations with the Developer. The role of the Officers in this type of meeting is set out in the leaflet "Grand Designs".
- (g) It should be clear that any statements by Members should be categorised as without prejudice to their final decision on the application.
- (h) Officers should be present in relation to meetings falling within A, and must be in the case of B and C. In these meetings, the Officer should explain that the meeting is taking place at the request of the Applicant and that Members and Officers will be free to ask questions about the proposal. If the Applicant requests the view of the Authority this should be communicated subsequently and in writing by the Officer. The Officer will make it clear that any views expressed, prior to the formal determination of an application, are preliminary. The Officer taking part in the discussions will make it clear if they are the decision maker.
- (i) Advice and observations should be based on the Adopted Plan and Material Considerations. A written note of the proceedings must be kept to include a record of Officer attendance and will form a background document to any future planning application.
- (j) Officers of appropriate seniority should attend such meetings. The involvement of any Members should be recorded in any subsequent Committee Report.
- (k) Following the meeting a letter should be sent to the Applicant emphasising the informative nature of the meeting.
- (l) In discussions which have touched on commercially sensitive or confidential information, this information may remain confidential, subject to the requirements of the Freedom of Information Act.

- (m) In addition, Members should not seek to influence Officers or pressure their Officers to support a particular course of action.
- (n) Unless developers illustrate, at the time of submitting a major application, how they have met the requirements of the Statement of Community Involvement in relation to pre-application discussions with the Community and Members, Regulation 4 of the Town and Country Planning Applications Regulations will be used to put the application on hold until the developer has demonstrated how the requirements have been met; and this should include pre-application discussion with Members.
- (o) If Members follow this advice, they should be able to participate in pre-application discussions without affecting their partiality.
- (p) The Head of Planning and Development may guide Parish Members if they wish to participate in pre-application discussions.

## **8. MEMBERS' INVOLVEMENT DURING THE LIFE OF A PLANNING APPLICATION**

- 8.1.** It is considered that Members' input into the pre-application stage would assist in the collation and provision of information to the Applicant on the views of the local community and matters that may concern Members and the community and should not be seen as negotiation but an exchange of information.
- 8.2.** However, during the life of an application, it is considered that discussion between Members and the Applicant may be considered as negotiation which will affect the view of the partiality of the Member(s). For this reason it is considered that Members should not be involved in discussions with Applicants during the life of a major application.
- 8.3.** If Members are concerned about such an application, either before or after its consideration by Planning Committee, then a meeting should take place between Members and Officers to detail that concern, and subsequently between Officers and the Developer to set out concerns. This process should include applications deferred by Committee.
- 8.4.** The alternative would be to either refuse an application or seek an application's withdrawal and then for Members to be engaged in the pre-application discussions prior to the submission of a new application.
- 8.5.** The advantage of these approaches is that Members' impartiality remains but the Council's actions, particularly in the latter approach, could be regarded as 'heavy handed' and there is the question of additional

appeals. The preferred approach would be to use Officers as 'informed go- betweens'.

## **9. OFFICER REPORTS TO COMMITTEE**

**9.1.** Earlier inquiries found serious shortcomings by Councils in the way in which planning applications were reported to Committee. These gave rise to criticisms of inadequate consideration of the issues, inconsistency of decision-making, that the reasoning behind a recommendation was unclear or non-existent, and that sometimes there was no recommendation. This led to public concern and a loss of confidence.

**9.2.** All these problems can be avoided by having regard to the following points. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 38 of the Planning and Compulsory Purchase Act 2004:

9.2.1. All applications considered by Planning Committee will be subject to full, written reports from Officers.

9.2.2. Reports should be accurate and cover, among other things, the substance of objections and the views of people who have been consulted, as recommended by the Ombudsman.

9.2.3. Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations.

9.2.4. Reports will have a written firm recommendation of action. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.

9.2.5. Reports should contain a technical appraisal which clearly justifies the recommendation.

9.2.6. If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

9.2.7. Reasons for granting permission must be clearly stated and minuted.

9.2.8. Significant contact between Officers and Applicants or Objectors will be recorded on the application file which will be publicly available.



**10. PUBLIC SPEAKING AT PLANNING COMMITTEE**

- 10.1.** Public participation in respect of planning applications has been agreed by the Council and the procedure is as set out below.
- 10.2.** If a planning application or enforcement issue (unless an exempt item) is to be determined by the Planning Committee and a speaker wishes to address the Committee in respect of that application, he/she must give notice of that request to the Head of Policy, Communications and Governance by 4 p.m. on the working day before the relevant meeting.
- 10.3.** The following speakers will be allowed to address the Committee for each planning application or planning enforcement matter (except Exempt reports) in the following order:-

Parished Areas

An Objector	A petitioner, or a representative of a Residents' Association/Amenity Group, or an individual objector.
A representative of the appropriate Parish Councils	Where a representative of the Parish Council does not register to speak, a concerned resident may speak with the Chairman's discretion.
*The applicant or his or her representative	The applicant or his or her representative (including a supporter), or a petitioner, or a representative of a Residents' Association/Amenity Group.

Non-Parished Areas

A representative of a Residents' Association or Amenity Group	Where a representative of a Residents' Association/Amenity Group does not register to speak, a concerned resident may speak with the Chairman's discretion.
An Objector	A petitioner, or a representative of a second Residents' Association/Amenity Group, or an individual objector.
*The applicant or his or her representative	The applicant or his or her representative (including a supporter), or a petitioner, or a representative of a second or third Residents' Association/Amenity Group.

\* The applicant or his or her representative would have

priority.

- 10.4.** In order to avoid repetition, a petitioner may present a petition but the appropriate speaker slot will be forfeited. A petitioner may speak for three minutes. If more than one petition is received these may be presented in accordance with the Council's rules on petitions.
- 10.5.** Each category of speaker will be limited to three (3) minutes to address the Committee. he/she will not be allowed to ask a supplementary question, make a supplementary statement and will not be cross examined. Also, no written material or photographs may be handed out at the meeting.
- 10.6.** When more than one person wants to speak for or against a planning application or more than one amenity group/organisation or residents' association wishes to speak for or against a planning application, the first person or group to register their wish to speak will be afforded that right. However, the Proper Officer shall keep a reserve list of speakers for each application. If, at the meeting the original speaker is not in attendance, a speaker from the reserve list, depending on if the original speaker was a supporter or objector, i.e. an objector replaces an objector, taken in the order which they registered their right to speak shall be invited to address the Committee.
- 10.7.** In addition to the public speakers above, Visiting Members may address the Planning Committee for three minutes on individual matters but should give the same notice of their intention to speak to the Proper Officer as members of the public. If they do not do so, the application will not be brought forward on the agenda.
- 10.8.** Members who have Other Significant Interests in the issue being discussed, but who are exercising their right to make representations, must give the same notice of their intention to speak to the Head of Policy, Communications and Governance as members of the public.
- 10.9.** Visiting Members and Members with Other Significant Interests who are exercising their right to make representations, should sit away from the body of the Committee.
- 10.10.** A Member with an Other Significant Interest who wishes to make representations will always be the first speaker to address the Committee on an item and will leave the room immediately after making the representations.
- 10.11.** Members are urged not to hold conversations whilst being addressed by visitors, since to do so may give the impression that the points being made are not being considered.

## **11. DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

**11.1.** The law requires that where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 of the Planning and Compulsory Purchase Act 2004). This gives rise to two main issues:-

11.1.1. Firstly, all applications which are not in accordance with the Development Plan must be identified as soon as possible. They must be advertised as such, in accordance with the requirements of the Town and Country Planning (General Development Procedure) (England) Order 2010.

11.1.2. Secondly, if it is intended to approve such an application, the material considerations which lead to this conclusion must be clearly identified and how they justify overriding the Development Plan clearly demonstrated.

**11.2.** The application may then have to be referred to the Secretary of State depending upon the type and scale of development proposed. If the Officer's report recommends approval of a departure, the justification for this should be included, in full, in that report and in the minutes.

**11.3.** If the Planning Committee makes a decision contrary to the Officer's recommendations (for refusal) a detailed minute of the Planning Committee's reasons (which should be full, clear and convincing) should be made and a copy placed on the application file. The Officer should also be given the opportunity to explain the implications of any decision contrary to his recommendation. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an Applicant will rarely provide such grounds. The wording of reasons for refusal should be clearly understood before the Planning Committee votes on a motion to refuse an application, rather than leaving the drafting to Officers to do following the meeting, even if this requires the deferral of the application or a short adjournment in order to draft the wording.

**11.4.** Conditions should be clearly understood before the Committee votes on applications to grant permission.

## **12. REFERENCE OF APPLICATIONS TO PLANNING COMMITTEE BY MEMBERS**

**12.1.** If a Ward Member of a Ward that the proposed development would impact upon wishes an application to be dealt with by the Planning Committee (rather than by the Head of Planning and Development under delegated powers) he/she must notify the Head of Planning and

Development in writing within 21 days of the date of the weekly list advising him/her of the application.

- 12.2.** When so doing, the Member shall offer his or her views on the application, but if the Member is a member of the Planning Committee they should ensure that they have not pre-determined the application.
- 12.3.** The application shall only be referred to the Planning Committee (unless for other reasons delegated authority cannot be exercised) if determination of the application would differ from the Member's views.
- 12.4.** Additionally, if a Member or Parish Council requests that an application is determined by Committee, that Member or Parish Council should attend the Committee to address the planning issues they have raised.

