



# AGENDA

## EXTRAORDINARY COUNCIL MEETING

Date: Wednesday, 27 April 2022

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT\*

Quorum = 16

Pages

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### Information for the Public

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The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park; and

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

## 2. Apologies

## 3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary Interests (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

**Advice to Members:** If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

4. Election of Leader
5. Community Governance Reviews
6. Committee System - Revised Constitution

## **Issued on Thursday, 14 April 2022**

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**Chief Executive, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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<b>Council</b>	
<b>Meeting Date</b>	27 April 2022
<b>Report Title</b>	<b>Change of governance model: Updates to Parts 1 to 3 of the constitution</b>
<b>Cabinet Member</b>	Cllr Baldock – Deputy Leader (Cabinet Member for Constitutional Reform)
<b>SMT Lead</b>	David Clifford – Head of Policy, Governance and Customer Services (Monitoring Officer)
<b>Head of Service</b>	
<b>Lead Officer</b>	
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<p>Council is asked to:</p> <ol style="list-style-type: none"> <li>1. <b>Adopt</b> the text at Appendices I to X as Parts 1 to 3 of the updated constitution, to come into effect at annual council in May 2022.</li> <li>2. <b>Give delegated authority</b> to the monitoring officer, in consultation with the council leader, to make minor changes to the constitution aimed at rectifying typographical, formatting or paragraph numbering errors, or to resolve any residual references to the executive model.</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 Following council consideration of Parts 1 and 2 of the updated constitution at its March meeting, this report updates council on the work of the cross-party constitution working group since March, and asks council to adopt the text at Appendices I to X as Parts 1 to 3 of the updated constitution, giving effect to the decision to move to the committee system from May.

## 2 Background

- 2.1 Council voted unanimously in October to move to a committee system of governance from the 2022/23 municipal year. At the same meeting, council requested the cross-party working group which had been established to consider this governance change to continue its work in overseeing the detail of the new governance model. The working group comprises Cllrs Baldock (chair), Bonney, Darby, Ingleton, Martin, Simmons, Truelove and Valentine.
- 2.2 A guiding principle for the working group has been for the updated constitution to be as concise and as coherent as possible. Among other things, this implies that

all the rules governing a particular meeting or process should be located in the same place – at least to the extent that this is possible. In practice, this has meant that in addition to making substantive changes to the way meetings and processes work as a consequence of the new governance model, the working group has also agreed to move some elements of the constitution around within the document, without materially changing what those elements say.

- 2.3 As the April extraordinary council meeting will be the last council before the new constitution comes into effect in May, it is necessary that the version of the constitution at Appendices I to X is adopted at this juncture in order that lawful decision-making can continue into the new municipal year. However, this does not mean that further revisions will not be possible.
- 2.4 The working group has established a list of areas where further refinement and improvement of the constitution may be desirable, and has agreed to turn its attention to those once the more urgent work of incorporating the governance change is completed. In addition to this, in regard specifically to the new committee system, the intention is for the working group to review the effectiveness of these arrangements after the first two cycles of committee meetings in the autumn. Any further changes proposed by the working group will be brought to council in due course.

### **3 Proposals**

- 3.1 The text at Appendices I to X is intended to replace Parts 1 to 4 of the current constitution as the new Parts 1 to 3. The working group gave very detailed consideration to this text at its meetings on 18 March, 4 April and 12 April, and Parts 1 and 2 (Appendices I and II) were agreed by council, with some slight amends which have now been incorporated, at its meeting on 30 March. This includes clarification that both the policy and resources committee and other service committees can establish working groups as well as formal subcommittees.
- 3.2 Other points raised at council in March included a possible need to review officer delegations and a question about whether a subcommittee of the housing and health committee was the best format for the Swale Rainbow Homes shareholder representation panel.
- 3.3 The working group's list of areas for further refinement includes the scheme of officer delegation, which could probably be made more concise without materially affecting its operation, and this is likely to be picked up early in the new municipal year. At its 4 April meeting, the working group further considered the shareholder representation panel and concluded that on balance a subcommittee of the housing and health committee remained the most workable arrangement.
- 3.4 The remaining sections of the updated constitution which council has not previously seen comprise the new Part 3 (previously Part 4), consisting of the council and committee procedure rules and a series of thematic procedure rules covering how specific functions are to be carried out. As with the changes to

Parts 1 and 2, the proposed amendments to Part 3 are largely in consequence of the change to the governance model, and as would be expected, this change has necessitated fewer amendments to these procedure rules than was the case for the new Part 2, which covers committees' responsibility for functions.

- 3.5 In addition to these consequential amends, the working group has taken the opportunity to rationalise the order in which rules appear in a number of sections to make those sections more immediately comprehensible, but has also proposed a small number of more significant amendments, not all of which are strictly consequential on the change of governance model. These are outlined in the paragraphs below. The working group also agreed to standardise the use of 'chair' rather than 'chairman' and 'they' rather than 'she', 'he', or 'he/she' throughout the document.

### ***Council and committee procedure rules (Appendices III, IV and V)***

- 3.6 As members would expect, the change of governance model does not necessitate far-reaching amendments to the council procedure rules, and the proposals of the working group set out in the appendices and below do not generally include anything which would materially affect the way council and committee meetings operate. However, some changes are proposed in connection with the principles of concision, coherence and non-duplication.
- 3.7 Most of the rules contained in the current council procedure rules also apply to committees, but the rule which states this is rather buried towards the end of the document. In line with the coherence principle and the working group's objective to ensure that as far as possible all the rules governing a meeting or a function are to be found in the same part of the constitution, the applicability of each rule to committees has been made more explicit (by means of the introductory note at 3.1.0 and the use of asterisks to denote rules which only apply to council), and a number of previously separate sets of procedure rules have either been incorporated into what are now the council and committee procedure rules or appended to them as an annex.
- 3.8 This is the case for the public participation procedure rules (previously Part 4.9 of the constitution), which have been incorporated into the main body of the council and committee procedure rules. The petitions scheme, which was formerly part of the public participation rules, has become an appendix to the main rules, and is on the working group's list of areas for possible further refinement in the new municipal year. While the council is no longer under a legal obligation to have a petitions scheme, it probably makes sense to retain one, but the current scheme is arguably more complicated than it needs to be.
- 3.9 The joint transportation board procedure rules have also become an appendix to the council and committee procedure rules. These are shared between SBC and KCC, and cannot be amended without agreement from both councils. With this in mind, the only change which has been made is to replace the reference in Rule 8.2 to the Swale executive with a reference to the relevant Swale service

committee (or its chair). The KCC monitoring officer has been advised of this unavoidable change.

- 3.10 The final appendix to the council and committee procedure rules is the set of rules governing standards hearings by the standards committee or its subcommittee. These are unchanged from the current constitution, and are therefore not reproduced in the appendices to this report, but council will want to note the work currently being undertaken by the standards working group on updating the code of conduct, which may result in changes being proposed on these procedure rules. More information about this work is provided in paragraph 3.23 below.
- 3.11 The only substantive change to the way in which the council and committee procedure rules work is that Rule 3.1.14.1 has been amended so that once a council agenda has the maximum two motions on it, no further motions can be submitted to the proper officer until the close of that council meeting. These further motions would formerly have been added to future council agendas. This change, which is intended to prevent a situation in which one member or one group has filled the available slots for motions for any number of upcoming council meetings, was unanimously supported by the working group.

#### ***Access to information procedure rules (Appendix VI)***

- 3.12 The access to information rules at Appendix VI have been updated with amendments consequential on the change of governance model, which have included the deletion of long sections covering cabinet and scrutiny. At its meeting on 12 April the working group discussed the remaining rules in some detail but eventually decided not to propose any further changes.

#### ***Budget and policy framework procedure rules (Appendix VII)***

- 3.13 The primary purpose of the budget and policy framework procedure rules has previously been to ensure that council defines a clear budget and policy framework within which the cabinet can take executive decisions, with anything falling outside that framework needing to be referred back to council.
- 3.14 Something akin to this needs to be retained in the committee system, and the rules at Appendix III have therefore been updated with amendments consequential on the change of governance model, with references to cabinet being replaced with references to policy and resources committee or service committees as appropriate, and sections which were largely or exclusively about cabinet and scrutiny being simplified or deleted as appropriate.
- 3.15 In line with the principles of concision, coherence and non-duplication which the working group has tried to adopt throughout the constitution review process, a section on virement has been incorporated into the financial procedure rules, with a reference to those rules being added into the budget and policy framework rules in its place.



### ***Officer employment procedure rules (Appendix VIII)***

- 3.16 The officer employment procedure rules cover both the recruitment and appointment of senior officers and the disciplinary processes which apply to statutory officers. Members will recall from the discussion of Part 2 of the updated constitution at council on 30 March that two new subcommittees of the policy and resources committee are established in Section 2.2 of the updated constitution (an investigation and disciplinary subcommittee and a statutory officer disciplinary appeals subcommittee), in addition to the existing appointments subcommittee.
- 3.17 This is to take account of recent changes to the legal provisions on senior officer disciplinary matters, and these changes are also reflected in the second half of the updated procedure rules at Appendix VIII. These describe the new procedures which the new subcommittees will need to adopt, and are a reflection of the up-to-date legal position. This does mark a material change from the current rules which is not consequential on the change of governance model, but it is one which legally the council has little choice but to adopt.
- 3.18 The first half of the officer employment rules at Appendix VIII, dealing with the recruitment and appointment primarily of senior officers, remains robust and has therefore not undergone significant change. However, the working group has proposed the reordering of some of the clauses as a means of rationalising the way the rules work in conjunction with each other and of making them more readily understandable to members and officers seeking to apply them.

### ***Financial procedure rules (Appendix IX)***

- 3.19 The financial regulations at Appendix IX have been reviewed not only by the working group but also the director of resources, who attended the working group meeting on 12 April. In addition to the usual unavoidable amendments in consequence of the change of governance model, the working group agreed to amend Section A3 of the appendix to these regulations, covering virements.
- 3.20 Members will recall that the section on virements deals with transfers of funds from one budget line to another budget line, either within a single manager's budget or across budgets held by different managers. Virements above £40,000 (revenue) or £50,000 (capital) can currently be approved by the relevant cabinet member. In the absence of individual member decision-making in the new system, the only body which can take the place of the cabinet member is the policy and resources committee.
- 3.21 The working group agreed that leaving the limits on virements which can be approved without a committee decision at these relatively low levels could present real issues in cases where decisions are needed quickly, and have therefore proposed increasing the limit at which the chief executive can take such decisions (with the approval of the director of resources) to £100,000 for both revenue and capital.

### ***Contract standing orders (Appendix X)***

- 3.22 The contract standing orders underwent a thorough review in late 2020, so the working group has made only the most unavoidable updates in consequence of the change of governance model. This has effectively been limited to the replacement of references to cabinet members with references to chairs of relevant committees.

### ***New Part 4 (old Part 5) – codes of conduct etc***

- 3.23 The member and officer codes of conduct which, together with associated guidance notes, comprise Part 5 of the current constitution have not been reviewed by the constitution working group, as the change of governance model does not in itself require any amendments to these sections.
- 3.24 However, council will wish to note that the standards working group (a cross-party working group of the standards committee) is currently working on an updated member code of conduct and a modern member-officer protocol. The intention at this stage is to bring these via the policy and resources committee to council for adoption in the autumn. This work may also involve a review of the standards hearing procedure rules (as referenced in paragraph 3.10 above), which would need to be a piece of work involving both the working groups.

### ***Recommendations***

- 3.25 Council is now ***recommended*** to adopt the text at Appendices I to X as Parts 1 to 3 of the updated constitution, to come into effect at annual council in May 2022.
- 3.26 Council is further ***recommended*** to give delegated authority to the monitoring officer, in consultation with the council leader, to make minor changes to the constitution aimed at rectifying typographical, formatting or paragraph numbering errors, or to resolve any residual references to the executive model.

## **4 Alternative Options**

- 4.1 Having made the decision to move to a committee system of governance, the council needs to put in place service committees to take on the work of the current executive. However, there is a good deal of flexibility in terms of the number and remit of these committees, so there is a range of potential alternative options. Council agreed in October that the cross-party working group should be the body to develop proposals for the detailed working of the new system, and the constitutional text at Appendices I to X reflects both the group's considered preferences and the council decisions of February and March 2022.

## **5 Consultation Undertaken or Proposed**

- 5.1 In addition to the cross-party member working group, an officer group has also been established to work on the introduction of the new system, and that group has been consulted on the content of this report. The council fulfilled its legal

obligation shortly after the October decision to move to a committee system to bring that decision to the attention of the public by means of a newspaper notice.

## 6 Implications

Issue	Implications
Corporate Plan	The updated constitution is an expression of the council's fourth corporate plan priority, to 'renew local democracy and make the council fit for the future'.
Financial, Resource and Property	No implications identified at this stage. In the new model, the policy and resources committee will propose an annual budget to council in the way that cabinet does now, and once adopted all service committees will spend within the confines of that budget, again as cabinet does now.
Legal, Statutory and Procurement	The council has engaged a consultant corporate governance solicitor to assist with the redrafting of the constitution, and he is confident that the text at Appendices I to X represents a modern and legally robust approach to both the form and substance of a council constitution.
Crime and Disorder	No implications identified at this stage. Crime and disorder matters fall under the remit of the community committee in the structure proposed here.
Environment and Climate/Ecological Emergency	No implications identified at this stage. Environmental, climate and ecological matters fall under the remit of the environment committee in the structure proposed here.
Health and Wellbeing	No implications identified at this stage. Health and wellbeing matters fall under the remit of the housing and health committee in the structure proposed here.
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified at this stage. Safeguarding matters fall under the remit of the housing and health committee in the structure proposed here.
Risk Management and Health and Safety	No implications identified at this stage.
Equality and Diversity	No implications identified at this stage.
Privacy and Data Protection	No implications identified at this stage.

## 7 Appendices

- Appendix I: Updated text of Parts 1 and 2 of the constitution (introduction and responsibility for functions)
- Appendix II: Updated text of Part 2.8 (scheme of officer delegations)
- Appendix III: Updated text of Part 3.1 (council and committee procedure rules)
- Appendix IV: Updated text of Part 3.1 Appendix 1 (petitions scheme)
- Appendix V: Updated text of Part 3.1 Appendix 2 (joint transportation board procedure rules)
- Appendix VI: Updated text of Part 3.2 (access to information procedure rules)
- Appendix VII: Updated text of Part 3.3 (budget and policy framework procedure rules)
- Appendix VIII: Updated text of Part 3.4 (officer employment procedure rules)
- Appendix IX: Updated text of Part 3.5 (financial procedure rules)
- Appendix X: Updated text of Part 3.6 (contract standing orders)

## 8 Background Papers

- [Council report](#) from October 2021 regarding the decision to make a formal change to the council's governance model.
- [Council report](#) from March 2022 regarding the updates to Parts 1 and 2.
- [General purposes committee report](#) from December 2020 regarding the review of the contract standing orders. These recommendations were subsequently agreed by council.
- Current [council constitution](#).

## PART 1 - SUMMARY AND EXPLANATION

### 1.1 The Constitution

1.1.1. This document is Swale Borough Council's Constitution. It sets out how the Council operates, how decisions are made and the procedures which need to be followed. The Council will exercise all its powers and duties in accordance with the law and this Constitution.

#### 1.2.1 Purpose

1.2.1 The purpose of the Constitution is to:

- a) enable the Council to provide clear leadership to the community in partnership with the public, businesses and other organisations;
- b) support the active involvement of citizens in the process of local authority decision- making;
- c) help Councillors represent their constituents more effectively;
- d) enable decisions to be taken efficiently and effectively;
- e) create a powerful and effective means of holding decision-makers to public account;
- f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- h) provide a means of improving the delivery of services to the community.

### 1.3 How the Council operates

1.3.1 The Council is composed of 47 Members, otherwise called Councillors and elections are held every four years. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn-up by the Local Government Boundary Commission for England. Councillors are democratically accountable to residents of their ward.

- 1.3.2 Only registered voters of the Borough or those living or working or owning land or premises in Swale will be eligible to hold the office of Councillor.
- 1.3.3 The overriding duty of Councillors is to the whole community but they have a special duty to their constituents, including those who did not vote for them.
- 1.3.4 All Councillors will:
- a) represent their communities and bring their views into the Council's decision making process, i.e. become the advocate of and for their communities;
  - b) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - c) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - d) balance different interests identified within the ward and represent the ward as a whole;
  - e) be involved in decision-making;
  - f) be available to represent the Council on other bodies; and
  - g) maintain the highest standards of conduct and ethics.
- 1.3.5 Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- 1.3.6 Councillors will not make public information which is confidential or exempt without the consent of the Council, or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it. For these purposes, "confidential" and "exempt" information are defined in the Procedural Rules in Part 3.2 of this Constitution.
- 1.3.7 Councillors have to agree to follow a Code of Conduct set out in Part 4 of this Constitution to ensure high standards in the way they undertake their duties. The Standards Committee is responsible for matters relating to the Code of Conduct.
- 1.3.8 Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 5 of this Constitution. The Scheme is approved by Full Council following advice from an Independent Members' Allowances Panel.

## **1.4 The Committee System**

1.4.1 The Council operates a 'committee system' form of governance. This means that decisions are made by Full Council or delegated to Committees, Subcommittees and Officers. Full Council is the meeting of all 47 Councillors and Full Council is ultimately responsible for the exercise of all functions and certain matters are expressly reserved to be taken by a meeting of the Full Council.

## **1.5 How Decisions Are Made**

1.5.1 This part of the Constitution explains who takes decisions and sets out the responsibilities of the Council, Committees, Subcommittees and officers.

1.5.2 All Councillors meet together a number of times each year as the Full Council. The main role of Full Council meetings is to decide the Council's overall policies and set the budget each year. Further details are set out in Part 3.3 of the Constitution.

1.5.3 Full Council elects a Mayor as Chair of the Full Council meeting and who performs the Council's civic role and represents the Council in the community. The Mayor is the representative of the Crown in the Borough and as such is the First Citizen of the Borough. They are the principal ambassador of the council. The Mayoralty cannot be used for political purposes. The Full Council also elects a Deputy Mayor who will deputise for the Mayor when they are unavailable or absent.

1.5.4 Meetings of the Full Council will generally be open for the public to attend except where exempt or confidential matters are being discussed.

1.5.5 There are three different types of Full Council meeting:

- a) The Annual Meeting of the Council;
- b) Ordinary meetings; and
- c) Extraordinary meetings, which will be called as and when required in accordance with the Council Procedure Rules.

1.5.6 The Council will issue and keep up-to-date a record of what part of the Council or individual has responsibility and for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 2 of this Constitution.

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

- a) due consultation and the taking of professional advice from officers;

- b) respect for human rights;
- c) a presumption in favour of openness;
- d) clarity of aims and desired outcomes;
- e) due regard to the Public Sector Equality Duty; and
- f) due regard for the individuals and communities served by the Council.

## **1.6 Committees**

- 1.6.1 Whilst certain functions are reserved to the Council, the Council can delegate many of its functions to a Committee, a Subcommittee, a joint Committee or an Officer. These are set out in Part 2 of the Constitution. Part 2 of the Constitution also sets out the responsibilities for the Council's functions which are not the responsibility of the Full Council.
- 1.6.2 The Committee system consists of a number of service-based and other committees taking decisions under their terms of reference which are agreed by Full Council and set out at Part 2 of this Constitution.

## **1.7 The Council's Staff**

- 1.7.1 The Council has people working for it (called 'Officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A structure chart is attached as Appendix 1 to this constitution.

## **1.8 Finance, Contracts and Legal Matters**

- 1.8.1 The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules as set out in Part 3.8 of this Constitution.
- 1.8.2 Every contract made by the Council will comply with the Contract Standing Orders as set out in Part 3.9 of this Constitution.
- 1.8.3 The Directors/Head of Legal are authorised to institute, defend or participate in and settle any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or is in accordance with Council policy or in any case where they consider that such actions are necessary to protect or pursue the Council's interests. If the action is not required to give effect to a decision or policy of Council the Director/Head of Legal will consult with the Chair of Policy and Resources or Vice-Chair in their absence.



- 1.8.4 Where any documents are 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 them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.
- 1.8.5 The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal. A decision of the Council, or any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Partnership should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Partnership or some other person authorised by them.

## **1.9 Review and Publication of the Constitution**

- 1.9.1 This Constitution will be kept under review by the Monitoring Officer.
- 1.9.2 The Proper Officer will give a printed copy or summary of this Constitution to each Member of the authority upon delivery to them of that individual's Declaration of Acceptance of Office on the Member first being elected to the Council, and advise Members of any changes.
- 1.9.3 The Proper Officer will ensure that copies are available for inspection at the Council offices. The Constitution will also be available to view on the Council's website. If requested, hard copies will be made available on payment of a reasonable fee.
- 1.9.4 The Proper Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

## **PART 2 – RESPONSIBILITY FOR FUNCTIONS**

### **2.0 Introduction**

The Local Government Act 1972 (as amended) sets out the arrangements authorities can make for the discharge of their functions. Authorities may discharge their functions through Committees, Subcommittees, etc. There is no power to delegate Council functions to an individual Member, but powers can be delegated to an Officer in consultation with a Member.

### **2.1 Functions of Full Council**

2.1.1 The following functions are the responsibility of the Full Council and will be discharged by the Full Council unless specifically delegated to another Committee, Subcommittee, body or Officer elsewhere in this Constitution:

- a) to adopt and approve the budget and any amendments to it which cannot be made by other bodies pursuant to the Financial Regulations;
- b) to adopt and amend any policies reserved to Full Council by law or this constitution;
- c) to adopt and amend the Constitution;;
- d) to appoint the Mayor and Deputy Mayor;
- e) to elect the non-executive Leader of the Council;
- f) to make appointments to Committees;
- g) to make appointments to outside bodies;
- h) to nominate directors of any companies in which the Council has shares or owns wholly or partly, where the Council has a right to nominate directors
- i) to change the name of the area;
- j) to confer the title of Honorary Alderman/Alderwoman or Freeman of the Borough;
- k) to adopt the Codes of Conduct for Members and Officers;
- l) to adopt a Members' Allowances Scheme, after considering the report of the Independent Members' Allowances Panel;
- m) to appoint or dismiss the Head of Paid Service and Returning Officer, the Monitoring Officer or the Section 151 Officer;

- n) to resolve any matters requiring Member involvement, relating to local elections, electoral registration, revisions of electoral boundaries, orders in respect of parishes and related matters pertaining to the Borough or Parish Councils;
- o) to make, amend, revoke, re-enact or adopt bylaws and promote or oppose the making of local legislation or personal Bills; and
- p) all other matters which, by law, must be reserved to Council.

## **2.2 Committees of the Council**

### **2.2.1 Policy and Resources Committee**

#### **Membership and functions of the Policy and Resources Committee**

2.2.1.1 The Policy and Resources Committee shall be comprised of 15 members of the Council.

2.2.1.2 The functions of the Committee are:

- i. to propose an annual revenue budget, capital budget, medium-term financial plan, and schedule of fees and charges to Council;
- ii. to coordinate the development of the Council's strategy and policy across service committees, and to adopt strategies and policies, where appropriate based on proposals from other service committees;
- iii. to propose to Council the strategies and policies the adoption of which is reserved to Council;
- iv. to maintain strategic oversight of all Council services, including oversight of resources, performance and risks;
- v. to exercise and delegate authority on behalf of the Council over all non-regulatory matters falling within the Committee's area of responsibility;
- vi. to exercise and delegate authority on behalf of the Council over all non-regulatory matters which fall within the area of responsibility of multiple service committees, or to determine which service committee should exercise or delegate such authority;
- vii. to commission, procure and manage external contractors on matters falling within the Committee's area of responsibility, and to maintain strategic oversight of the Council's commissioning and procurement processes;
- viii. to oversee the Council's relationships with partner organisations, and involvement in formal and informal partnerships, in matters falling within the committee's area of responsibility, including strategic relationships with government and Kent County Council;

- ix. to receive, and optionally to give effect to, recommendations from other Service Committees and from Subcommittees of the Policy and Resources Committee; and
- x. To consider amendments to the Constitution and to make recommendations on amendments or changes to Full Council.

2.2.1.3 The areas of responsibility of the Policy and Resources Committee are:

- i. corporate strategy and corporate plan;
- ii. development of annual budget and medium-term financial plan;
- iii. overall budget management;
- iv. overall risk management;
- v. overall performance management;
- vi. organisational health and safety;
- vii. customer services, including oversight of service-related complaint handling;
- viii. communications including website;
- ix. transformation and digitisation;
- x. commissioning and procurement systems and processes;
- xi. revenues and benefits, including council tax collection and council tax support;
- xii. corporate services including all Mid-Kent Services functions;
- xiii. cemeteries;
- xiv. members' and officers' learning and development;
- xv. equality and diversity;
- xvi. resilience, including emergency planning and business continuity; and
- xvii. all matters relating to the Council's responsibilities as an employer.

### **Subcommittees and Working Groups**

2.2.1.4 The Policy and Resources Committee may establish such subcommittees and/or working groups as it requires and may set the terms of reference and membership of those subcommittees and working groups. It shall also have the following subcommittees each comprised of 7 members of the Committee who have received appropriate training on the conducting of hearings and employment:

### **Appointments Subcommittee**

2.2.1.5 The functions of the Appointments Subcommittee shall be to:

- i. agree the appointments of Directors of the Council/Shared Services; and
- ii. make recommendations to Full Council on the appointments of the Head of Paid Service, Monitoring Officer and Section 151 Officer.