### **13. SITE VISITS**

#### **13.1. Purpose of Visits**

- 13.1.1. The purpose of a site visit is to enable Members to inspect the site of a proposed development to enable them better to understand the impact of that proposed development.
- 13.1.2. It is not the function of the visit to receive representations or debate issues.

#### **13.2. Decisions to Conduct a Site Visit**

- 13.2.1. Visits will take place if voted for by a majority of the Planning Committee.
- 13.2.2. Site visits will only take place where the Committee believes that there is a clear benefit to be gained.
- 13.2.3. Arrangements for visits will not normally be publicised nor made known to Applicants or agents, Objectors or Parish Councils except where permission is needed to go on land.

#### **13.3. Procedures on Site Visits**

- 13.3.1. The site will be inspected from the viewpoint of both Applicant(s) and other persons making representations and will normally be unaccompanied by the Applicant, other persons making representations or Parish Councils.
- 13.3.2. Where it is necessary to enter a building to carry out a visit, representatives of both Applicant(s) and any other persons making representations will normally be given the opportunity to be present. If either party is not present or declines to accept the presence of the other, Members will consider whether to proceed with the visit.

- 13.3.3. Where Applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

#### **13.4. Decision Making**

- 13.4.1. No decision will be taken on site. The application will normally be considered at the next ordinary meeting of the Planning Committee.
- 13.4.2. Substitutes who have attended the site visit are strongly encouraged to attend the meeting of the Committee when the decision is due to be made in order to act on behalf of the Member they represented at the site visit.
- 13.4.3. Members of the Planning Committee are strongly encouraged not to vote on planning applications where there has been a site visit, unless they attended the site visit.

### **14. REGULAR REVIEW OF DECISIONS**

- 14.1. Members should visit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of planning policy.
- 14.2. Such a review will be undertaken at least annually. It should include examples from a broad range of categories, such as, major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practice.

### **15. COMPLAINTS AND RECORD KEEPING**

- 15.1. Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local Code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 15.2. The Council already has a fully developed local complaints system.
- 15.3. So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to

understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers.

- 15.4.** Such decisions should be as well documented and recorded as those taken by the Planning Committee. These principles apply equally to enforcement and Development Plan matters. Monitoring should be undertaken regularly. Every report should contain a full planning history of the site.

## **16. SECTION 106 AGREEMENTS**

- 16.1.** A system shall be put in place and maintained to ensure the co-ordination, management, monitoring and enforcement of Section 106 Obligations by the Head of Planning and Development.
- 16.2.** Interim progress and final statements of all Section 106 Obligations shall be reported to Planning Committee by the Head of Planning and Development.
- 16.3.** A system shall be put in place by the Head of Planning and Development to identify the monetary and non-monetary outcomes of Section 106 Obligations.
- 16.4.** All reports (both delegated and Committee) which cover matters which require planning obligations should explain how the obligations relate to the tests set out in the Community Infrastructure Levy (CIL) regulations.

## **17. DEFERRAL OF PLANNING DECISIONS**

- 17.1** It is likely that from time to time the Planning Committee will defer a decision to a future meeting of the Committee, in order to enable the Officers to report back on any areas of concern raised by the Committee. Minor applications should only be deferred if there is a need for additional information or if there are disputed facts within the report, otherwise they should be determined as reported, with the proviso that there may be occasions when the Planning Officers may seek deferral/withdrawal of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable. On the second occasion that the matter is discussed at Committee, a decision must be made.

## **18. PLANNING DECISIONS WHICH HAVE SIGNIFICANT COST IMPLICATIONS**

- 18.1.** If the Head of Planning and Development, on the advice of the Legal Officer present at the meeting, believes that the Planning Committee's reasons justifying a resolution to refuse/impose conditions are not sustainable, that decision of the Planning Committee will be deferred to

its next meeting. The Head of Planning and Development will give advice on this before any vote is taken. The Committee itself may also agree to defer consideration of an application for the same reasons.

- 18.2.** If, at that next meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development on the advice of the Legal Officer present will request Members to refer the consideration of the application to Part II of the meeting (private session), to offer Members further advice on the legal and financial implications, and the likelihood of success at appeal.

## **19. ATTENDANCE OF MEMBERS AT PLANNING COMMITTEE**

- 19.1 As a matter of courtesy, if a member of the Planning Committee knows that he/she will not be able to attend the whole of the meeting he/she should, wherever practicable, so advise the Committee at the beginning of the meeting.

## **20. APPEALS**

- 20.1.** In cases of appeals against non-determination, the Legal Officer taking the case should manage the appeal process to ensure that the Committee's instructions are taken sufficiently early to enable the Council's case to be established before statements of case and witness statements are exchanged with the Appellant/sent to the Inspectorate.
- 20.2.** If the Planning Committee decides to refuse planning permission on grounds which they are advised cannot be sustained, the Legal Officer managing any subsequent appeal should give serious consideration to calling the Chairman or other representative of the Committee to give evidence.

## **21. TRAINING**

- 21.1.** Training requirements for Planning Committee Members and Substitute Members are set out in 2.2.2 of this Code. All Members should receive basic training on planning issues.

## **22. URGENT UPDATE REPORTS**

- 22.1.** The urgent update report will be prepared one clear day before the day of the meeting of the Planning Committee and e-mailed to Members and posted on the website that evening, giving Members and the public the opportunity to read it before the meeting. Persons who have given notice of their intention to address the Planning Committee shall be informed if there is an urgent update report in respect of the application on which they wish to speak and advised that they may inspect the update on the

website or obtain an oral update from the Planning Department. If there is any further communication between the day that the urgent update report is published and the day of the meeting which raises material considerations, this will be reported to the meeting.



## **D4. Local Code on Licensing Matters**

**Adopted by the Licensing Act 2003 Committee on 28 April 2005**

**By the Standards Committee on 13 June 2005**

**And by the Council on 27 July 2005**

**Further Amended by Licensing Committee and Licensing Act 2003 Committee in October 2013 to take into account the new Code of Conduct, Localism Act 2011 and the Officer restructure.**

**Further amended to reflect the change to Committee Governance with effect from 23 May 2015.**

**Further Amended by Council on 30 September 2020.**

### **1. BACKGROUND TO THE CODE**

The Code is based on the Local Government Regulation (formerly LACORS) Guidance (Updated January 2010): The Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, which was produced to help ensure that Members make licensing decisions in an open, impartial, and lawful manner, with sound judgement and for justifiable reasons. For Licensing Committee, also read this as covering Licensing Sub-Committee.

### **2. THE GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS**

**2.1.** Members and Officers have different, but complementary, roles. Officers advise Members and the Council, and carry out the Council's work. They are employed by the Council (not by individual Members) and it follows that instructions may only be given to Officers through a decision of the Council or a Committee or Sub-Committee. A successful relationship between Members and Officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust which underpins it, must never be abused or compromised.

**2.2.** Both Members and Officers are guided by Codes of Conduct. The Codes of Conduct adopted by Maidstone Borough Council, provide standards and guidance for Members and Officers and they are set out at D1 and D5 of this Constitution. Members and Officers are obliged to register and declare certain interests and relationships. In addition to these Codes, the Council's procedure rules set down rules which govern the conduct of Council business.

**2.3.** The Code of Conduct for Members was adopted by Maidstone Borough Council on 5 July 2012. It sets out the requirements on Members in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register

and declare interests, but it also deals with a Member's relationship with other Members, staff and the public, which will impact on the way in which Members participate in the licensing process. Of particular relevance to Members serving on Licensing Committees, Sub-Committees, or who become involved in making a licensing decision is the requirement that a Member:

*"Must not use or attempt to use your position as a Member **improperly** to confer on or secure for yourself or any other person, an advantage or disadvantage;" (Paragraph 3.2.3 of the Members' Code).*

- 2.4.** Members serving on the Licensing Committee, or Sub-Committee, or who otherwise become involved in making a licensing decision will represent their constituents as a body and vote in the interests of the whole Borough. The basis of the licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Licensing Committee should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.5.** The role of an Elected Member on the Licensing Committee will involve balancing the multiple needs and interests of the community, whilst giving priority to the Four Licensing Objectives of the Licensing Act 2003, namely:
- 2.5.1. The prevention of crime and disorder
  - 2.5.2. Public safety
  - 2.5.3. The prevention of public nuisance
  - 2.5.4. The protection of children from harm
- 2.6.** Members who do not feel that they can act in this way should consider whether they are best suited to serving on the Licensing Committee.
- 2.7.** Members should also be very cautious about accepting any gifts and hospitality. The Code requires any Members receiving any gift or hospitality in their capacity as a Member, over the value of £100, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. Receipt of the gift must also be declared at meetings of the Council by the recipient, where it relates to the matter being considered (if the gift was received in the last 3 years). However, Members of the Licensing Committee should not accept any gifts or hospitality from persons involved in licensing applications.

- 2.8.** Similarly, Officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a licensing proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of a minimal level and register its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the Council's register of gifts and hospitality whether or not accepted. This register is reviewed regularly by the Council's Monitoring Officer.
- 2.9.** Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as membership of political parties and serving on another Council.
- 2.10.** A requirement for staff to act impartially is also included within the Council's Employees' Code.
- 2.11.** Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Members in the Code of Conduct. Members are placed under a requirement by paragraph 3(2) (c) of the Code:

"Not to do anything that compromises, or is likely to compromise, the impartially or integrity of those who work for, or on behalf of, the authority."

- 2.12.** The Council has agreed that no Member will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies, procedures, legislation and guidance relevant to this Committee as specified by the Committee. This training must be completed to an agreed programme set by the Committee annually with a due date for completion. New members must receive training, but the programme may include no training provision for experienced members if there have been no relevant changes to legislation, policies or guidance.
- 2.13.** If a Member has not completed the specified training by the due date, the Member will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Housing and Community Services will keep a record of the training requirements of this Committee and of Members' compliance with the requirements.
- 3.       REGISTRATION OF INTERESTS BY MEMBERS**
- 3.1.** The Localism Act 2011 and the Members' Code place requirements on Members relating to the registration and declaration of their interests

and sets out the consequences for Members' participation in consideration of an issue, in light of those interests. These requirements must be followed scrupulously and Members should review their situation regularly. Advice may be sought from the Council's Monitoring Officer on these issues. Ultimate responsibility for fulfilling the requirements rests individually with each Member.

- 3.2.** A register of Members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection and be published on the Council's website. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of his or her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.

#### **4. DECLARATION OF INTERESTS**

- 4.1.** The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act – it being a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's Code. Where a Member considers he/she has a DPI or OSI in a matter, he/she must always declare it, not participate or vote on the matter and must withdraw from the room when the matter is discussed.
- 4.2.** If the Council allows members of the public to address meetings, then a Member with an OSI may attend a meeting to make such representations, but must leave the room immediately after making those representations. If a Member wishes to take advantage of this, they should seek guidance from the Monitoring Officer.
- 4.3.** Translated to a Member's involvement in licensing issues, the interests test will require a Member to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the Member, his or her family, friends or employer (other than the limited right to attend meetings to make representations and then leave).
- 4.4.** In certain circumstances a Member with a DPI or OSI may seek a dispensation to participate, notwithstanding their interest, from the Council's Monitoring Officer.
- 4.5.** A potentially difficult issue may arise in where a Member on the Executive is also a member of the authority's Licensing Committee or other decision-making body for licensing matters. There may be occasions when that Member will wish to press for a particular development which the Member regards as beneficial to the development of the area. Should that Member be able to vote on any licensing application relating to that

proposal? The appropriate action is not clear cut and may depend on the particulars of the case. However, the general advice would be that a Member in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he/she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the Member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the Member becomes almost the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the Member is able to speak in favour of the development but should not vote on the relevant applications (unless the Member has conducted high-profile, active lobbying for a particular outcome, in which case he/she should not participate in the debate nor vote on the application).

- 4.6.** Any Member who is a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Licensing Committee when considering taking up an appointment on that Committee, but provided that the Member does not believe him/herself to be under an obligation to vote in the same way as the Parish Council recommends, dual membership should not be a bar to sitting on the Licensing Committee when considering such applications. However, such membership should be notified to the Committee. If the application has actually been made by another Council of which the Member is a member or a senior member of staff, the interest is likely to be an Other Significant Interest.

## **5. APPLICATIONS SUBMITTED BY MEMBERS AND THE LOCAL AUTHORITY**

- 5.1.** Proposals to their own Authority by serving and former Members, Officers, and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Local Authorities may apply for their own Premises Licences so as to licence areas of public space (either indoor or outdoor). Indeed the Government's guidance encourages this:

*10.20 "Local authorities should bear in mind their ability to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres, and similar public areas where festivals and carnivals might take place."*

- 5.2.** Such applications must be and seen to be dealt with in exactly the same manner in all other applications, with no regard given to the interests of the Council itself. During such an application process, it is therefore important to be aware of any potential appearance of bias.
- 5.3.** It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-
- 5.3.1. Members who act as agents for people pursuing a licensing matter with the authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council they should take no part in its processing.
- 5.3.2. The Monitoring Officer shall be informed of such proposals by the Member concerned and by Officers when they submit licensing applications on behalf of themselves or their spouses.
- 5.3.3. Applications submitted by Members, Officers and by the Council itself will be dealt with by the Licensing Sub-Committee.

## **6. LOBBYING OF AND BY MEMBERS**

- 6.1.** Local Democracy – the Licensing Act 2003 sets out the grounds for making representations on licensing. Members may make representations themselves or on behalf of “other persons”. It should be borne in mind that one of the key aims of the Licensing Act 2003 is to localise decision making or “democratise” the process and members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment and employment as well as the undesirability of crime and public nuisance.
- 6.2.** Since January 2010, Members are regarded as interested parties/other persons in their own right. They are entitled to make representations or call for reviews in respect of any licensed premises in any Ward within the Council’s area. They do not have to await instructions from residents or other organisations but can act on their own initiative.
- 6.3.** It is important to recognise that lobbying is a normal and a perfectly proper part of the political process. Those who may be affected by a licensing decision will often seek to influence it through an approach to their elected Ward Member or to a Member of the Licensing Sub-Committee. However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Member being called in question. When being lobbied, Members of the Licensing Committee should not express an opinion which may be taken as indicating that they have already made up their

mind on the issue before they consider the matter in Committee. In such situations, they should restrict themselves to giving procedural advice and refer the lobbyist to his or her Ward Member, who is not a Member of the Licensing Committee or the Licensing Officer who can explain the process of decision making.

- 6.4.** Members, and Members of the Licensing Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a licensing application will be processed and determined in a transparently open and fair manner, in which Members will take account of all the Officers' advice and other relevant representations made before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality. Determining a licensing application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly.
- 6.5.** There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Monitoring Officer that any Member has breached the Code of Conduct.
- 6.6.** In reality, of course, Members will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Licensing Committee's proceedings (as set out above) is that Members of the Licensing Committee must not decide which way they intend to vote in advance of the Licensing Committee meeting.
- 6.7.** Political reality suggests that it is often important to distinguish between the role of the Licensing Committee Member who is, and who is not, a Ward Member for the area affected by a particular licensing application.
- 6.8.** A Licensing Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Licensing Committee meeting before declaring one way or the other.
- 6.9.** A Licensing Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Member to argue convincingly when the Licensing Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Licensing Committee. Although not amounting to an Other Significant Interest

according to the Code of Conduct, the proper course of action for such a Member would be not to participate in consideration of the application but they may wish to act as/or represent an 'other person', or may wish to act in their capacity as another person in their own right.

- 6.10.** It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement when taking decisions on licensing matters to take account of all arguments in an open-minded way.
- 6.11.** It cannot be stressed too strongly that striking this balance is, ultimately, the responsibility of the individual Member, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct.
- 6.12.** Given that the point at which a decision on a licensing application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Licensing Committee meeting must not be used to decide how Members should vote.
- 6.13.** Members of the Licensing Committee should avoid organising support for or opposition to a licensing application and avoid lobbying other Members. Such actions can easily be misunderstood by parties to the application and by the general public.
- 6.14.** Members should not put improper pressure on Officers for a particular application and should not do anything which compromises, or is likely to compromise, their impartiality.
- 6.15.** Members who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Member.
- 6.16.** Where a Member receives written representations directly in relation to a licensing application, he/she shall pass the correspondence to the Licensing Officer in order that those representations may be referred to in any Committee report.
- 6.17.** Members of the Licensing Committee will remain in the meeting for the whole time that an item is being debated and will not be able to vote on the matter unless they have done so.

## **7. PRE-APPLICATION DISCUSSIONS**

- 7.1.** Member(s) will not be involved in discussions with an applicant or agent concerning a licensing proposal when a licensing application is imminent or has been submitted and remains to be determined. This is because



the Member could all too easily compromise or be seen to compromise his or her own position or the position of the Council.

## **8. SITE VISITS**

The Protocol for site visits, which take place during a hearing, is as follows.

### **8.1. Purpose of Visits**

8.1.1. The purpose of the site visits is to enable Members to inspect proposed application sites to enable them to better understand the impact of that proposal.

8.1.2. It is not the function of the visit to receive representations or debate issues.

### **8.2. Selecting Site Visits**

8.2.1. Visits will take place if voted for by a majority of the Licensing Sub-Committee.

8.2.2. Site visits will only take place where the Sub-Committee believes that there is a clear substantial benefit to be gained and the hearing will be adjourned.

### **8.3. Procedures on Site Visits**

8.3.1. The site will be inspected from the viewpoint of both applicant(s) and other persons making representations.

8.3.2. Where applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

### **8.4. Decision Making**

8.4.1. No decision will be taken on site.

## **9. REGULAR REVIEW OF DECISIONS**

**9.1.** Members should visit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of licensing policy.

**9.2.** Such a review will be undertaken at least annually and should include examples from a broad range of categories. The Licensing Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

**10. COMPLAINTS AND RECORD KEEPING**

- 10.1.** Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 10.2.** The Council already has a fully developed local complaints system. So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate.
- 10.3.** Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every licensing application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Licensing Committee. These principles apply equally to enforcement.
- 10.4.** Monitoring should be undertaken regularly.

## **D5. Officers' Code of Conduct**

### **INTRODUCTION**

The public is entitled to expect the highest standards of conduct from all staff who work in local government and therefore the Borough Council. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist the Council and its staff in their day-to-day work. The Code is produced in the light of the challenges which staff face in the new and more commercially orientated environment of today. However the Code cannot be exhaustive and Officers should seek guidance on any matter where they are unsure of the standards required.

### **AIMS OF THE CODE**

The aim of the Code is to lay down guidelines for Maidstone Borough Council staff which will help maintain and improve standards and protect staff from misunderstanding or criticism. The Code sets out the minimum standards that should apply.