### **Investigation and Disciplinary Subcommittee**

2.2.1.6 The function of this Subcommittee shall be to consider any disciplinary action against one of the Council's statutory officers, the Head of Paid Service, Monitoring Officer or the section 151 Officer. The powers of the Subcommittee shall include, in accordance with the Employment Procedure Rules to;

- i. suspend a statutory officer;
- ii. appoint an investigating officer to carry out a disciplinary investigation in respect of a statutory officer;
- iii. conduct a disciplinary hearing;
- iv. recommend to Council the dismissal of a statutory officer; and
- v. determine disciplinary action short of dismissal in respect of a statutory officer.

### **Statutory Officers Disciplinary Appeals Subcommittee**

2.2.1.7 The function of this Subcommittee shall be to hear any disciplinary appeals brought by a statutory officers on any disciplinary sanction short of dismissal. No member may sit on the Appeals Subcommittee on a case which has been considered by them as a member of the Investigation and Disciplinary Subcommittee.

### **Planning and Transportation Policy Working Group**

2.2.1.8 The Policy and Resources Committee shall establish a working group to make recommendations to it on the following areas:

- i. The development of planning policy including policies forming the local plan for recommendation to Council;
- ii. Section 106 and community infrastructure levy;
- iii. building and development control;
- iv. transport; and
- iv land charges.

## **2.3 Service Committees**

### **2.3.1 Membership and functions of all service committees**

2.3.1.1 All service committees shall be comprised of 15 members of the Council.

2.3.1.2 All of the service committees shall exercise the following functions within their areas of responsibility:

- i. to exercise and delegate authority on behalf of the Council over all non-regulatory matters falling wholly within the committee's area of responsibility;
- ii. to provide strategic oversight of Council services falling within the committee's area of responsibility, including oversight of resources and performance;
- iii. to commission, procure and manage external contractors on matters falling within the committee's area of responsibility;
- iv. to oversee Council relationships with partner organisations, and involvement in formal and informal partnerships, in matters falling within the committee's area of responsibility;
- v. to make recommendations to the Policy and Resources Committee on policies, strategies, budgets, fees and charges concerning services and other matters falling within the committee's area of responsibility; and
- vi. to appoint and oversee the work of any subcommittees.

**2.3.2 The areas of responsibility of the Community Committee are:**

- i. inclusivity and tackling disadvantage;
- ii. crime, disorder and antisocial behaviour;
- iii. CCTV;
- iv. culture
- v. leisure and sport
- vi. play areas and outdoor fitness equipment
- vii. voluntary and community sector;
- viii. liaison with town and parish councils;
- ix. parking;
- x. heritage and conservation, including closed churchyards and
- xi. to act as the Council's crime and disorder (overview and scrutiny) committee for the purposes of and with the powers set out in the Police and Justice Act 2006, the Local Government and Public Involvement in Health Act 2007 and any regulations made under those Acts.

**2.3.3 The areas of responsibility of the Environment Committee are:**

- i. refuse collection and recycling;
- ii. street cleansing;
- iii. climate and ecological emergency;

- iv. environmental response, including fly-tipping, contaminated land, animal welfare, pollution control, littering and illegal encampments;
- v. environmental health, including management of public health and safety risks;
- vi. air quality;
- vii. green spaces, open spaces and grounds maintenance;
- viii. flooding, sea defences and coastal protection;
- ix. active travel; and
- x. public conveniences.

**2.3.4 The areas of responsibility of the Housing and Health Committee are:**

- i. housing advice, homelessness prevention and housing register;
- ii. affordable and social housing;
- iii. disabled facilities grants, home improvements and Staying Put;
- iv. empty dwellings;
- v. private-sector housing support and enforcement;
- vi. health inequalities;
- vii. liaison with public health, health providers and adult social care;
- viii. children and young people, including liaison with children's services; and
- ix. child and vulnerable adult safeguarding.

**2.3.5 The areas of responsibility of the Regeneration and Property Committee are:**

- i. Regeneration;
- ii. economic development;
- iii. town centres and markets;
- iv. visitor economy;
- v. property asset management, including beach huts;
- vi. learning and skills; and
- vii. sea fronts, harbours and quays.

**2.3.6 Subcommittees and Working Groups**

2.3.6.1 Service committees may set up subcommittees and/or working groups. The subcommittees will have decision making powers where these are delegated to them by the Committee. The subcommittees may make recommendations to the whole committee on particular elements of the area of responsibility of the committee.

2.3.6.2 The Housing and Health Committee shall have a Subcommittee called the Swale Rainbow Homes Shareholder Representation Subcommittee which shall be made up of members who have received appropriate training. This shall make decisions in respect of the Council's role as shareholder of Swale Rainbow Homes.

2.3.6.3 Any Subcommittee or Working Group must report to the Service Committee and its membership will be set by the Service Committee. The membership of a Subcommittee must be drawn from the parent committee but the membership of a working group need not do. The political balance rules and access to information rules will not apply to any working groups but they will operate in an open and transparent way and membership will be drawn from members who are from different political groups on the Council. Where a working group is to be supported by officers the Chief Executive will be consulted before it is established.

## **2.4 Other Committees**

### **2.4.1 Audit Committee**

2.4.1.1 The Audit Committee shall comprise of 9 members of the Council.

2.4.1.2 The purpose of the Audit Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority's financial and nonfinancial 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.

2.4.1.3 The Audit Committee has responsibility for:

#### Audit Activity

- i. To consider the Head of Audit Partnership's annual report and opinion, and a summary of audit activity (actual and proposed) and the level of assurance it can give over the council's governance arrangements, and any report from Internal Audit on agreed recommendations not implemented within a reasonable timescale;
- ii. To consider reports dealing with the management and performance of Internal Audit Services, including consideration and endorsement of the 3 year Strategic Internal Audit Plan;
- iii. To consider the external auditor's annual letter, the report to those charged with governance, and any specific reports as agreed with the external auditor;



- iv. To oversee the appointment of the Council's external auditor, comment on the scope and depth of external audit work and ensure that it gives value for money;

#### Regulatory Framework

- v. To review any issue referred to it by the Chief Executive or the Director or any Council body;
- vi. To monitor the effective development and operation of risk management and corporate governance in the Council;
- vii. To monitor council policies on 'Whistleblowing' and the 'Antifraud and Corruption Strategy';
- viii. To consider and comment on the authority's Annual Governance Statement and agree its adoption as part of the
- ix. approval of the annual accounts;
- x. To consider the Council's arrangements for governance and whether adequate safeguards are in place to secure compliance with its own and other published standards and controls and best practice;

#### Accounts

- xi. To review and approve the annual statement of accounts. Specifically, to consider whether there are concerns arising from the financial statement or from the audit that need to be brought to the attention of the Policy and Resources Committee or the Council;
- xii. To consider the external auditor's report to those charged with governance on issues from the audit of the accounts;
- xiii. To be responsible for ensuring effective scrutiny of the treasury management strategy and policies (Note: Council is responsible for adopting the Treasury Management strategy and policy); and

#### Reporting

- xiv. To present an annual report to the Council providing assurance that the responsibilities of the Committee have been met.

### **2.4.2 Urgent Decisions Committee**

2.4.2.1 The Committee shall comprise of 7 Members of the Council, to include the Group Leaders subject to political balance rules.

2.4.2.2 The Committee shall have responsibility for exercising the functions of Full Council, if necessary, in cases where it is not possible to call a Full Council meeting, subject to a full report to the next available meeting of Full Council for information.

### **2.4.3 Licensing Committee**

2.4.3.1 The Licensing Committee shall comprise of 15 members of the Council who have received appropriate training on licensing.

2.4.3.2 The Committee shall have responsibility for:

- i. To review and make recommendations to Policy and Resources Committee and thereafter full Council upon policy in relation to licensing matters under the Licensing Act 2003 and the statement of licensing policy;
- ii. To discharge the Council's functions as a Licensing Authority under the Licensing Act 2003, within agreed policy;
- v. To arrange for the discharge of any of the licensing functions exercisable by the Committee to an Officer of the Licensing Authority subject to the limitations set out in Section 10(4) of the Licensing Act 2003;
- vi. To review and make recommendations to Policy and Resources Committee and thereafter full Council upon policy in relation to licensing matters under the Gambling Act 2005 and the statement principles;
- vii. To discharge the Council's functions as a Licensing Authority under the Gambling Act 2005, within agreed policy;
- viii. To arrange for the delegation of any of the licensing functions exercisable by the Committee to an Officer of the Licensing Authority subject to the limitations set out in Section 154 of the Gambling Act 2005;

#### General Licensing Matters

- ix. To make recommendations to Policy and Resources Committee on any matters of licensing policy;
- x. To review and make decisions in accordance with Council policy in licensing matters under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 (Sex Establishments) and Schedule 4 (Street Trading) and the statement of principles;

- xi. to discharge the Council's functions as a Licensing Authority under the Local Government (Miscellaneous Provisions) Act 1982, within agreed policies;
- xii. To arrange for the delegation of any of the licensing functions exercisable by the Committee to an officer of the Licensing Authority subject to the limitations set out in Schedule 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982;
- xiii. To consider enforcement action against Hackney Carriage and Private Hire Vehicle Operators under the Local Government Miscellaneous Provisions Act 1976 and Town Police Clauses Act 1984;
- xiv. To discharge all licensing functions of the Council not reserved to Full Council;
- xv. To exercise the Council's functions under any of the relevant statutory provisions relating to Health and Safety at Work etc. Act 1974, as far as they are the responsibility of the Council; and
- xvi. To make decisions on matters relating to the Council's responsibilities in respect of Hackney Carriage and Private Hire Vehicles and Drivers.

2.4.3. The Licensing Committee shall have a Licensing Act Subcommittee and a General Licensing Subcommittee each comprised of 3 members of the Committee.

2.4.3.1 The Licensing Act Subcommittee shall have responsibility for:

Licensing Act 2003

- i. Application for a personal licence if any objection is made;
- ii. Application for a personal licence where a person has any unspent convictions;
- iii. Application for a premises/club premises licence if a representation is made;
- iv. Application for a provisional statement if representation is made;
- v. Application to vary the DPS if the police object;
- vi. Application for the transfer of premises licence if the police object;
- vii. Application for interim authority if the police object;
- viii. Application to review a premises/club premises licence

- ix. Decision to object when the Councils a consultee and not the Licensing Authority; and
- x. 10. Application for a temporary event notice when the police object.

### Gambling Act

- xi. Application for a premises licence where representations have been received;
- xii. Application to vary a premises licence where representations have been received;
- xiii. Application to transfer a licence where representations have been received;
- xiv. Application for a provisional statement where representations have been received;
- xv. Review of a premises licence;
- xvi. Application for club gaming machine permits where representations have been received;
- xvii. Cancellation of a club gaming machine permit; and
- xviii. Application for more than 4 gaming machine permits in a licensed premises.

2.4.3.2 The General Licensing Subcommittee shall have responsibility for making decisions about individual licensing matters and appeals where not otherwise delegated to the Head of Environment and Leisure Services or the Head of Housing and Community Services.

### **2.4.4 Planning Committee**

2.4.4.1 The Planning Committee shall be comprised of 17 members of the Council who have received appropriate training on planning.

2.4.4.2 The Committee shall have responsibility for making decisions under the Town and Country Planning Act 1990 (as amended) and Planning (Listed Buildings and Conservation Areas) Act 1990, including:

- i. The granting of permissions, or approvals;
- ii. Refusals of permissions;
- iii. Applications for listed building and conservation area consent;
- iv. Resolution to make and confirm tree preservation orders;
- v. Orders under Section 215 relating to maintenance of waste land and resolution to prosecute for noncompliance with an order;

- vi. Resolution to serve enforcement notices and listed building enforcement notices and service of "stop notices", or resolution to prosecute in the case of failure to comply with any type of confirmed order;
- vii. Resolution to serve a repairs notice and to carry out urgent works to preserve listed buildings under Sections 48 and 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- viii. Resolution to prosecute for the unauthorised display of advertisements.
- ix. Agreements under Section 106 of the Town and Country Planning Act 1990 (as amended);
- x. Notices under Section 79 of the Building Act 1984;
- xi. To respond to consultations on any planning applications to be carried out by and/or determined by other Authorities, Agencies or Government Departments;
- xii. The determination of applications for development to be carried out by the Council;
- xiii. To resolve to make an Article 4 Direction;
- xiv. To resolve to make an 'Area of Special Control' under the Advertisement Regulations;
- xv. To resolve to secure the preservation of a building under Sections 3 and 4 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or such other relevant legislation as may be enacted thereafter;
- xvi. To resolve to revoke a planning permission;
- xvii. To resolve to accept a Purchase Notice;
- xviii. To resolve to serve a discontinuance order;
- xix. To determine other related planning matters including conservation, tree preservation, advertisement control, building preservation and functions the subject of agency.