### **STATUS OF THE CODE**

Whilst the Code lays down guidelines, adherence to the Code forms a condition of employment of all Council staff. As such it is a guide to the behaviour required and expected of staff. A breach of the Code may result in the application of the formal disciplinary procedure and staff should ensure that they are conversant with its terms.

## **1. STANDARDS**

- 1.1.** All staff 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 Members and fellow staff with impartiality. Staff are expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Staff must make themselves aware of the Council's Contract Rules and Financial Rules and abide by their provisions. Staff must report to the appropriate manager any impropriety or breach of procedure.

## **2. DISCLOSURE OF INFORMATION**

- 2.1.** 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 and there is guidance in the Local Government Transparency Code published in October 2014 and available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/360711/Local\\_Government\\_Transparency\\_Code\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360711/Local_Government_Transparency_Code_2014.pdf)

- 2.2.** Staff must be aware of which information the Council does make public and act accordingly. In particular both individual and corporate liability under Data Protection legislation must be observed and safeguarded.
- 2.3.** Staff should not knowingly use any information obtained in the course of their employment for personal gain or benefit, nor should they knowingly pass it on to others who might use it in such a way. Any particular information received by a member of staff from a Member which is personal to that Member and does not belong to the Council should not be divulged without the prior approval of that Member, except where such disclosure is required or sanctioned by law.

### **3. POLITICAL NEUTRALITY**

- 3.1.** Staff serve the Council as a whole. It therefore follows they must serve all Members and not just those of any leading or controlling group, and must ensure that the individual rights of all Members are respected.
- 3.2.** No Officer should act in any manner or advise any political group of the Council in such a way as may compromise their political neutrality either as to the work of the group or as to the work of the Council; neither shall they be required to attend any meeting of any political group where their neutrality may be compromised.
- 3.3.** The Local Government and Housing Act 1989 and Regulations made under the Act impose, as a result of the salary level or scope of duties, restrictions on the political activities of certain Officers. Full details will be provided to Officers in such politically restricted posts.
- 3.4.** Staff, 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. RELATIONSHIPS**

#### **4.1. Generally.**

Staff are responsible to the Council through its senior managers. Mutual respect between staff and Members is essential to good Local Government. Close personal familiarity between staff and individual Members can damage the relationship and prove embarrassing to other staff and Members and therefore should be avoided. The Council's approved Protocol on Member/Officer relations is available at Part E1 of this Constitution.

#### **4.2. The Local Community and Service Users.**

Staff should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within the community as defined by the policies of the Council.

#### **4.3. Contractors.**

All relationships of a business or private nature with external contractors, or potential contractors, must be made known to your Section Manager. Orders and contracts must be awarded on merit, by fair competition against other tenderers, and no special favour must be shown to any businesses. Additional caution must be exercised where friends, partners or close personal associates are involved with the potential contractor.

**4.4.** Staff who engage or supervise contracts 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, must declare their relationship in writing in the register kept by the Monitoring Officer, pursuant to Section 117 Local Government Act 1972.

#### **4.5. With Other Members of Staff.**

Close personal relationships between Council staff will sometimes occur. It is very important that any relationship is not seen to bring advantage to either party and close personal relationships between a senior manager and one of their staff should be avoided. If a close personal relationship develops between a manager and a member of their staff, it may be necessary to relocate one of the members of staff to alternative work.

#### **4.6. Media.**

Each Department will set guidelines which will identify staff authorised to talk to the media. Employees who are not authorised to deal with representatives of the media should refer any enquiries they receive to their Head of Service, line manager or Head of Policy, Communications and Governance. Employees who have specific authority to deal with such enquiries should only reply to requests for information or questions which relate to the facts of the situation. Where an expression of opinion or statement of policy is required the head of department must first be consulted. Every assistance should be given to Members who need information to deal with questions from the media. Employees should refer to the Head of Policy, Communications and Governance for guidance.

**4.7.** An employee, who speaks as a private individual direct to the press, or at a public meeting, or where their remarks may be reported to the press,

should ensure that nothing they say might lead the public to think they are acting in their official capacity as a Council employee. Where employees are speaking on behalf of a recognised trade union this must be made clear.

## **5. APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

- 5.1.** Staff involved in the appointment of others must ensure that these are made on the basis of merit. It would be unlawful for a member of staff 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, staff must not be involved in an appointment where they are related to an applicant, or have a close personal relationship in or outside work with him/her.
- 5.2.** Similarly, staff must not be directly involved in decisions relating to discipline, promotion or pay adjustments for any other member of staff who is a relative, or who has a close personal relationship with him/her.
- 5.3.** Where a relationship exists with an applicant for a post with the Council, that relationship must be clearly stated on the application form. Where a member of Council staff is aware that a relation is applying for a post, they must bring this to the attention of the appropriate Section Manager as soon as is possible.

## **6. OUTSIDE COMMITMENTS**

- 6.1.** Officers graded local grade 8 and above shall devote their whole-time service to the work of the Council and shall not engage in any other business or take up any additional appointment or employment without the express consent of their Director.
- 6.2.** Such Officers shall not place themselves in a position where their duty and their private interests' conflict. The Council will not attempt to preclude Officers from undertaking additional employment, but any such employment must not, in the view of the Council, conflict with or react detrimentally to the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.
- 6.3.** In accordance with the Copyright Designs and Patents Act 1988 the ownership of copyright or design right in any literary, dramatic, musical or artistic work or design created by an Officer during the course of his/her normal duties will belong to the Council. This also applies to the ownership of copyright and design right in any such work created by an employee in the course of duties falling outside his/her normal duties but specifically assigned to him/her.
- 6.4.** This intellectual property also includes inventions, computer programmes, original/creative drawings, writings and drawings. Officers

are, by virtue of the nature of their duties and the responsibilities arising from them, under a special obligation to further the interests of the Council.

- 6.5.** This also applies to the ownership of any invention made by an employee in the course of their duties falling outside his/her normal duties but specifically assigned to him/her.
- 6.6.** Officers are under an obligation to sign any documents or to do anything else which is necessary to apply for and obtain any patent registered design or other protection in the name of the Council. The Council will indemnify the Officer in respect of all costs incurred by him/her in complying with these requirements.
- 6.7.** In certain circumstances Officers may be entitled to receive compensation from the Council for inventions under Section 40 of the Patents Act 1977.

## **7. PERSONAL INTERESTS**

### **7.1.** Staff must record in the Register the following interests:-

- 7.1.1. All paid employment (other than by the Borough Council) and occupations, including Directorships, Partnerships and Consultancies.
- 7.1.2. Ownership of any land which is within the Borough.
- 7.1.3. Companies or other Corporate Bodies having a place of business within the Borough and in which the Officer has a beneficial interest in a class of securities with a nominal value greater than £25,000 or 1/100 of the issued share capital, whichever is the less.
- 7.1.4. Any tenancy or licence of land or premises in the Borough.
- 7.1.5. Membership of any organisation that falls within the following definition: -

*'Any lodge, chapter, society, trust or regular gathering or meeting, which:*

- (a) is not open to members of the public who are not members of that lodge, chapter, society or trust; and*
- (b) includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society, gathering or meeting; and*
- (c) includes, whether initially or subsequently, a*

*commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering, or meeting.' A lodge, chapter, society, trust, gathering or meeting as defined above, should not be regarded as a secret society if it forms part of the activity of a generally recognised religion."*

7.1.6. Any other financial or non-financial interest which could conflict with the Council's interests.

- 7.2.** Staff must not allow the impression to be created that they are, or may be, using their position to promote a private or personal interest, rather than forwarding general public interest. Private and personal interests include those of their family and friends, as well as those arising through membership of, or association with, clubs, societies and other organisations.
- 7.3.** Information concerning private affairs of a member of staff will not be made public unless the Council is legally required to do so or unless the member of staff has given their permission.
- 7.4.** Staff must not process any claim or application to the Council from themselves, a relative or personal friend. In addition, staff must not process any claim in respect of a property owned or part owned by them, their family or a friend. They must disclose any such claim or application to their supervisor or manager who will arrange for it to be dealt with by another member of staff.
- 7.5.** All staff must complete a Registration of Interests form upon appointment; must notify the Monitoring Officer immediately of any changes in their interests; and must complete the form when it is circulated every three years.
- 7.6.** The Register of Interests shall be kept by the Monitoring Officer and any potential conflict of interest will be discussed with the relevant Head of Service.
- 7.7.** If an Officer is present at a meeting of the Council, its Committees or Sub Committees, or management meetings when an issue in which he/she has a personal interest is being discussed, he must declare the interest and its nature and leave the meeting, unless invited to remain.

## **8. EQUALITY AND DIVERSITY ISSUES**

All members of staff should ensure that the policies relating to equality issues agreed by the Council are complied with in addition to the



requirements of the law. All members of the local community, customers and other staff have the right to be treated with fairness and equity.

## **9. SEPARATION OF ROLES DURING TENDERING**

- 9.1.** Staff involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. Senior staff that have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 9.2.** Staff in contractor and client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 9.3.** Staff who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information to any unauthorised party or organisation.
- 9.4.** Employees should ensure that no special favour is shown to current or 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.
- 9.5.** Staff contemplating a "spin out" through a mutual or a management buyout should, at the earliest possible moment inform their Director or the Chief Executive as appropriate and withdraw from any in-house processes.

## **10. CORRUPTION**

Staff 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 member of staff to demonstrate that any such rewards have not been corruptly obtained. All staff should be aware of the Bribery Act 2010 and ensure that they follow the guidance in the Code of Conduct. Staff should report any behaviours which lead them to believe that others may have breached the Act.

## **11. USE OF FINANCIAL RESOURCES**

Staff 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.

## **12. GIFTS AND HOSPITALITY**

### **Introduction**

- 12.1.** The acceptance of gifts, hospitality or other benefits, even on a modest scale, may arouse suspicion of impropriety and extreme caution and discretion should be exercised in accepting either. In principle you should refuse any personal gift offered to you or to your family by any person or company who has or seeks dealings of any kind with the Council. Staff should be aware of their responsibilities under the Bribery Act 2010 and ensure that the acceptance of a gift or hospitality does not cause them to breach the requirements of the Act.
- 12.2.** Only useable gifts of a nominal value may be accepted by individual staff, (e.g. pens, pencils, rulers, calendars, diaries). Other small gifts such as chocolates, biscuits and flowers may be accepted, provided that they are shared (as appropriate) within the Section or Directorate. The receipt of these gifts and the action taken must be recorded in the Directorate's Gifts and Hospitality Register which is kept by the Monitoring Officer.
- 12.3.** Any other gift (including all wines and spirits of whatever value) to an individual (or group of individuals) must be politely refused on the basis that it would offend against the Council's Code of Conduct for staff. The offer and refusal of these gifts must be recorded in the Directorate's Gifts and Hospitality Register. If it is not possible, for any reason, to refuse the gift at the time (e.g. if the donor refuses to take it back) then the gift must be passed to your Section Manager to return it to the donor.
- 12.4.** In pursuit of your duties you may be offered gifts for the Council as a corporate body. Any such gifts should not be refused, whether it is an actual gift or a "gift in kind" until the Chief Executive has been informed and been given the opportunity to determine whether the Council should receive such a gift, and if so the purpose to which it should be put (occasionally such gifts, for example, may be used in raffles in support of the Mayor's charity). The action taken in respect of any such corporate gift should be recorded by the Chief Executive in a Corporate Gift/Sponsorship Register, to be maintained by him/her, whether the gift is accepted or refused.

### **12.5. Sponsorship**

The same principles would apply to sponsorship of corporate activities, events and functions. The register should include details of the name of sponsors, descriptions of the sponsorship offered and whether it is accepted or declined. Generally speaking, sponsorship entails a payment (in cash or account) to the Council, for which there is no tangible consideration from the Council to the sponsor (see also Paragraph 13 below).

## **12.6. Hospitality**

All hospitality should be appropriate and necessary (e.g. a working lunch) and wherever possible, have the prior sanction of the Director or relevant Section Manager. Such hospitality must be recorded in the Gifts and Hospitality Register maintained by the Monitoring Officer. This provision relates to drinks, meals, sports events and other entertainment. Staff will be expected to show foresight in obtaining, wherever possible, management approval to hospitality in advance of it being accepted. If it is not possible to obtain approval in advance, approval should be sought as soon as possible after receipt of the hospitality. Approval should be written.

### **12.7. Examples of acceptable hospitality include:**

- 12.7.1. A working lunch of modest standard, provided to allow business discussions to continue
- 12.7.2. An open day organised by a company where other organisations are guests

### **12.8. Examples of hospitality which are unacceptable include:**

- 12.8.1. Offers of holiday accommodation
- 12.8.2. Theatre tickets
- 12.8.3. Hotel accommodation
- 12.8.4. Use of company flat
- 12.8.5. Sports events such as professional league football matches or first-class cricket games

**12.9.** It will usually be more acceptable to join in hospitality offered to a group than to accept something unique to yourself (e.g. tickets to the theatre).

**12.10.** When a particular person or body has a matter currently in issue with the Council (e.g. the award of a contract, or a contract dispute), any offers of hospitality must be refused, even if in normal times they would be acceptable.

**12.11.** Offers of hospitality which have been declined must also be recorded in the Register. This is to ensure that offers of excessive hospitality and their refusal are recorded in order to protect the Officer concerned and allow their manager to be aware of such offers.

## **Free Seminars/Conferences/Product Familiarisation Sessions**

**12.12.** Attendance by staff at relevant seminars, training sessions, conferences, courses or trips for product/service familiarisation is acceptable but must

be recorded in advance in the Directorate's Gifts and Hospitality Register. In all cases, the Director/Section Manager must give consent prior to attendance and satisfy him/herself that no immediate or subsequent purchasing decisions are compromised by the employee attending. Where visits to inspect equipment etc. are required, staff must ensure that the Council meets the costs of such visits to avoid jeopardising the integrity of any subsequent purchasing decision. Where modest meals or refreshments are provided by the other party, and to refuse would give offence or be unreasonable, these may be accepted and recorded in the Gifts and Hospitality Register, but, as before, these should be authorised in advance in writing by the Director/Section Manager wherever possible. Where this is not possible, the written sanction of the Director/Section Manager should be obtained and recorded as soon as possible after the event.

### **Review of Gifts and Hospitality Registers**

**12.13.** The Monitoring Officer shall review the Gifts and Hospitality Registers (and in the case of the Chief Executive also the Corporate Gift/Sponsorship Register) on a three-monthly basis and will sign the Register to signify that they are satisfied to the best of their knowledge that there is full compliance with the provisions relating to gifts and hospitality. The Monitoring Officer will ensure that reminders are sent to staff at least annually.

**12.14.** Note: Heads of Service should obtain approval under these provisions from their Director; Directors should obtain approval from the Chief Executive, and the Chief Executive should consult the Leader of the Council with regard to the receipt of gifts and hospitality.

### **13. SPONSORSHIP - GIVING AND RECEIVING**

**13.1.** Where an outside organisation wishes to sponsor or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

**13.2.** Where the Council wishes to sponsor an event or service, neither a member of staff nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to the Monitoring Officer, appropriate Director or to the Chief Executive of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, staff must ensure that impartial advice is given and that there is no conflict of interest involved.

## **14. STANDARD OF APPEARANCE**

- 14.1.** The Council has the right to expect high standards of appearance from staff whilst undertaking their duties. Employees should be neat, well-groomed and professional in appearance whilst dressing appropriately for the task they are undertaking. Unless dictated by the task in hand, and agreed in advance with their Section Manager, casual clothing such as denim-type items, casual or sports clothing are not considered suitable.
- 14.2.** Where provided, safety equipment and protective clothing must be worn as instructed. No such equipment may be tampered with and any defects apparent must be brought to the attention of the appropriate manager without delay.
- 14.3.** For the protection of the public and employees it is important that Council staff are easily identifiable whilst at work either within the offices or within the community. Cardkey identification cards, where provided, must be worn, so as to be clearly visible, at all times whilst undertaking work on behalf of the Council. When making visits to the homes or premises of the public, official Council identification should be presented promptly and where appropriate ahead of being requested.

## **15. FRAUD AND THEFT**

- 15.1.** The Council will not tolerate fraud or theft committed by employees at or during the course of their work. If evidence comes to light that fraud or theft has occurred the matter will be fully investigated internally and if sufficient evidence is available of possible involvement in fraud or theft, staff will be suspended.
- 15.2.** Disciplinary Policy - If sufficient evidence is available that a loss has been incurred by the Council and by implication a criminal act has occurred, the matter will be referred to the Police who may undertake their own quite separate investigation.
- 15.3.** Under the Council's Disciplinary Policy staff may be subject to disciplinary action or dismissed if there is evidence to suggest either fraud or theft has been committed. Offences committed outside work may also be dealt with under the Disciplinary Policy (for example where there is an impact on the duties and responsibilities of the member of staff, or any breach of the duty of trust and confidence, perhaps through inappropriate use of social media) and you should therefore ensure that you understand how your actions outside work could affect your employment with the Council.

# **PART E - PROTOCOLS**

## **E1. Protocol on Member/Officer Relations**

**Adopted by Council on 5 December 2001**

**Amended by Council on 5 March 2003**

**Amended by Council on 22 October 2003**

**Amended by Council with effect from 23 May 2015**

### **1. INTRODUCTION**

- 1.1.** The purpose of this protocol is to guide Members and Officers of the Council in their relations with one another.
- 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 offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3.** This protocol is a written statement of current practice and convention. It seeks to promote greater clarity and certainty as well as respect between Members and Officers.
- 1.4.** In this protocol, "Officers" applies to all employees of the Council.

### **2. PRINCIPLES**

- 2.1.** This protocol also seeks to enhance and maintain the integrity (real and perceived) of local government. Members and Officers should ensure that they demonstrate high standards of personal conduct at all times.
- 2.2.** Members and Officers have separate and distinct roles. Both Members and Officers should recognise this and respect their varying roles.
- 2.3.** The basic principles underlying the Member/Officer relationship in both directions should therefore be:-
  - 2.3.1. Honesty
  - 2.3.2. Openness
  - 2.3.3. respect for the different roles; and
  - 2.3.4. courtesy and mannersin the spirit of the Seven Principles of Public Life set out in Annex 1 to Chapter D1 of the Constitution.