## NOTE

- A. that in cases where the Committee is minded to make a decision that would be contrary to officer recommendation and contrary to policy and/or guidance, the Chair should invite the Head of Planning to request the Committee to consider if the application should be deferred to the next meeting of the Committee or if there should be a short adjournment for Officers to consider the views of the Planning Committee and to give further advice.
- B. that in cases where the Committee determines an application contrary to officer recommendation a full record should be made of the reasons for rejecting the recommendation.

2.4.4.3 The Committee shall have a Working Group called the Planning Committee Site Visits Group. It shall be comprised of members of the committee and ward councillors will be invited to attend. Its responsibility will be to visit sites the subject of planning applications, as directed by the Planning Committee, and report back to the subsequent meeting Planning Committee. See Planning Committee Procedural Rules in Part 3 of this Constitution.

### **2.4.5 Standards Committee**

2.4.5.1 The Committee shall be comprised of 11 members of the Council plus three non-voting co-opted Parish representatives.

2.4.5.2 The Committee shall have the following responsibilities:

- i. to promote and maintain high standards of conduct by Members and co-opted members of the authority and Parish Councils within the Borough;
- ii. to recommend to Full Council for adoption a code dealing with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity;
- iii. to monitor and review the Code of Conduct as appropriate to ensure it is consistent with the following principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- iv. to ensure that the Code of Conduct includes the provision that the authority considers appropriate in respect of the registration in its register, and disclosure, of (a) pecuniary interests, and (b) interests other than pecuniary interests which the Council thinks appropriate;

- v. to put in place arrangements under which allegations can be investigated and decisions on allegations can be made. Such arrangements to include provision for the appointment by the authority of at least one independent person and to cover Parish Councils in the Borough;
- vi. to consider applications for the grant of dispensations in accordance with the provisions contained within S.33 (b) (c) and (d) of the Localism Act 2011; and
- vii. to set the allowances and expenses for the Independent Person.

2.4.5.3 The Committee shall have a Subcommittee called the Standards Hearing Panel.

2.4.5.4 The Standards Hearing Panel shall be comprised of 3 members of the Committee who have received appropriate training on the conducting of hearings.

2.4.5.5 The Standards Hearing Panel shall have the following responsibilities:

- i. to consider any matter referred for investigation in accordance with the arrangements adopted by the Council for considering any allegation that a member or co-opted member of the Council or a Parish Council in the Borough has failed to comply with the Code of conduct; and
- ii. to conduct a hearing and decide whether a member has failed to comply with the Code of Conduct and, if so determine what action(s) to take in accordance with the Council's arrangements

## **2.5 Area Committees**

2.5.1 The purpose of area committees is to enhance the quality of life and of council services in the relevant area and to bring greater local insight to bear in council decision-making.

2.5.2 The Membership of each Area Committee shall include all ward members in the area. Area committee boundaries will align with ward boundaries. Substitute Members are not permitted on Area Committees.

2.5.3 There shall be Area Committees for the following areas;

- i. Eastern (Abbey; Boughton and Courtenay; East Downs; Priory; St Ann's; Teynham and Lynsted; Watling). 12 Members (quorum: four Members);
- ii. Sheppey (Minster Cliffs; Queenborough and Halfway; Sheerness; Sheppey Central; Sheppey East). 14 Members (quorum: five Members);
- iii. Sittingbourne (Chalkwell; Homewood; Kemsley; Milton Regis; Murston; Roman). 11 Members (quorum: four Members);
- iv. Western (Bobbing, Iwade and Lower Halstow; Borden and Grove Park; Hartlip, Newington and Upchurch; The Meads; Woodstock; West Downs). 10 Members (quorum: three Members).

2.5.4. The Area Committees shall have the following responsibilities:

- i. develop a work programme to enhance core services within the area and take a report to council on an annual basis to provide an update on progress;
- ii. agree spending decisions in relation to specific funding allocated to members of the Committee;
- iii. provide area intelligence to the Policy and Resources Committee and heads of service, and assist with policy development on relevant matters; and
- iii. make recommendations to Full Council, Policy and Resources Committee or any Service Committee on issues in the committee's area and respond to any other specific matter referred to it by Full Council, a committee or a senior council officer.

2.5.5 Each Member will receive an identical amount of specific funding, established in each annual council budget, to be allocated to projects in consultation and agreement with the Area Committee at large. Members may make proposals for allocating any part of the amount remaining to them at any meeting of the Area Committee, and the Committee's agreement will be decided by a simple majority of Members present. The pooling of individual Members' amounts is permissible. Any amount for which an allocation has not been agreed by the Area Committee by the end of the financial year will be forfeited, and no rollovers will be permitted. Any funding allocation agreed by the Committee but unspent by the end of each electoral cycle will also be forfeited.



## **2.6 Joint Arrangements**

- 2.6.1 Kent Resource Partnership: Swale representative appointed by the Environment Committee.
- 2.6.2 South Thames Gateway Building Control Joint Committee: Swale representative appointed by the Policy and Resources Committee.

## **2.7 Proper Officer Schedule** (unchanged)

## **2.8 Officer Delegations** (see Appendix II)

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## Appendix II

### PART 2.8 – SCHEME OF OFFICER DELEGATIONS

#### 2.8.1 INTRODUCTION

- 2.8.1.1 This scheme has been adopted by Swale Borough Council and is the list of delegations to officers under Section 101 of the Local Government Act 1972 (as amended) and all other powers enabling delegations to officers.
- 2.8.1.2 The delegations which follow are subject to the responsibility of the Chief Executive to ensure the efficient management and execution of the Council's functions and implementation of its policies. The purpose of the delegations is to lead to a streamlining of the processes of the Council.
- 2.8.1.3 Any reference to any Act of Parliament shall include references to regulations, subordinate legislation and European Union legislation upon which either UK legislation is based, or from which powers, duties and functions of the Council are derived.
- 2.8.1.4 Reference to any enactment, regulation, order or byelaw shall include any amendment, re-enactment or re-making of the same.
- 2.8.1.5 Any post referred to below shall be deemed to include any successor post or a post which includes within the job description elements relevant to any particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded.
- 2.8.1.6 The exercise of any delegated power is subject to:-
- The overriding requirement to ensure that the financial effect of the delegation will fall within an approved budget;
  - The Council's policies including the Budget and Policy framework, the Procedure Rules, Protocols and Codes in this Constitution;
  - Any statutory restrictions; and
  - The right of Council or any Committee to decide on any matter in a particular case.
- 2.8.1.7 In streamlining, wherever possible the scheme of delegation, reference is made only where appropriate to the policies under which the delegation is being exercised. There is an overriding requirement that all delegations are agreed with the law and the Council's policies.
- 2.8.1.8 Before deciding whether to exercise the delegation the officer concerned should ensure that the Director and/or Heads of Service have considered

whether the matter is of a controversial nature, or involving significant changes in policy, to require consultation upon, with the relevant Committee Chair and recorded or agreement reached to report to the Council and/or a Committee as appropriate.

- 2.8.1.9 Officers shall also undertake all the operational duties within the remit of their team or service and all necessary powers to do this are therefore deemed to be delegated to the relevant Director or Head of Service or Officer who has responsibility for the discharge of the function.
- 2.8.1.10 So far as the delegations relate to powers which arise by virtue of agency agreements, they are subject also to any qualifications contained in the respective agreements.
- 2.8.1.11 Except where specific provision is made by legislation or by resolution of the Council, the Heads of Service are appointed to be the proper officers in respect of any legislation falling within the scope of their respective services.
- 2.8.1.12 The Director and all Heads of Service shall designate an appropriate responsible officer to deputise during their absence or indisposition.
- 2.8.1.13 The delegated powers held by an officer may be exercised by the line manager of that officer, and any Director or Head of Service may authorise other responsible officers (who have the relevant skills and knowledge) to act on their behalf, provided that there is a written record of such authorisation. A central record will be kept.
- 2.8.1.14 Where the Council, a Committee or Sub-Committee has delegated a function to an officer, the person or body making the delegation may at any time resume responsibility for the function either in respect of a particular matter or generally, and so may exercise the function despite the delegation.
- 2.8.1.15 In determining the suitability of an officer to be given this authority, regard must be had to the nature of the authority being given, the seniority of the post, the experience of the relevant officer and all other relevant circumstances so as to ensure that the authority and the relevant officer are appropriately matched. This authorisation must:
- be in writing, dated and signed by the officer giving the authority;
  - specifically identify the post and person authorised to carry out the functions;
  - specifically identify the functions to which the authorisation relates (attach an extract from the scheme as the numbering may change over time); and
  - identify any conditions (if any) to which the authorisation is subject.

## 2.8.2 Conflicts of Interest

- 2.8.2.1 Every officer is responsible for identifying whether they have any conflict of interest, actual or perceived, in any matter on which it would otherwise fall to them to make a decision, and for notifying the authority of this (including under s117 of the Local Government Act 1972).
- 2.8.2.2 Where any officer is unable to act on a matter because of a conflict of interest, that officer's line managers up to and including the Chief Executive may discharge the matter or arrange for another officer to discharge the matter.
- 2.8.2.3 Where the Chief Executive is unable to act on a matter because of a conflict of interest, the Chief Executive will arrange for another officer to discharge the matter.
- 2.8.2.4 Where the Monitoring Officer is unable to act on a matter in their statutory capacity under s5 of the Local Government and Housing Act 1989, the matter shall be discharged by the Deputy Monitoring Officer.
- 2.8.2.5 Where the Monitoring Officer is unable to act on a matter under the Localism Act 2011 in relation to Member conduct, the matter shall be discharged by the person appointed by the Monitoring Officer for this purpose.

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## **2.8.4 DELEGATIONS TO THE CHIEF EXECUTIVE**

### **General**

- 2.8.4.1. To be and to carry out the duties of Head of Paid Service and to exercise authority over all other officers of the Council so far as is necessary for the efficient management of the Council's functions.
- 2.8.4.2. All appointments, discipline and dismissals of staff at and below Head of Service level are delegated to the Chief Executive (for Heads of Service appointments, a joint Member officer consultation panel will be constituted, the membership of which will be agreed between the Chair of the Policy and Resources Committee and the Chief Executive).
- 2.8.4.3. To exercise the power to appoint a person in respect of disciplinary investigations or proceedings in respect of statutory officers. This delegation is to be exercised in consultation with the Chair of Policy and Resources Committee and in accordance with Part 4.8 of the Constitution.
- 2.8.4.4. To nominate a deputy who may exercise the Chief Executive's powers in the absence or incapacity of the Chief Executive.
- 2.8.4.5. To exercise any of the powers delegated to any other officer, including the Director.
- 2.8.4.6. To bring forward proposals for restructuring of the Council where it may be required or thought to be desirable to ensure that the Council has advice on the establishment and structure needed to carry out efficiently the work of the Council. This includes undertaking any statutory consultation or other consultation.
- 2.8.4.7. To be responsible for Health and Safety and Welfare.
- 2.8.4.8. To be responsible for Security.
- 2.8.4.9. To liaise with national and local associations, authorities, groups, companies, organisations and individuals to further the policies and objectives of the Council.
- 2.8.4.10. To be responsible for undertaking negotiations and consultation with staff through their trade unions on all matters relating to employment.
- 2.8.4.11. To submit responses to government and other bodies, consulting on changes to legislation and policy, as considered appropriate, following consultation with the Chair of the Policy and Resources Committee.

**Emergency Measures – in exercising these delegations the Chief Executive will ensure that the Leader is informed in accordance with the Council’s Emergency Plan.**

- 2.8.4.12. In emergencies or any other circumstance which makes it impractical for the Council or a Committee to meet, to take any decision which could be taken by the Council or a Committee (save for any decision expressly reserved to Full Council under Statutory or Regulatory provisions), having regard as fully as possible to the views of the Members who would otherwise have made the decision.
- 2.8.4.13. To be authorised in response to a serious emergency/disaster within the Borough, and on the border of the Borough, to commit staff and resources until such time as the Emergency Committee can meet.
- 2.8.4.14. To discharge the Council’s duties under the Civil Contingencies Act 2004.
- 2.8.4.15. Authority to take any urgent action between meetings in consultation with the Leader or Deputy Leader of the Council, on matters which are outside the scope of powers expressly delegated to the Director or any Head of Service.

**Crime and Disorder**

- 2.8.4.16. To consult with other agencies and with the Chair of the Community Safety Partnership and Ward Members and to take such action as may be necessary to secure the proper implementation of Orders under the Crime and Disorder Act 1998, or any amendment or re-enactment thereof.
- 2.8.4.17. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, including exceptional cases where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used.

**Complaints**

- 2.8.4.18. To deal transparently with issues relating to the Commission for Local Administration (Complaints to the Local Government Ombudsman) in consultation with the relevant committee Chair or Leader.
- 2.8.4.19. To make maladministration payments in consultation with the Chair of the Policy and Resources Committee up to £2,000.