- 2.4.** In addition, both Members and Officers have their own personal lives which should be respected. Except in cases of emergency, contact out of office hours on matters relating to Council business should be avoided.
  - 2.5.** A Member may not attempt or purport to give instructions to any Officer nor to involve him/herself in staffing matters other than as part of the Council's adopted employment practices.
  - 2.6.** Members should never subject an Officer to unfair treatment or criticism and Members and Officers should have mutual respect for each other at all times even if their views differ. Disputes or differences should be considered in private and not played out in front of a Committee, in the office, on social media or in public. Members should appreciate that Officers are responsible for their conduct to their line manager. Where a Member is not satisfied with the response of an Officer they should raise the issue with the Officer's Head of Service or Director.
  - 2.7.** If a Member has a complaint or a concern about an Officer they should report this confidentially to the Officer's Head of Service or Director. 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 Democracy and General Purposes Committee is politically accountable for staff policy issues and the Chief Executive is responsible for the management of staff including disciplinary and other operational matters.
  - 2.8.** Information given by Members to Officers on Council business will routinely be passed on to other Officers of the Council. Members should not therefore expect nor ask that information given by them to Officers be kept confidential as this would conflict with the Officers' responsibilities to their managers and their Chief Officer.
  - 2.9.** Where any Officer has a complaint about the conduct of a Member they should raise it with their Head of Service or Director who may consider it appropriate to refer it to the Leader or Whip of the appropriate political group on the Council or where the complaint is serious and amounts to a potential breach of the Members' Code of Conduct, may submit a complaint to the Monitoring Officer pursuant to the Code.
  - 2.10.** Close personal relationships between Members and Officers should be avoided, but where they subsist they should be declared to a more senior manager and professional interaction should be avoided so far as possible.
- 3. ROLE OF MEMBERS**
- 3.1.** Members are responsible to the electorate and serve so long as their term of office lasts (usually four years).



- 3.2.** Members have a variety of roles which will differ depending on their particular role within the Council (e.g. the Mayor or a Chairman).
  - 3.3.** The Council proposes to introduce a list of key roles for Members. In brief, Members are expected to:-
    - 3.3.1. Make policy;
    - 3.3.2. Contribute to the good governance of the area;
    - 3.3.3. Represent the interests of their Ward and Constituents fairly and impartially;
    - 3.3.4. Participate in the governance of the Council and represent the Council on outside bodies;
    - 3.3.5. Maintain the highest standards of conduct and ethics; and
    - 3.3.6. Comply with their obligations under the Constitution.
  - 3.4.** Members when carrying out their normal representational roles on behalf of local residents are recommended to refer their requests for information or other concerns directly to Heads of Service or a wide range of identified Officer contacts across the organisation which for on-going matters may also include the relevant case Officer. This should be done in a considerate way and, with the exception of urgent issues, sufficient notice should be given to allow a considered response or advice to be provided.
- 4. ROLE OF OFFICERS**
- 4.1.** Through the management structures Officers are responsible to the Council as a whole, as their employer. Where Officers work in a shared service then they may have responsibilities to more than one Council and more than one manager, although it should be clear who their line manager is for employment purposes.
  - 4.2.** Whether or not the Officer holds a politically restricted post, Officers must be seen to be politically impartial and must not allow their political views to influence their actions.
  - 4.3.** Officers are responsible for giving advice to all Members and for implementing the proper decisions of the Council.
  - 4.4.** Officers have various roles depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs and managing other Officers.
  - 4.5.** The Head of the Paid Service and the Chief Officers are responsible for the day to day running of the Council in accordance with the decisions of the Council and under delegated authority.

- 4.6.** The Head of the Paid Service and the Chief Officers are therefore responsible for the management of the Officers and are responsible consequently for giving instructions and disciplining Officers. In a Chief Officer's absence, contact will normally be with the Head of Service. This support will relate to those matters of policy and principle for which the Member is responsible, but will not include matters of a political nature.
- 4.7.** Officers 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 (provided they act in good faith); the distinction between policy and operational issues is therefore a significant one.
- 4.8.** From time-to-time Officers will receive requests for information or concerns will be raised by Members as part of their role as elected representatives. Members will direct their requests to Heads of Service, other managers or, on occasion case Officers where there may be an on-going matter. Any information requested should be provided in a timely way and confidentiality should be respected. Any concern raised by an elected member should be responded to promptly; where needed guidance and advice concerning the response should be sought from senior Officers. Officers should be mindful of the nature of the political environment.
- 4.9.** As well as following the Officers' Code of Conduct at Chapter D6, Part D of the Constitution, an Officer may also be subject to the rules and codes of conduct of his or her own particular profession.
- 4.10.** Heads of Service are primarily responsible for the management of staff within units and the operation of Council services on a day-to-day basis.
- 5. MAYOR**
- 5.1.** The role of the Mayor is shown in greater detail in the Core Provisions in Part A of this Constitution.
- 5.2.** The Mayor should during his or her term of office not engage in any controversial activity which could call into question the integrity or impartiality of the office.
- 5.3.** The support provided to the Mayor should be used solely in discharging the civic functions associated with the office.
- 5.4.** The Mayor should be careful not to engage in political activities which are properly the function of the Leader of the Council (and vice versa).
- 5.5.** Officers shall go through the agenda of Council meetings with the Mayor and shall help him/her answer questions to the extent of supplying

him/her with facts. Officers must avoid straying into areas of politics or personalities.

## **6. OFFICER/MEMBER RELATIONSHIP**

- 6.1.** It is clearly important that there should be a professional working relationship between a Member on the Executive, the Chairman of a Committee and Chief Officer and other senior Officers of any unit. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups.
- 6.2.** In relation to action between meetings, it is important to remember that the law only allows for decisions relating to the discharge of any of the Council's functions to be taken by a Member on the Executive, a Committee, a Sub-Committee or an Officer.
- 6.3.** The Chairman's role is primarily to ensure that the business transacted at a meeting is conducted efficiently and effectively, ensuring that all Members on the Committee have the opportunity to participate in the discussions of the Committee.
- 6.4.** Finally, it must be remembered that Officers are accountable to their Chief Officer and that whilst Officers should always seek to assist a Member on the Executive, or a Chairman (or indeed any Member) they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Chief Officer. If any Officer is concerned about their position, they should report their concern to their Chief Officer and/or the Monitoring Officer.

## **7. PARTY GROUPS**

- 7.1.** There is 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. Party groups may not call on Officers to support and contribute to their deliberations, although Officers may be asked to provide information, research and best practice in delivering Council functions.
- 7.2.** Members must not ask Officers to act in any way which would conflict with the Officers' Code of Conduct or which would affect or be seen to affect the political impartiality of Officers.

## **8. WARD MEMBERS**

- 8.1.** Whenever a public meeting is organised by the Council to consider a local issue, all the Members 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 Members should be notified at the outset of the exercise.

- 8.2.** Officers may only attend meetings called by Ward Members in an official capacity if this attendance is approved by a Chief Officer/Head of Service.
- 8.3.** Ward Members may not ask Officers to provide advice or undertake work for organisations with which they are involved unless that service has been approved by the relevant Chief Officer/Head of Service.
- 8.4.** In dealings with local groups Officers should as far as possible respect the representational role that Members have in their Wards.

## **9. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS**

- 9.1.** Members are free to approach any Officer to provide them with such information, explanation and advice (about that Officer's functions) as they may reasonably need in order to assist them in discharging their role as Members. This can range from a request for general information about some aspect of a unit's activities to a request for specific information and advice on behalf of a constituent.
- 9.2.** Officers approached by Members to provide information or copies of documents, where insufficient information is provided by the Member to enable the Officer to identify and locate the information/documents sought, or where a request is ambiguous, should, as far as practicable, provide assistance to the Member to enable him/her to describe more clearly the information requested. The aim of such assistance is to clarify the nature of the information sought, not to determine the aims or motivations of the applicant.
- 9.3.** In addition to Members' common law and statutory rights to inspect documents, the Council has agreed that Members should have the following rights:
  - 9.3.1. That all documents (including reports to the Chief Officer Management Team and the minutes but excluding letters/e-mails received from Members, unless the Member has expressly agreed in writing that the letter/e-mail may be copied/inspected) of the Council should be available and open for inspection and copying by all Members, provided either that the documents do not disclose exempt information as described in the Access to Information Procedure Rules in Chapter C5, Part C of this Constitution, or that the Member has a "need to know" the information contained in the document (and has made a written declaration stating why inspection of the documents is

necessary for the performance of their duties as a Member). Access to the document will not be given if to do so would be a breach of the Data Protection Act or other legislation;

9.3.2. That all information obtained from an inspection and any copy document received shall be treated as confidential to the Member and shall be for his or her use as a Member.

**9.4.** Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.

**9.5.** Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council. Disclosure of confidential or exempt information without proper authority could amount to a breach of the Members' Code of Conduct.

## **10. CORRESPONDENCE**

**10.1.** An Officer shall not copy his or her correspondence to a Member to any third parties (other than to other Council Officers and/or to the recipients of the Member's original letter/e-mail) without the express written consent of the Member. If an Officer does copy his or her correspondence with a Member to another person this should be made clear to the Member. In other words, a system of "silent copies" shall be avoided.

**10.2.** Officers shall not, without the consent of a Member, share any responses to requests for information, casework, advice or other information received from or given to a Member with any other Member, unless the Monitoring Officer considers this to be justified in the particular circumstances of the case, for example to comply with a legal obligation.

**10.3.** 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 in the name of a Member.

## **11. SUPPORT SERVICES TO MEMBERS**

**11.1.** Support to a Member shall be provided solely in order for the Member to fulfil his or her duties.

**11.2.** This support shall only be provided with the approval of the Chief Executive who shall be entitled to inspect any documents produced.