**Elections**

- 2.8.4.20. To be the Electoral Registration Officer.
- 2.8.4.21. To be the Returning Officer.



- 2.8.4.22. To discharge the Council's functions regarding Parliamentary, Local Government (Kent County Council, Borough Council and Parish/Town Council) Elections and Referendum.
- 2.8.4.23. To make an order, under Section 91 of the Local Government Act 1972, to appoint temporary members to Parish Councils.

### **Miscellaneous**

- 2.8.4.24. To take preliminary steps to protect the rights and interests of the Council relating to any White Paper, Bill or Statutory Instrument or Order in Parliament.
- 2.8.4.25. Authority to reallocate the delegations to the Director/Heads of Service as and when required.
- 2.8.4.26. To determine arrangements for civic hospitality and transport in consultation with the Chair of the Policy and Resources Committee.
- 2.8.4.27. To administer the approved Members' Allowances Scheme.
- 2.8.4.28. To be the "Proper Officer" for the functions designated to the Proper Officer under the Local Government Act 1972; Representation of the People Act 1983; Local Elections (Parishes and Communities) Rules 1986; Local Government and Housing Act 1989.
- 2.8.4.29. To report to Council on any requests to approve extended absence of Councillors from any meetings, and the declaration of vacancies of any seats of the Council.
- 2.8.4.30. To record, hold and administer civic gifts.
- 2.8.4.31. To be the Petitions Officer.
- 2.8.4.32. To receive requests for Call for Action and to place items on the Appropriate Committee.
- 2.8.4.33. To authorise approval of conference attendance for Members appointed to outside bodies, or in connection with their Council responsibilities, in consultation with the Chair of the Policy and Resources Committee.

### **2.8.5 DELEGATIONS TO DIRECTORS**

- 2.8.5.1. To award contracts for the winning tender in accordance with Contract Standing Orders.
- 2.8.5.2. In consultation with the relevant Committee Chair, to authorise waivers to competitive tendering process for the amounts not exceeding the limit set out in Contract Standing Orders.

- 2.8.5.3. In consultation with the relevant Committee Chair, to authorise the extension of contracts for amounts not exceeding the limit set out in Contract Standing Orders.
- 2.8.5.4. To appoint staff within the approved establishment. The Chief Executive has delegated authority to Directors for all appointments, discipline and dismissal of staff below Heads of Service within their Directorate.
- 2.8.5.5. To authorise Occasional or Regular Car User Allowances in accordance with the Council's Conditions of Service.
- 2.8.5.6. To determine requests for honoraria within their directorate in accordance with the Council's HR policies.

## **2.8.6 DELEGATIONS TO THE DIRECTOR REGENERATION AND NEIGHBOURHOODS**

- 2.8.6.1. Authority to write-off any irrecoverable debt not delegated to the Chief Financial Officer and Head of Environment and Leisure in accordance with the financial regulations.
- 2.8.6.2. To donate or write-off surplus goods or equipment which are not economically viable to sell.
- 2.8.6.3. On receipt of a detailed report from the relevant Head of Service to approve virement on the approved budget of a cost centre, subject to the limitations outlined in the Financial Regulations.
- 2.8.6.4. To issue requisitions for information under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.8.6.5. To provide management and administration of grant schemes and payments, including the signing and sealing of grant agreements, in accordance with the Council's policy framework and/or the requirements of the funding body.

### **Miscellaneous**

- 2.8.6.6. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000 including cases, in the absence of the Chief Executive, where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligence Source is to be used.
- 2.8.6.7. To give consent to the exercise by the Police of powers to disperse groups of young persons under Part 5 of the Anti-Social Behaviour Act 2003.

## 2.8.7 DELEGATIONS TO THE DIRECTOR OF RESOURCES

- 2.8.7.1. On designation by the Council, to be the Chief Financial Officer and be responsible for the administration of the financial affairs of the Council under Section 151 of the Local Government Act 1972 (as amended); to exercise the duties of the Chief Financial Officer under Section 114 of the Local Government Finance Act 1988; and to discharge functions under the Accounts and Audit Regulations 2011.
- 2.8.7.2. To deal with matters specified by Financial Regulations.
- 2.8.7.3. Negotiate with the external auditor on the level and type of audit resources required to carry out the statutory and management audit requirements of the Council.
- 2.8.7.4. To write-off any irrecoverable debt in accordance with the Financial Regulations, and the information to be kept in a register.
- 2.8.7.5. To estimate any collection fund surplus or deficit and to subsequently notify the major precepting authority.
- 2.8.7.6. To make loans to officers for car purchase and to keep a register of these loans.
- 2.8.7.7. To enter into leasing agreements to lease non- property assets for use by the Council as approved by the Capital Programme or Policy and Resources Committee.
- 2.8.7.8. To arrange and review insurance in accordance with the Council's Policy.
- 2.8.7.9. To raise loans and make investments as and when required.
- 2.8.7.10. To manage the Council's treasury management activities in accordance with the Chartered Institute for Public Finance and Accountancy (CIPFA) Code of Practice for Treasury management and CLG Guidelines.
- 2.8.7.11. To authorise financial leases in accordance with approved capital financing arrangements.
- 2.8.7.12. To make arrangements for the collection of income due to the Council.
- 2.8.7.13. To sign all necessary claim forms in respect of any grants or other funds payable to the Council.
- 2.8.7.14. To set the Council Tax and Business Rate Base.
- 2.8.7.15. To publish in a local newspaper, within 21 days, notice of the amount of Council Tax set by the authority in accordance with Section 38 of the Local Government Finance Act 1992.

- 2.8.7.16. To exercise responsibility for the accounting arrangements for the operation of the collection fund in connection with the administration of Council Tax and Non- Domestic Rate.
- 2.8.7.17. To authorise Statutory Returns in connection with Council Tax and Council Tax Benefit, Non-Domestic Rate and Discretionary Housing Payments.
- 2.8.7.18. To authorise statutory subsidy calculations and returns in connection with the administration of Housing Benefit.
- 2.8.7.19. To determine and declare local average interest rates in accordance with legislation and the interest rate for loans to housing associations.
- 2.8.7.20. To issue, renew or repay temporary loans.
- 2.8.7.21. To administer matters in respect of mortgages granted by the Council.
- 2.8.7.22. To authorise the premature repayment of mortgages issued by the Council.
- 2.8.7.23. To provide financial services either on an agency basis or where required by statute.
- 2.8.7.24. To authorise persons to act for the Council at company and creditor meetings.
- 2.8.7.25. Where appropriate to elect for VAT status on particular land or property.

### **Council Tax and Non-Domestic Rates**

- 2.8.7.26. To exercise all of the Council's powers and duties to bill, administer and collect the Council Tax and Non-Domestic Rates.
- 2.8.7.27. Pursuant to Section 101 of the Local Government Act 1972, to issue enforcement proceedings including making complaints on behalf of the Swale Borough Council in the Magistrates Court under the following Regulations:-
- The Community Charges (Administration and Enforcement) Regulations 1989;
  - The Community Charges (Administration and Enforcement) (Amendment) Regulations 1989;
  - Community Charges (Co-Owners) Regulations 1990 (as amended);
  - Non-Domestic Rating (Collection and Enforcement) (Miscellaneous Provisions) Regulations 1990 (as amended);
  - Non-Domestic Rating Collection and Enforcement) (Local Lists) Regulations 1989 (as amended);

- Any other further regulations issued by the Secretary of State under the Local Government Finance Act 1988 (Schedule 9);
- The Council Tax (Administration & Enforcement) Regulations 1992 (as amended); and
- Any further regulations issued by the Secretary of State under the Local Government Finance Act 1992 (Schedule 4).

2.8.7.28. To write-off any irrecoverable debt in respect of Council Tax, Non-Domestic Rates and Housing Benefit Overpayments in accordance with the Financial regulations and the information to be kept in a register.

2.8.7.29. To appear on behalf of the Council at a Valuation Tribunal.

2.8.7.30. To consider applications for non-domestic rate relief from charitable and other organisations pursuant to Sections 43 and 47 of the Local Government Finance Act 1988.

2.8.7.31. To consider applications for the reduction and remission of rates pursuant to Section 49 of the Local Government Finance Act 1988.

2.8.7.32. To write-off any irrecoverable debt in the case of council tax, business rates or housing benefit overpayments in accordance with the Financial Regulations, and the information to be kept in a register.

### **Housing and Council Tax Benefit**

2.8.7.33. To exercise all of the Council's powers and responsibilities for Housing and Council Tax Benefits, including the payment of benefits and the determination of discretionary payments.

2.8.7.34. To administer rent rebates for Local Authority tenants and rent allowances for Private/Housing pursuant to Section 134 of the Social Security Administration Act 1992 (as amended).

### **2.8.8. DELEGATIONS TO THE MONITORING OFFICER**

2.8.8.1. To be and to carry out the duties of the Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act 1989, the Local Government Act 2000 and any other enactments and the Council's constitution, and to nominate a member of staff to deputise as Monitoring Officer.

2.8.8.2. To maintain a record of notices of disclosable pecuniary interests and disclosable non-pecuniary interests by any Councillor and personal and prejudicial and personal and non-prejudicial interests by any officer and to maintain the register of Councillors interests and declarations.

2.8.8.3. To maintain the record of officer delegations.

- 2.8.8.4. To make any necessary updates to the Constitution (as required by law) where there is no discretion in consultation with the Leader of the Council.
- 2.8.5.5. To deal with all complaints under the Members' Code of Conduct.
- 2.8.5.6. To publish and maintain the Council's Constitution with authority to make minor textual changes and amendments to Officer Delegations to take account of changes in legislation in consultation with the Leader of the Council.
- 2.8.8.7. To put in place appropriate arrangements to record relevant Officer Decisions required under the Openness of Local Government Bodies Regulations 2014.

## **2.8.9 DELEGATIONS TO THE DATA PROTECTION OFFICER**

- 2.8.9.1. To be responsible for decisions relating to Data Protection and Freedom of Information law.
- 2.8.9.2. To implement the provisions of Environmental Information Regulations 1995 and be responsible for decisions made under the Regulations.

## **2.8.10 DELEGATIONS TO HEADS OF SERVICE**

- 2.8.10.1. Authority to approve staffing structures within existing budgets. The Directors have delegated authority to Heads of Service for all appointments, discipline and dismissal of staff within their teams.
- 2.8.10.2. Authorisation to approve the payment of overtime to members of staff in accordance with the Council's Conditions of Service or the appropriate negotiated conditions within their department.
- 2.8.10.3. To sign any document needed to implement a decision by, or in the name of, the Council that is within the scope of the powers delegated to them.
- 2.8.10.4. Authority to authorise staff to enter land or premises.
- 2.8.10.5. To serve statutory notices and arrange for works in default.
- 2.8.10.6. Authority to spend in accordance with the financial regulations. This includes authority to award contracts that are within the approved budget for the current financial year, having gone through the tendering procedures as set out in contract standing orders. (Relevant Committee Chair to be kept informed of any waivers granted).
- 2.8.10.7. Authority to implement new and existing legislation.
- 2.8.10.8. To respond to consultations on behalf of the Council in consultation with the relevant Committee Chair where appropriate.

## **2.8.11 DELEGATIONS TO THE HEAD OF FINANCE AND PROCUREMENT**

- 2.8.11.1. To develop the key Commissioning and Procurement Strategies, Plans and Procedures for officers to follow.
- 2.8.11.2. To monitor and make suggested changes to the Contract Standing Orders document in order to comply with legislation.
- 2.8.11.3. To agree waivers in accordance with Contract Standing Orders.
- 2.8.11.4. To agree to the extension or termination of contracts within the parameters set out in Contract Standing Orders.
- 2.8.11.5. To monitor and record expressions of interest for the Community Right to Challenge as per the Localism Act 2011 and The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012.

## **2.8.12. DELEGATIONS TO THE HEAD OF LEGAL PARTNERSHIP**

**These delegations are subject to the Law Society practice procedures and requirements of the Solicitors Regulation Authority.**

### **General**

- 2.8.12.1. Authority to sign, or, where necessary, seal, any document needed to implement a decision taken by, or in the name of, the Council, and to authorise other officers to do so and to keep a record.
- 2.8.12.2. To act as Solicitor to the Council and carry out all related work on behalf of the Council.
- 2.8.12.3. To institute, conduct, prosecute and defend any legal proceedings on behalf of the Council, including cases where the Council considers it expedient for the protection or the promotion of the interests of the inhabitants of the Council's area.
- 2.8.12.4. On instruction from client departments to settle, if appropriate, and in the interests of the Council any actual or threatened legal proceedings, and in consultation where necessary with the relevant statutory officers. If the action is not required to give effect to a decision or policy of Council the Head of Legal Partnership will consult with the Chair of Policy and Resources or Vice-Chair in their absence,.
- 2.8.12.5. To ensure with regard to 3 and 4 above that the early involvement of the Council's External Auditor be sought where appropriate in cases of an unusual and significant nature, and that an information report be presented thereafter at the earliest opportunity to the Policy and Resources Committee.