## **E2. Protocol on Mayor & Deputy Mayor Pre-Selection**

### **1. ELIGIBILITY**

- 1.1.** Other than in exceptional circumstances, the Mayor should have held the post of Deputy Mayor in the year preceding the Mayoral election.
- 1.2.** Where there are exceptional circumstances (where the Mayor has not been the Deputy Mayor) the election of the Mayor should be made on the same basis as that for the appointment of Deputy Mayor.
- 1.3.** A Member shall be considered eligible for nomination when he/she is the most Senior Member at the Council (as set out in the order of seniority by length of service of Members) who wishes to take up that office, has served for a minimum of six years and who under normal circumstances has not previously held that office. On becoming eligible he/she should be appointed to the position of Deputy Mayor (or Mayor and Deputy if there are exceptional circumstances).
- 1.4.** A Member can serve as Mayor more than once in exceptional circumstances, these being that there are no other Members who meet the eligibility criteria, or no other eligible Members who are prepared to stand. Where there is more than one Member who is eligible under these exceptional circumstances, priority will be given to the Member who has held the post of Mayor the least number of times. Where there remains more than one eligible Member, lots will be drawn.

### **2. PROCESS OF PRE-SELECTION**

- 2.1.** At the penultimate ordinary meeting of the Council of the Municipal Year the proposed Mayor and Deputy Mayor should usually be chosen.
- 2.2.** If, following discussions, there is more than one Member with the same seniority (ignoring ranking according to the time at which the Member was elected) wishing to be Deputy Mayor (or Mayor in exceptional circumstances), then the current Mayor shall draw lots and advise Members of the outcome to guide them when casting their votes.

### **3. SENIORITY**

- 3.1.** Members of the Council will rank in the following order of seniority at Civic functions:
  - 3.1.1. The Mayor;
  - 3.1.2. The Deputy Mayor;
  - 3.1.3. The Leader; and

- 3.1.4. Members, according to their date and time of election (those elected at the same time ranking according to alphabetical order).
- 3.2.** If a person after ceasing to be a Member is subsequently re-elected within four years, his or her seniority will be determined by the total length of service as a Member of the Council.

## **E3. Protocol on Honorary Aldermen**

### **1. INTRODUCTION**

- 1.1.** The Local Government Act 1972 gives principal councils the power to confer the title of 'Honorary Alderman' on persons who have, in the opinion of the Council, rendered eminent services to the Council as past members of that Council, but who are no longer members of the Council. The act does not specify how eminent services are defined, and this is left as a matter of local interpretation.
- 1.2.** The criteria to be used to select Honorary Aldermen for appointment at Maidstone Borough Council are:
  - 1.2.1. The title of Honorary Alderman can only be conferred to a past member of this authority.
  - 1.2.2. Honorary Aldermen must have served 16 years in total, in aggregate, on the Council. When aggregating terms, the same principle will be used when determining precedence as for the Mayoralty, i.e. if there is a break of not more than four years between terms the service can be aggregated.
  - 1.2.3. An Honorary Alderman must have demonstrated an exemplary contribution to the Borough during their time served as a Member.

### **2. APPOINTMENT OF HONORARY ALDERMAN**

- 2.1.** Appointments of Honorary Aldermen must take place at a Council meeting specially convened for the purpose. The meeting can occur on the same date of another Full Council meeting. The nomination will be proposed and seconded. Two thirds of the members present at the meeting must vote in favour of a resolution for the nominee to be appointed as an Honorary Alderman.
- 2.2.** An Honorary Alderman will be presented with a certificate confirming the title by the Mayor at the next Council meeting and will be given an opportunity to speak.
- 2.3.** The name of the Honorary Alderman will be placed on an honours board in the Town Hall. If more than one Honorary Alderman is appointed at the same time, the names on the board should be ordered by length of service. If more than one Honorary Alderman is appointed with the same length of service then they should be ordered alphabetically.
- 2.4.** Honorary Aldermen cannot be appointed posthumously.



### **3. RIGHTS & RESPONSIBILITIES OF HONORARY ALDERMAN**

**3.1.** The title of Honorary Alderman does not confer any special privileges or rights upon the appointee to speak or vote at Council meetings, beyond the rights and privileges already afforded to the public. Section 249 of the Local Government Act 1972 provides that: -

3.1.1. Whilst an Honorary Alderman may attend and take part in such civic ceremonies as the Council may from time to time decide, they not, as such, have the right:-

- (a) To attend meetings of the Council or a committee of the Council in any capacity other than as a member of the public; or
- (b) To receive any allowances or other payments as are payable to Members.

3.1.2. No Honorary Alderman shall, while serving as a Member, be entitled to be addressed as Honorary Alderman or to attend or take part in any civic ceremonies of the Council as an Honorary Alderman.

**3.2.** The only rights that are conferred to an Honorary Alderman by virtue of their appointment is to be invited to civic functions and events by invitation of the Council. The Council will decide which civic functions and events it is appropriate to invite Honorary Aldermen to. An Honorary Alderman has parity of status with a past Mayor and as such will be invited to the same civic functions and events.

**3.3.** The role of Honorary Alderman is an honorary one, but to the public an Honorary Alderman is perceived to be a representative of the Council. In taking up this role all Honorary Aldermen must agree and adhere to the protocol laid down by this Council. There are two key elements:

3.3.1. That the person becoming Alderman does so in the full knowledge that they are perceived to be representative of the civic element of the Council and must act to the highest standards.

3.3.2. In taking this role, the Alderman becomes apolitical in public; knowing that any views expressed may be interpreted as views of the Council. Aldermen are not to speak on behalf of the Council in any way whatever.

### **4. PAST MAYORS**

Past Mayors are not eligible to become Honorary Aldermen, as past Mayors are already invited to civic functions and events, already have their name on an honours board and are presented with a badge of office at the end of their mayoral year. As granting the title of Honorary

Alderman would not grant any additional privileges to past Mayors it is unnecessary for them to be both past Mayors and Honorary Aldermen.

## **5. REMOVAL OF TITLE OF HONORARY ALDERMAN**

- 5.1.** There may be occasions where, due to the past or future behaviour of individuals who have been appointed as Honorary Aldermen, the Council may wish to remove the title of Honorary Alderman from an individual in order to protect the reputation of the Council.
- 5.2.** Removal of the title of Honorary Alderman will follow the same process as appointment (proposed and seconded, and then a resolution of two thirds of those present must be passed). However, it may take place at any meeting of Full Council rather than a specially convened meeting.

**PART F - FINAL PROVISIONS**

**F1. Scheme of Allowances – To be Added**

**1. []**

**1.1. []**

1.1.1. []

# **GLOSSARY OF TERMS**

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
AtoI	Access to Information	Provisions inserted in Part VA Schedule 12(A) Local Government Act 1972 which enable Members to consider reports and information in private session (or Part II) when conducting local authority meetings or making decisions. There are numerous categories of "exempt" information, but they are also subject to a public interest test and "confidential" information. The Access to Information Procedure Rules are set out at Part 3.2 of the Constitution.
	Administration Political Groups	Those Political Groups with Members on the Executive
	Authority (or local authority)	A council or local authority; this includes bodies such as fire, police, and the National Park Authorities.
	Best Consideration	A requirement to obtain the highest value in money or money's worth when disposing of land (other than on a short tenancy) under land disposals powers (i.e., S123 Local Government Act 1972).
BV	Best Value	A duty to secure "continuous improvement in the way in which functions are exercised having regard to economy, efficiency and effectiveness"(Section 3(1) Local Government Act 1999). Best Value authorities should have regard to Government Guidance in a Circular.
	Budget Decision Meeting	<p>A meeting of the relevant body at which it —</p> <ul style="list-style-type: none"> <li>• makes a calculation (whether originally or by way of substitute) in accordance with any requirements of the Local Government Finance Act 1992; or</li> <li>• issues a precept under Chapter 4 of Part 1 of that Act</li> </ul>
	Call for Action	A process introduced by the government under the Local Government and Public Involvement in Health Act 2007, to strengthen the role of the ward councillor; to act on behalf of residents to resolve a local issue of concern, acting as a last resort for people who cannot get issues resolved through any other means.

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
CIPFA	Chartered Institute of Public Finance and Accountancy	CIPFA represents local authority Finance Officers and has a trading arm set up as a company called the Institute of Public Finance (IPF).
CFO	Chief Finance Officer	The person designated by the authority as the Officer responsible for the proper administration of the Council's financial affairs under Section 151 Local Government Act 1972 and Sections 114-115 Local Government Finance Act 1988, with duties to report to the Council in the event of unlawful expenditure or inability of the Council to cover its liabilities. This post attracts Statutory Protection.
	Clear Day	Excludes Saturdays and Sundays, Bank, statutory and Council holidays, the day on which notice is given, or a petition is presented, and the day of the meeting.
	Committee	Means a group of Members set up by the Council with terms of reference to decide certain matters or make recommendations in an advisory capacity.
	Community Strategy	A strategy which every local authority must prepare to promote wellbeing in their area under s.4 Local Government Act 2000.
	Confidential Information	Means information given to the Council under an obligation of confidence; and for the purpose of the Access to Information Procedure Rules in Part C of this Constitution information supplied by a Government Department on terms that forbid its disclosure or pursuant to a Court Order that prevents disclosure.
	Co-Opted Member	A Co-Opted Member is somebody who is appointed to a Committee or Sub-Committee who is not an elected Councillor. Generally speaking Co-Opted Members may only vote on advisory committees or pursuant to specific legislation, otherwise they are not entitled to a vote.
CMT	Corporate Management Team	Usually the Chief Executive, Directors and Heads of Service who meet at regular intervals.