- 2.8.12.6. To instruct Counsel and professional advisors as appropriate and in accordance with the agreed procedures of the Mid-Kent Legal Services Partnership.
- 2.8.12.7. To give legal undertakings and indemnities on behalf of the Council and to keep a register.
- 2.8.12.8. Under Section 223 of the Local Government Act 1972 to authorise officers who are not admitted solicitors to appear in Magistrates' Courts on behalf of the Council.
- 2.8.12.9. To determine procedural arrangements for the issue of all consents, refusals, decisions and notices on behalf of the Council.
- 2.8.12.10. To accept on behalf of the Council the service of notices, orders and legal procedures.

### **Land and Property**

- 2.8.12.12. To dispose of any land or any interest in land in accordance with the law, following appropriate Member approval.
- 2.8.12.13. To acquire properties which the Council is under a legal obligation to acquire under planning legislation, following Member approval.
- 2.8.12.14. To complete all property transactions and contractual arrangements.
- 2.8.12.15. To make and carry out the statutory notifications and advertisement procedure in relation to Footpath Orders, in accordance with S257 of the Town and Country Planning Act, and where there are no objections, or any objections made are withdrawn, to confirm the Order.

### **Miscellaneous**

- 2.8.12.16. To maintain a central record of Regulation of Investigatory Powers Act 2000 (RIPA) applications and authorisations in-line with RIPA Orders and Codes of Practice.

## **2.8.13 DELEGATIONS TO THE HEAD OF POLICY, GOVERNANCE AND CUSTOMER SERVICES**

### **Customer Services**

- 2.8.13.1. To provide the frontline service for all residents contacting the Council using varying methods of communication and multiple locations.
- 2.8.13.2. The development of the Council's Customer Charter, Complaints Strategy and procedures.



## **Corporate Strategy and Communications**

2.8.13.3. To produce and publish publicity and information material.

2.8.13.4. To manage and co-ordinate press and media relations.

2.8.13.5. To issue press statements following discussion with the relevant Committee Chair, and where appropriate other involved Members.

2.8.13.6. To co-ordinate consultation on behalf of the Council.

## **2.8.14 DELEGATIONS TO THE HEAD OF ENVIRONMENT AND LEISURE SERVICES**

### **Waste Collection and Disposal**

2.8.14.1. To exercise powers in relation to refuse collection, street cleansing, public conveniences, recycling and minor works.

2.8.14.2. To levy charges regarding the collection and disposal of waste other than household waste, and for the provision of bins and sacks.

2.8.14.3. To implement and enforce the provisions of Part II and Schedule 4 of the Environmental Protection Act 1990.

2.8.14.4. To implement and enforce the provisions of the Public Health Act 1961 regarding the accumulations of rubbish.

### **Seafront and Harbour**

2.8.14.5. To manage and maintain seafront facilities.

2.8.14.6. To commission and monitor the beach lifeguarding service.

2.8.14.7. To grant and renew licences and leases for beach huts.

2.8.14.8. To undertake responsibility for the effects of oil pollution on the coast line.

2.8.14.9. To work with the key authorities on coastal risk management and flood planning.

### **Leisure and Green Spaces**

2.8.14.10. To manage, maintain and control (including temporary or permanent closure of) parks, open spaces, country parks, equipped play areas and outdoor sports facilities.

2.8.14.11. To prepare the key strategic documents and plans for sport, leisure and open spaces to support the Local Plan process.

2.8.14.12. To let parks and open spaces for sporting and recreation facilities including fairs, exhibitions and displays subject to suitability.

- 2.8.14.13. To grant and to renew licences for fitness and leisure coaches and instructors using Council land.
- 2.8.14.14. To be responsible for the development and provision of indoor leisure facilities including the leisure centre contract.
- 2.8.14.15. To make arrangements for the provision and advertising of leisure services and events.
- 2.8.14.16. To deal with petitions in relation to ball games on open spaces in consultation with Ward Members.

### **Cemeteries and Closed Churchyards**

- 2.8.14.17. To manage and maintain Council owned cemeteries and to maintain “closed churchyards” under Section 18 of the Burial Act 1855 and Section 215 of the Local Government Act 1972.
- 2.8.14.18. To exercise powers in relation to the granting of rights of burial, rights to erect memorials and maintenance of graves pursuant to the Local Government Act 1972, Public Health Act 1936 and Local Authorities Cemeteries Order 1977.
- 2.8.14.19. To grant reductions in burial fees and charges, on a case-by-case basis, where the Council has admitted fault in a service or burial.

### **Parking and Highways Management**

- 2.8.14.20. To manage, maintain and control off-street parking and to make necessary amendments to the Off-Street Parking Order.
- 2.8.14.21. To manage on-street parking enforcement in accordance with the Road Traffic (Permitted Parking and Special Parking Area) (County of Kent) (Borough of Swale) Order 1999.
- 2.8.14.22. To agree to the temporary use of car parks for other activities and to temporarily suspend on and off-street parking bays.
- 2.8.14.23. To enforce the provisions of the Road Traffic Regulation Act 1984 and Refuse Disposal (Amenity) Act 1978 regarding the removal of vehicles and any other offence.
- 2.8.14.24. To enforce the provisions of the Clean Neighbourhoods and Environment Act 2005 in relation to fixed penalty notices for nuisance parking offences.
- 2.8.14.25. To exercise the Council’s powers to provide and maintain footway Lighting systems and street naming and numbering.
- 2.8.14.26. To exercise the power to provide and maintain bus shelters and to give consent to Parish Councils for the erection of seats and shelters.

2.8.14.27. In conjunction with the Head of Legal Partnership to make Orders for the closure of highways for a period of 24 hours or less for special purposes under Section 21 of the Town Police Clauses Act 1847 and Road Traffic Act 1984.

### **Allotments**

2.8.14.28. To administer allotments and the discharge of related statutory functions.

### **Contract Management**

2.8.14.29. To lead on contract management within the authority, including monitoring of the Council's major contracts – waste and recycling, street cleansing, public conveniences, leisure centres and grounds maintenance.

2.8.14.30. To issue defaults and rectification notices to contractors who do not meet the terms of service.

### **Climate and Ecological Emergency**

2.8.14.31. To manage green infrastructure projects and promote biodiversity.

### **Environmental Services**

2.8.14.32. To discharge the Council's responsibilities with regard to statutory nuisances.

2.8.14.33. To enforce the provisions of the following Acts in relation to the welfare of animals:

- Dangerous Wild Animals Act 1976;
- Zoo Licensing Act 1981;
- Animal Welfare Act 2006;
- The Animal Welfare (Licensing of Activities Involving Animals (England) Regulations 2018;
- Dogs Act 1871, 1906 and Dangerous Dogs Act 1991;
- Dog Control Orders (Clean Neighbourhoods and Environment Act) 2005;
- Breeding and Sale of Dogs (Welfare) Act 1999;
- Section 11(2) of The Microchipping of Dogs (England) Regulations 2015

2.8.14.34. To enforce the provisions of the Prevention of Damage by Pests Act 1949.

- 2.8.14.35. To implement and enforce the provisions of the Environmental Protection Act 1990.
- 2.8.14.36. To implement and enforce the Environment Act 1995.
- 2.8.14.37. To enforce the provisions of the Clean Air Act 1993.
- 2.8.14.38. To enforce the provisions of the Control of Pollution Act 1974.
- 2.8.14.39. To implement and enforce the provisions of the Noise and Statutory Nuisance Act 1993.
- 2.8.14.40. To implement and enforce the provisions of Part 6 of the Anti-social Behaviour Act 2003.
- 2.8.14.41. To enforce the provisions of the Noise Act 1996.
- 2.8.14.42. To implement and enforce the provisions of the Criminal Damage Act 1971, the Antisocial Behaviour Act 2003, Part IV of the Environmental Protection Act 1990 and the Town and Country Planning Act 1990 in relation to graffiti, littering and fly posting.
- 2.8.14.43. To implement and enforce the provisions of the Clean Neighbourhood Act 2005.
- 2.8.14.44. To enforce the provisions of the Control of Pollution Amendment Act 1989 and the Environmental Protection (Duty of Care) Regulations 1991 regarding transport of waste.
- 2.8.14.45. To implement and enforce the provisions of the Environmental Permitting (England and Wales) Regulations 2007.
- 2.8.14.46. To implement and enforce the provisions of Part II and Schedule 4 of the Environmental Protection Act 1990.
- 2.8.14.47. To enforce the provisions of the Health Act 2006 relating to smoke-free offences.
- 2.8.14.48. To enforce the provisions of The County of Kent Act 1981.
- 2.8.14.49. To implement and enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and 1982.
- 2.8.14.50. To administer the Waste to Land (Use in Agriculture) Regulations 1989.
- 2.8.14.51. To enforce the provisions of Sections 3-6 of the Refuse Disposal Amenity Act 1978, Part VIII of the Road Traffic Regulations Act 1984 and The Removal and Disposal of Vehicles (England) (Amended) Regulations 2002.
- 2.8.14.52. To implement and enforce the provisions of Sections 235-238 of Part XI

of the Local Government Act 1972 in relation to the enforcement of Byelaws.

- 2.8.14.53. To implement and enforce the provisions of Parts 1, 2, 4, 6, 7 and Part 11, Sections 154 only, of the Anti-Social Behaviour, Crime and Policing Act 2014.
- 2.8.14.54. To implement and enforce the provisions of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018.
- 2.8.14.55. To implement and enforce the provisions of the Control of Waste (Dealing with seized property) (England & Wales) Regulations 2015.
- 2.8.14.56. To appoint suitably qualified inspectors under Part 2 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
- 2.8.14.57. To inspect any premises on which a licensable activity or any part of it is being or is to be carried on under Part 2 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and following that inspection, grant a licence to the operator, or renew the operator's licence.
- 2.8.14.58. To implement and enforce the provisions of the Environmental Permitting (England and Wales) Regulations 2016.
- 2.8.14.59. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, excluding cases where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used.

### **Gypsy Sites and Unlawful Encampments**

- 2.8.14.60. To monitor the number of gypsies/land travellers, legally and illegally encamped within the Borough and to maintain a continuing dialogue with the Kent County Council over gypsy site provision.
- 2.8.14.61. To issue Notices in relation to the removal of unauthorised encampments on the highway under the Highways Act 1980 and from Council owned land under the Criminal Justice and Public Order Act 1994.

### **Miscellaneous**

- 2.8.14.62. In conjunction with the Head of Legal Partnership, to serve Notices under Section 23 of the Local Government (Miscellaneous Provisions) Act 1976 in relation to dangerous trees.
- 2.8.14.63. To implement and enforce the provisions of the Land Drainage Act 1991.
- 2.8.14.64. To enforce the provisions of the Sunday Trading Act 1994 and to enforce any breaches of street trading under the Local Government (Miscellaneous Provisions) Act 1982.

2.8.14.65. To exercise the Council's power to secure unoccupied buildings under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

2.8.14.66. To provide management and administration of grant schemes and payments, including the signing and sealing of grant agreements, in accordance with the Council's policy framework and/or the requirements of the funding body.

### **Anti-idling Legislation**

2.8.14.67. To authorise relevant officers or persons to stop the commission of stationary idling offences and issue fixed penalty notices (FPNs) in respect of such offences, in accordance with Regulation 6(3) of the 2002 Regulations.

## **2.8.15 DELEGATIONS TO THE HEAD OF PLANNING SERVICES**

### **Development Management**

2.8.15.1. To determine applications, negotiate and enter into Section 106 Agreements, to agree minor variations to planning obligations, to respond to prior notifications, and to make observations on behalf of the Borough Council in accordance with the provisions of the appropriate Development Plan or other adopted Borough Council Planning Policy Guidance.

2.8.15.2. The delegated powers in paragraph 1 above shall not be exercised in the following circumstances:

(a) Any planning applications submitted by a member of the Council or Members of staff and for Council development (whether involving Council owned land or not);

(b) Applications where the decision of the Head of Planning would conflict with any written representation received within the specified representation period from:

- (i) Any Member of the Borough Council;
- (ii) A statutory consultee;
- (iii) A Parish or Town Council;

Provided that any such representations from (ii) or (iii) above are, in the opinion of the Head of Planning, based upon relevant planning considerations.

(c) Applications where the decision of the Head of Planning would conflict with letters of representations, or petitions, from at least three separate addresses received within the specified representation period from persons or bodies (other than those set out in (a) above) provided that any such representations are, in the opinion of the Head of Planning, based upon relevant planning considerations and relevant Ward Member requests that the application should be reported to the Planning Committee; and

- (d) Applications which the Head of Planning considers are sufficiently major or raise difficult questions of policy interpretation or any unusual or difficult issues which warrant Member determination.

2.8.15.3. During the appeal process to negotiate and enter into Section 106 Agreements and conditions in accordance with Council Local Plan policies and any pre-appeal discussions with relevant Members.

### **Trees, Hedgerows and High Hedges**

2.8.15.4. To respond to notifications under the Town and Country Planning Act 1990 of intention to cut down, uproot, top or lop a tree within a Conservation Area or for trees covered by Tree Preservation Orders.

2.8.15.5. To determine Felling Licence applications.

2.8.15.6. To make and confirm, where there are no objections, Tree Preservation Orders.

2.8.15.7. To refuse permission to cut down trees and approvals to lopping, silvicultural thinning of woodlands and routine cutting of coppice woodland not affecting draw trees.

2.8.15.8. Authority under Regulation 12 of the Hedgerows Regulations 1997 (as amended) and Section 214B of the Town and Country Planning Act 1990 (as amended) to enter onto land.

2.8.15.9. To respond to hedgerow notifications in consultation with the appropriate ward member(s).

2.8.15.10. Subject to consultation with the Head of Legal Partnership, to service notices relating to dangerous trees, in accordance with Section 23 of the Local Government (Miscellaneous Provisions) Act 1976.

2.8.15.11. To consider and determine the Council's response to formal complaints in relation to high hedges, to issue remedial notices and determine all other matters in relation to high hedges in accordance with Part 8 of the Anti-Social Behaviour Act 2003.

### **Enforcement**

2.8.15.12. To authorise, sign and serve all enforcement and other notices under the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) regulations 2007 on behalf of the Council following consultation with the Planning Committee Chair or Vice-Chair and local ward Member(s).

2.8.15.13. To authorise the Head of Legal Partnership to take necessary legal proceedings in respect of planning enforcement legislation, including applications for injunction and taking direct action.

## **Conservation of Historic Environment**

2.8.15.14. To authorise, sign and serve all Building Preservation Notices and Urgent Works Notices under the Planning (Listed Buildings and Conservation Areas) Act 1990.

2.8.15.15. To carry out works where it is considered urgently necessary for the preservation of a listed building.

2.8.15.16. To respond to consultations by Church Authorities under the Ecclesiastical Exemption Regulations.

## **Miscellaneous**

2.8.15.17. To respond to any pre-application or other consultation on nationally significant infrastructure projects submitted or to be submitted to the Major Infrastructure Planning Unit under the Planning Act 2008.

2.8.15.18. To respond to consultations from neighbouring planning authorities including Kent County Council following consultation with the Planning Committee Chair or Vice Chair, and the relevant Ward Member(s).

2.8.15.19. To authorise the Head of Legal Partnership to apply for Judicial Review of decisions made by the Planning Inspectorate in consultation with the Planning Committee Chair or Vice Chair and Ward Member.

2.8.15.20. To exercise powers of entry in accordance with Sections 196A and 324 of the Town and Country Planning Act 1990 (as amended) and Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

2.8.15.21. To determine whether an Environmental Impact Assessment is required, in accordance with The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended) and to screen and scope such assessments.

2.8.15.22. To determine applications for Certificates of Lawful Use or Development.

2.8.15.23. To carry out consultations under the procedure set out for minor developments by Government departments.

2.8.15.24. To accept non-material amendments to approve schemes including minor amendments to conditions and planning obligations.

2.8.15.25. To approve details reserved in conditional permissions (facing materials, landscaping, joinery details etc.).

2.8.15.26. To determine whether an application should not be considered in outline.

2.8.15.27. To serve notices requiring information regarding disposal of waste pursuant to Section 93 of the Control of Pollution Act 1974.



- 2.8.15.28. To act as “responsible authority” within the meaning of the Licensing Act 2003 and Gambling Act 2005.
- 2.8.15.29. To implement the provisions of the Environmental Assessment of Plans and Programmes Regulations 2004.
- 2.8.15.30. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, excluding cases where it is likely that confidential information will be acquired.
- 2.8.15.31. To be responsible for the Council’s Building Control function by way of representation at the Joint Committee of the South Thames Gateway Building Control Partnership.
- 2.8.15.32. To implement and enforce the provisions of the Antisocial Behaviour Act 2003 in relation to high hedges and miscellaneous powers.
- 2.8.15.33. To exercise responsibility for local land charges.

## **2.8.16 DELEGATIONS TO THE HEAD OF HUMAN RESOURCES PARTNERSHIP**

### **General**

- 2.8.16.1. To operate the Severance Policy with any redundancies or business cases for enhancements being approved by the appropriate Director or Chief Executive, and signed-off by the Chair of Policy and Resources Committee.
- 2.8.16.2. To enter into agreements with trade unions where implementation does not increase expenditure.
- 2.8.16.3. To enter into agreements with staff for the purpose of regulating work time.
- 2.8.16.4. To assimilate staff on appointment, promotion or re-grading.
- 2.8.16.5. To grant removal expenses and lodging allowances in accordance with any scheme approved by the Council.
- 2.8.16.6. To determine requests for provision of temporary accommodation for employees.
- 2.8.16.7. To make changes in accordance with legal requirements and best practice to HR policies and procedures following informal consultation with staff and the agreement of the Chair of Policy and Resources Committee.
- 2.8.16.8. To administer the Council’s Pension Discretionary Policy.

### **Training**

- 2.8.16.9. To grant financial assistance for post entry training.

2.8.16.10. To determine proposals to attend corporate and service training courses.

2.8.16.11. To determine proposals for the retention of fees for trainers.

### **Payroll**

2.8.16.12. To implement all negotiated salary or wage awards where no exercise of a discretion is involved.

2.8.16.13. To administer staff benefits and expenses and review rates annually.

2.8.16.14. To pay salaries, wages, pensions and insurance contributions without reference to Members in accordance with the agreed arrangements.

2.8.16.15. To make payments in respect of Members' allowances and expenses under Sections 173 to 178 of the Local Government Act 1972, and to keep a register of such payments.

### **2.8.17 DELEGATIONS TO THE HEAD OF AUDIT PARTNERSHIP**

2.8.17.1. To oversee 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.

2.8.17.2. The maintenance of the Council's Comprehensive Risk Register and the provision of advice and guidance on the principles and practices of Risk Management.

### **2.8.18 DELEGATIONS TO THE HEAD OF HOUSING AND COMMUNITY SERVICES**

#### **Community Services**

2.8.18.1. To enable community development services across the Borough.

2.8.18.2. To provide management and administration of grant schemes and payments, including the signing and sealing of grant agreements, in accordance with the Council's policy framework and/or the requirements of the funding body.

2.8.18.3. To manage Community halls and asset transfer projects.

2.8.18.4. To manage the CCTV service.

2.8.18.5. To deliver services in accordance with statutory and legislative requirements including Section 17 of the Crime and Disorder Act.

2.8.18.6. To manage the Community Safety Unit.

2.8.18.7. To implement and enforce the provisions of Parts 1, 2, 4, and 6 of the Anti-

## Social Behaviour, Crime and Policing Act 2014.

2.8.18.8. To enable the delivery of sports and physical activities across the Borough.

### **Housing**

2.8.18.9. To implement and enforce the provisions of the Housing Act 1985 (as amended) and the Housing Act 2004 in relation to demolition orders, housing conditions, licensing of houses in multiple occupation, and additional control provisions in relation to residential accommodation including overcrowding.

2.8.18.10. Power to approve disabled facilities grants in accordance with statutory criteria and authority to allow applicants to start work before grants are approved pursuant to Part I of the Housing Grants Construction and Regeneration Act 1996 (as amended).

2.8.18.11. To implement the provisions of Article 3 of the Regulatory Reform Act (Housing Assistance) (England and Wales) Order 2002 with power to provide housing assistance in accordance with the Council's published policy and grant/loan conditions, and power in consultation with the relevant Committee Chair to recover the grant in total or in part where a house is sold within five years.

2.8.18.12. To implement the provisions of Part VI of the Housing Act 1996 (as amended).

2.8.18.13. To enter into agreements for the supply for goods and services in connection with grant and financial assistance schemes.

2.8.18.14. To promote group repair and renewal schemes.

2.8.18.15. To implement Enforced Sale Procedure under the Law of Property Act 1925 including service of notice under Section 103 of the Act.

2.8.18.16. To implement and enforce the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

2.8.18.17. To implement and enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

2.8.18.18. To implement and enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 in relation to private sector rented properties.

2.8.18.19. To implement and enforce relevant housing provisions of the Housing and Planning Act 2016 or regulations made under the Act.

### **Homelessness**

2.8.18.20. To adopt the power given in the Localism Act 2011 to discharge

Homelessness Duty into the Private Rented Sector.

2.8.18.21. To implement the provisions of Part VII of the Housing Act 1996 (as amended) in relation to processing and determining all homeless applications.

2.8.18.22. To implement the provisions contained in the Homeless Reduction Act 2017 in relation to the prevention and relief of homelessness.

### **Caravans**

2.8.18.23. To implement and enforce the provisions of the Caravan Sites and Control of Development Act 1960.

### **Public Health**

2.8.18.24. To implement and enforce the provisions of the Public Health Act 1936 and 1961.

2.8.18.25. To implement and enforce the provisions of the Water Industry Act 1991 in relation to private water supplies.

### **Buildings**

2.8.18.26. To implement and enforce the provisions of the Building Act 1984.

2.8.18.27. To enforce the provisions of Part XI of the Local Government (Miscellaneous Provisions) Act 1982.

2.8.18.28. To implement and enforce the provisions of the Water Act 1989.

### **Drainage**

2.8.18.29. To implement and enforce the provisions of the Land Drainage Act 1991.

2.8.18.30. To enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976.

### **Pests**

2.8.18.31. To implement and enforce the provisions of the Prevention of Damage by Pests Act 1949.

### **Miscellaneous**

2.8.18.32. To implement and enforce the provisions of Part III of the Environmental Protection Act 1990.

2.8.18.33. To enforce the provisions of The County of Kent Act 1981.

2.8.18.34. To enter into agreements and contracts for the supply of goods and services in connection with the service.

- 2.8.18.35. To enable the delivery of markets on Council owned sites by working with market cooperatives in the Borough.
- 2.8.18.36. To authorise officers to apply for judicial approval and to undertake surveillance under the Regulation of Investigatory Powers Act 2000, excluding cases where it is likely that knowledge of confidential information will be acquired or where a vulnerable or juvenile Covert Human Intelligent Source is to be used.
- 2.8.18.37. To implement the provisions of the Counter Terrorism and Security Act 2015.
- 2.8.18.38. To implement the provisions of the Modern Slavery Act 2015.
- 2.8.18.39. To implement the provisions of the Children’s Act 2004.
- 2.8.18.40. To be responsible for safeguarding.

## **Licensing**

- 2.8.18.41. To carry out all licensing functions in respect of:
- Street trading in licensed streets pursuant to the Local Government (Miscellaneous Provisions) Act 1982;
  - Premises, club premises, personal licences, provisional statement, Designated Premises Supervisor, Temporary Event Notices in accordance with the Council’s Licensing Policy and the Licensing Act 2003;
  - Premises, provisional statement, Temporary Use Notices, Game Machine Permits, Lotteries, Prize Gaming Permits, acting as the Responsible Authority and instituting proceedings for non-compliance in accordance with the Council’s Gambling Policy and the Gambling Act 2005;
  - Street collections pursuant to Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 (as amended);
  - House to House collections pursuant to Section 2 of the House to House Collections Act 1939 (as amended);
  - Sex establishments pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;
  - To act as the “responsible authority” within the meaning of the Licensing Act 2003 and Gambling Act 2005;
  - To maintain a register of persons carrying out business as a scrap metal dealer pursuant to the provisions of the Scrap Metal Dealers Act 1964 and 2013.

- To exercise all powers under sections 19 – 28 of the Criminal Justice and Police Act 2001, with all powers of prosecution and court litigation reserved to the Head of Legal Partnership.

### **Hackney Carriage and Private Hire Vehicles**

2.8.18.42. To undertake all functions regarding Hackney Carriage and Private Hire Vehicles in accordance with the relevant provisions of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

### **Other**

2.8.18.43. To grant and to renew licences for pleasure boats and for pleasure boatmen pursuant to the Public Health Acts Amendment Act 1907 (as amended by the Local Government Act 1974) and to dispose of boats and ancillary equipment abandoned or uncollected on any port or foreshore in the Council's ownership.

## **2.8.19 DELEGATIONS TO THE HEAD OF REGENERATION AND ECONOMIC DEVELOPMENT**

### **Cultural Services**

2.8.19.1. To work in partnership to enable the delivery of arts, heritage and cultural services in Swale

2.8.19.2. To manage the preservation and development of cultural and heritage infrastructure.

### **Economic Development and Regeneration**

2.8.19.3. To implement key regeneration projects across the Borough.

2.8.19.4. To enable synergy between the Council, learning providers and local businesses.

2.8.19.5. To enable the delivery of visitor economy projects across the Borough.

2.8.19.6. To provide management and administration of grant schemes and payments, including the signing and sealing of grant agreements, in accordance with the Council's policy framework and/or the requirements of the funding body.