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
	Council	A statutory corporation created by statute or royal charter; and meetings to which all of the Members are invited.
Cllr	Councillor	An elected councillor of a local authority, also known as a "member" of the Council.
DPA	Data Protection Act 2018	This sets out a number of Data Protection principles governing the use of personal data about individuals in computerised and manual systems. Data must only be processed in accordance with 8 Data Protection principles and must be disclosed following a request by an individual seeking access to their own information upon payment of a fee (usually £10), not otherwise unless permitted or required by law.
DLHC	Department for Levelling Up, Housing and Communities.	The Government Department responsible for the majority of decisions affecting local authorities.
DWP	Department for Work and Pensions	This government department helps to develop and deliver government policy on pensions, welfare and benefits matters and is also responsible for managing the State Pension.
	Development Plan	As set out in Section 38(6) of the Planning & Compulsory Purchase Act 2004, an authority's development plan consists of the relevant <i>Regional Spatial Strategy</i> and the <i>Development Plan Documents</i> contained within its <i>Local Development Framework</i> .
DPI	Disclosable Pecuniary Interest	Those financial and other interests that are specified by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, details of which are set out in a Schedule to the Regulations. Failure to declare such interests may be a criminal offence. The Schedule to the Regulations is reproduced at Annex 2 to the Members' Code of Conduct at 4.1 to this Constitution. A Disclosable Pecuniary Interest may be that of a Councillor or a spouse or civil partner with whom the Councillor is living.



<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
	Dispensation from Restrictions on Participating and Voting	The Monitoring Officer may, on written request by a Councillor with an interest, grant a dispensation allowing the Councillor to participate in discussions and/or vote on items of business on the agenda at committee meetings. The grounds for granting a dispensation are set out in paragraph 8(2) of the Councillors' Code of Conduct at 4.1 of this Constitution.
EMRO	Early Morning Alcohol Restriction Order	An Early Morning Alcohol Restricting Order (EMRO) is a power in the Licensing Act 2003 to enable licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 12 midnight and 6am, if considered appropriate for promotion of the licensing objectives.
	Exempt Information	Information exempt in accordance with Schedule 12A of the Local Government Act 1972
	Forward Plan	A document containing the upcoming Key Decisions and Other Material Decisions to be taken by the Executive.
	Functions & Responsibilities Regulations	The Local Authorities (Functions & Responsibilities) Regulations 2001 SI 2853
FoI or FoIA	Freedom of Information Act 2000	An Act which requires all local authorities to prepare a Scheme for the disclosure of information and which requires authorities to deal with requests for information irrespective of the purpose of the requestor. Whilst there are limited exemptions, only a small proportion are "absolute" and the other "qualified" exemptions are subject to a Public Interest test, meaning that the Council must balance the interests of keeping the information confidential with the public interest in disclosure. Further information is available from the Information Commissioner's website at: <a href="https://ico.org.uk/for-the-public/">https://ico.org.uk/for-the-public/</a>

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
	General Power of Competence	Power given to local authorities in Section 1, Localism Act 2011 to do anything that an individual may do, unless there is any prohibition or limitation on other powers to achieve the Council's plans.
HPS (or HoPS)	Head of Paid Service	The Chief Executive who is designated as Head of the Paid Service under the Local Government and Housing Act 1989. This post attracts Statutory Protection.
HRA	Housing Revenue Account	A separate account required in relation to the landlord costs of local authority housing.
HRA	Human Rights Act 1998	Implementing the European Convention on Human Rights in the UK.
JNC	Joint Negotiating Committee	Usually a Committee which offers a consultative forum between the local authority and the Trade Unions to discuss matters relating to local authority employment, consult about local policy changes and reviews of national Conditions of Service. There are different Joint Negotiating Committees for Chief Executives, Chief Officers and other local authority staff in each area.
JR	Judicial Review	A method of challenging local authority public law decisions through the high court if a Council exceeds its powers or acts irrationally or perversely. Private law decisions are not covered and any appeal process must usually be exhausted first.
	Late Night Alcohol Levy	Is a power conferred on licensing authorities by the Police Reform and Social Responsibility Act 2011 to charge a levy to persons licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the cost of policing the late-night economy. The levy is payable by the holder of any premises licence or club premises certificate in the authority's area, which authorises the sale or supply of alcohol after midnight and before 6am.

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
	Leader	The person appointed as Leader of the largest group on the authority or appointed by the Council as the Leader of the Council at a meeting of the Full Council.
	Leader of the Opposition	Means the Leader of the second largest political group on the Council.
LGA	Local Government Acts	Specific local government legislation with key dates including 1972, 2000 and 2003.
LGA	Local Government Association	A member organisation of most local authorities based in London.
	Local Government Ombudsman	The Commissioner for Local Administration investigates and decides upon complaints and disputes from people who feel aggrieved and who have suffered injustice. The decisions and recommendations of the Ombudsman have to be formally considered by the Council. This may involve recommendations for the payment of compensation and may require changes to practices and procedures. The role and powers are decided by Parliament under the LGA 1974.
LGPS	Local Government Pension Scheme	This is a statutory public service pension scheme for local government employees and employees of Admission Bodies and Resolution Bodies in England and Wales. It operates through around 100 Administering Authorities maintaining their own fund (or funds). It is governed by the Superannuation Act 1972 and various Regulations. For Maidstone Borough Council the LGPS is run by Kent County Council.
	Local Residents	"Local Residents" in this Constitution means people who reside work or own or operate a business in the Borough of Maidstone or who use its services or are affected by its decisions or services.
	Mayor	The Mayor is the person who chairs meetings of the Council and is the first citizen of the Borough (see Part A, 2).
	Member (or elected Member)	A Councillor, i.e. someone elected by the voters of a particular Ward onto the Council.

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
MO	Monitoring Officer	<p>The person designated by the Council under Section 5 Local Government and Housing Act 1989 as the Council’s Monitoring Officer. This post attracts Statutory Protection. He/she may appoint a Deputy who is authorised to act in his or her absence or when otherwise unable to act, or to perform specific functions under the Local Government Act 2000. The Monitoring Officer has an obligation to report to Full Council where there is any proposal, decision or omission by the authority or any Officer which has or is likely to give rise to any contravention of an enactment or rule of law. The Monitoring Officer also has a range of responsibilities under the Local Government Act 2000 dealing with the ethical framework for Councillor conduct, the declaration of interests for decision making and Council Constitutions.</p>
	Non-Administration Political Groups	<p>A political group without a member on the executive</p>
	Nuisance	<p>“Serious nuisance” shall mean conduct or behaviour that causes a significant nuisance or annoyance to, or has a detrimental effect, of a persistent or continuing nature, on the quality of life of Local Residents</p>
OSI	Other Significant Interest	<p>An interest, other than a Disclosable Pecuniary Interest, or an interest in an authority function (housing, SSP, benefits etc.) which:</p> <p>May reasonably be regarded as affecting the financial position of a Member and/or an Associated Person to a greater extent than the majority of:</p> <p>Other Council Taxpayers, rate payers or inhabitants of the electoral division or ward affected by the decision; or of the Council's area generally; or</p> <p>Relates to the determination of an application made by a Member alone or jointly, for any approval, consent, licence, permission or registration, or that of an associated person; and</p> <p>where in either case, a member of the public, with knowledge of the relevant facts would reasonably</p>

ABB.	EXPRESSION	DESCRIPTION
		<p>regard the interest as being so significant that it is likely to prejudice a Member's judgement of the public interest. An Associated Person for these purposes is</p> <p>a family member or any other person 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</p> <p>any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or</p> <p>any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or</p> <p>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</p> <p>any body in respect of which you are in a position of general control or management:</p> <p>exercising functions of a public nature; or</p> <p>directed to charitable purposes; or</p> <p>one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).</p>
	Procedure Rule	A procedural rule or series of rules which the Council adopts to cover procedural, financial, procurement or staffing matters. These are contained in Part C of the Council's Constitution, which the Council is obliged to have under the Local Government Act 2000.
PPP	Public Private Partnership	Usually a partnership involving a private sector organisation and a public sector organisation such as a local authority/police authority with the objective of delivering local authority functions.
	Register of Members' Interests	The Council's Register of Disclosable Pecuniary Interests and Other Significant Interests maintained by the Monitoring Officer pursuant to Section 29 Localism Act 2011.

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
	Senior Officer	The Chief Executive, Director, Monitoring Officer or Head of Service.
	Sub-Committee	Means a group of Members created by a Council or Committee with terms of reference to decide certain matters or make recommendations in an advisory capacity. For the purposes of this Constitution Policy Advisory Committees are not sub-committees.
	Vires	Local authorities are statutory corporations and therefore have to act within the powers designated by an Act of Parliament; or something that can be inferred from the language of an Act of Parliament or is calculated to facilitate or conduce or incidental to an authority's functions (under section 111 LGA 1972). Not only does an authority have to identify a power it must then exercise that power properly, i.e. for proper purposes taking into account all relevant considerations etc. in order to successfully avoid an ultra vires challenge (i.e. outside the powers), by way of judicial review.
	Ward	The electoral area for which a Member is elected.
	Working Day	Excludes Saturdays and Sundays, Bank, statutory and Council holidays.