### **Property Services**

2.8.19.7. To enter into all 'de-minimis' Agreements, e.g. minor wayleaves, easements, rights of way, temporary occupation of land, tenants-at-will etc.

2.8.19.8. To negotiate and agree terms for the modification, variation or release of covenants contained in conveyances and transfers in accordance with any relevant provisions contained within the Asset Management Strategy, the Asset Transfer Policy and Disposals Policy.

- 2.8.19.9. To deal with Blight Notices ensuring final compensation where the notices have been accepted by the Council for conveyancing purposes.
- 2.8.19.10. To approve disturbance payments, etc. other than payments in respect of well- maintained houses.
- 2.8.19.11. To finalise negotiations in the case of confirmed Compulsory Purchase Orders.
- 2.8.19.12. To deal with applications for the sale of sub-station sites.
- 2.8.19.13. To deal with applications for the sale and purchase of land where the proposed consideration does not exceed £10,000 or where the land is to be sold or purchased on behalf of the Kent County Council.
- 2.8.19.14. To assign leases, subject to the normal investigation of the financial abilities of the new leases and to those cases also requiring a change of the approved use being determined, in consultation with the relevant Committee Chair.
- 2.8.19.15. To terminate or accept the surrender of a leasehold interest in land where it is of benefit to the Council.
- 2.8.19.16. To approve rent reviews and lease renewals up to a maximum increase of £7,000 or 20% per annum whichever is the greater amount.
- 2.8.19.17. To enter into leases for less than seven years or to enter into leases where the annual rent is less than £3,000.
- 2.8.19.18. To retain agents to advise upon terms for sales, leases, purchases, easements, compensation claims and similar matters or otherwise in connection therewith.
- 2.8.19.19. To negotiate the terms of, and authorise the granting of, landlords licences and consents and variations under existing leases.
- 2.8.19.20. To carry out any site investigation where he/she considers it necessary whether upon the commencement of negotiations or acquisition or otherwise.
- 2.8.19.21. To apply for planning permission for the development of any land or property and to make any other application under planning legislation.
- 2.8.19.22. To be responsible for all aspects of the Community Right to Bid process as per the Localism Act 2011.

## **2.8.20 DELEGATIONS TO THE MID-KENT ENVIRONMENTAL SERVICES MANAGER**

- 2.8.20.1. To discharge the Council's responsibilities with regard to statutory nuisances.

- 2.8.20.2. To administer all Port Health matters and monitor and enforce all other matters of public health and environmental health.
- 2.8.20.3. To appoint inspectors under the Health and Safety at Work etc. Act 1974.
- 2.8.20.4. To implement and enforce the provisions of the Health and Safety at Work etc. Act 1974, together with any other health and safety regulations and enactments.
- 2.8.20.5. To implement the provisions of the Food and Environment Protection Act 1985, the Control of Pesticides Regulations 1986 and of the Food Safety Act 1990 and any Orders or Regulations made thereunder or relating to the foregoing and any modifications or re-enactment to the foregoing.
- 2.8.20.6. To enforce the provisions of the Prevention of Damage by Pests Act 1949.
- 2.8.20.7. To implement and enforce the provisions of the Environmental Protection Act 1990.
- 2.8.20.8. To implement and enforce the Environment Act 1995.
- 2.8.20.9. To enforce the provisions of the Clean Air Act 1993.
- 2.8.20.10. To enforce the provisions of the Control of Pollution Act 1974.
- 2.8.20.11. To enforce the provisions of the Pollution Prevention and Control Act 1999.
- 2.8.20.12. To implement and enforce the provisions of the Noise and Statutory Nuisance Act 1993.
- 2.8.20.13. To implement and enforce the provisions of the Environmental Permitting (England and Wales) Regulations 2010.
- 2.8.20.14. To implement and enforce the provisions of the Public Health Acts 1936 and 1961, together with any other public health regulations and enactments.
- 2.8.20.15. To enforce the provisions of The Public Health (Control of Disease) Act 1984.
- NB: The Clinical Director of the Kent Health Protection Unit is appointed as the Proper Officer of the Council to carry out duties under the above Act, the Public Health (Prevention of Tuberculosis) Regulations 1925, the Public Health Act 1936, the Public Health (Ships) Regulations 1979 and any other Regulations made under the Act, and any consultants in Communicable Disease Control, authorised by the Clinical Director, are similarly appointed to act on his behalf.*
- 2.8.20.16. To implement and enforce the provisions of the Water Industry Act 1991 and Private Water Supplies Regulations 2009 in relation to private water supplies.



- 2.8.20.17. To implement and enforce the provisions of the Building Act 1984.
- 2.8.20.18. To enforce the provisions of The County of Kent Act 1981.
- 2.8.20.19. To implement and enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and 1982.
- 2.8.20.20. To enforce the provisions of the Land Drainage Act 1991.
- 2.8.20.21. To enforce the provisions of the Clean Neighbourhoods and Environment Act 2005:
- Part 5, Chapter 1 Sections 77 – 79, Chapter 2, Sections 82 – 86, Part 7, Chapter 1 Sections 69 – 73, Part 9, Sections 101 – 105
- 2.8.20.22. To enforce the provisions of the Environmental Damage (Prevention And Remediation) (England) Regulations 2015.
- 2.8.20.23. To enforce the provisions of the Noise Act 1996.
- 2.8.20.24. To enforce the provisions of the Anti-Social Behaviour Crime and Policing Act 2014 – Chapter 1 Sections 43 – 93.
- 2.8.20.25. To enforce the provisions of the Health Act 2006 – Part 1 Chapter 1.
- 2.8.20.26. To enforce the provisions of the Plant Protection Product Regulations 2011.
- 2.8.20.27. To enforce the provisions of the Plant Protection Products (Sustainable Use) Regulations 2012.

### **Anti-idling Legislation**

- 2.8.20.28. To authorise relevant officers or persons to stop the commission of stationary idling offences and issue fixed penalty notices (FPNs) in respect of such offences, in accordance with Regulation 6(3) of the 2002 Regulations.

### **Miscellaneous**

- 2.8.20.29. To enforce the provisions of the Offices, Shops and Railway Premises Act 1963.
- 2.8.20.30. To arrange burials and cremations pursuant to Section 46 of the Public Health (Control of Disease) Act 1984.

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## **PART 3.1 – COUNCIL AND COMMITTEE PROCEDURE RULES**

### **3.1.0 Introductory Note**

These rules are generally applicable to Council and committee meetings. Those which are applicable only to Council are marked with an asterisk. See Rule 3.1.34 for more details.

### **3.1.1. Annual Meeting of the Council \***

In a year where there is an ordinary election of Members, the Annual Meeting of the Council will take place within 21 days of the retirement of the outgoing Members. (The meeting usually takes place on the 12th day after the first Thursday in May). In any other year the Annual Meeting will take place in May.

The Annual Meeting will:

- (1) Elect a person to preside if the Mayor is not present;
- (2) Elect the Mayor; (see Procedure Rule 3.1.2 below);
- (3) Elect the Deputy Mayor (see Procedure Rule 3.1.2 below);
- (4) Approve as a correct record and sign the minutes of the last meeting;
- (5) Receive any announcements from the Mayor and Returning (or Acting Returning) Officer;
- (6) Elect the Leader of the Council;
- (7) Note the appointment of Deputy Leader, as made by the Leader;
- (8) Decide to establish at least such Committees as the Council considers appropriate, deciding their terms of reference and size, deciding the allocation of seats in accordance with the political balance rules and appointing Chair and Vice-Chair of all Committees of the Council as set out in Part 2 of the Constitution and appointing committee members, in accordance with nominations from Group Leaders, where applicable and voted on by Members of the relevant Committee only;
- (9) Approve a programme of meetings for the year;
- (10) Receive nominations of Councillors to serve on outside bodies and to appoint to outside bodies;
- (11) Receive nominations of Councillors and/or officers to be appointed as Directors of Companies where the Council has a right to appoint Directors;

(12) Agree any plan or strategy which forms part of the policy framework requiring implementation from the start of the civic year;

(13) Agree any other urgent item that cannot reasonably wait until the next ordinary meeting of the Council pursuant to Procedure Rule 3.1.5;

N.B. This does not mean that any other variations to the policy framework cannot be considered at a later date during the civic year.

(14) Note the Chief Executive's objectives for the forthcoming year.

### **3.1.2. Election of Mayor and Deputy Mayor \***

The Council has agreed the following protocol in respect of the Election of Mayor and Deputy Mayor:

(a) The selection of Mayor and Deputy Mayor is not confined to one party;

(b) The Mayor and Deputy Mayor will be chosen on merit;

(c) The term of office for the Mayor and Deputy Mayor will normally be for one year;

The Mayor elect and Deputy Mayor elect will be agreed by the Council meeting prior to the Annual Meeting (usually February) with a proviso that in the year of ordinary Council elections, should those nominated not be re-elected at those elections, a meeting of Group Leaders will take place between those elections and the Annual Council Meeting.

Nominations for Mayor and Deputy Mayor shall be delivered to the Proper Officer no later than noon on the Thursday before the February Council meeting, signed by a proposer and a seconder, both of whom at the time of delivery of the nominations, shall be elected Members of the Council, who have made declarations of acceptance of office as Councillors.

Should more than one nomination be received for Mayor and/or Deputy Mayor, voting will be by secret ballot at the February Council meeting. At that meeting a ballot paper will be circulated for Members to cast one vote, and the result will be declared at the end of that meeting.

If no nominations are received, nominations for the Mayor and Deputy Mayor shall be requested at the Annual Meeting.

### **3.1.3. Ordinary Meetings \***

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

(1) Elect a person to preside if the Mayor and Deputy Mayor are not present;

(2) Approve as a correct record the minutes of the last meeting and the Mayor will sign the minutes;

(3) Give Members the opportunity to make Declarations of Interest as follows:

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chair will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

(4) Receive any announcements from the Mayor;

(5) Receive questions and any petitions from, and provide answers to, the public in relation to matters which are to be considered by the Council in accordance with the Petition Scheme (see Appendix 1);

(6) To answer any questions asked by Members in accordance with Council Procedure Rule No. 3.1.14;

(7) Receive reports from officers (Head of Paid Service, Chief Financial Officer and Monitoring Officer and Statutory Officers who have a statutory right to report);

(8) Receive reports about and receive questions and answers on the business of joint arrangements and external organisations;

(9) Consider any other business specified in the summons to the meeting;

(10) Consider motions received in accordance with Council Procedure Rule No. 15;

The Order of Business can be altered by the Mayor/Chair at their discretion, or by resolution of the Council moved and seconded and put without discussion, with the exception of (1), (2) and (3) above. Under Section 100B of the Local Government Act 1972 the Mayor may agree to late items being added to the agenda where they are of the opinion that they are urgent.

#### **3.1.4. Extraordinary Meetings**

An extraordinary Meeting may be called by the Mayor.

Any five Members of the Council may request the Mayor to convene a meeting if they have signed a requisition presented to the Mayor which shall specify the business to be transacted at the meeting; if the Mayor refuses to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition, those Members may call the extraordinary meeting themselves.

Extraordinary meetings will be restricted to the business that the meeting was convened to consider. There is no requirement for the Minutes of the previous meeting to be considered.

In respect of other Committees/Panels, an extraordinary meeting may be called by either the Chair; or on requisition of a quarter of the whole number of the Committee/Panel delivered in writing to the Proper Officer, but in no case shall less than three members requisition an extraordinary meeting.

#### **3.1.5. Urgent Items**

The Mayor may accept an item for consideration which has not been included on the agenda for the meeting, if they are satisfied that it needs to be considered at the meeting as a matter of urgency. The reason for the urgency shall be recorded in the Minutes of the meeting.

#### **3.1.6. Substitute Members**

A Member can act as a substitute for another member at all meetings of the Council except for the full Council. If acting as a substitute on the Planning or Licensing Committee the substitute member must have undertaken appropriate training.

Names of substitute Members must be declared at the start of each meeting. Each political group must name the substitute even if that Councillor is not present at that time, as the membership at the beginning of the meeting lasts for the duration of the meeting (i.e. a Member cannot be substituted by a reserve, or vice-versa, part way through proceedings).

A Councillor who attends a meeting, as a substitute, speaks and votes in their own capacity. They do not relinquish their own personal responsibilities or, as it were, take on the mantle of their nominator. The substitute is personally under the same obligations as other Members to disclose an interest.

A substitute nominated to attend in place of the Chair or Vice-Chair shall not exercise the powers and duties of the Chair or Vice-Chair as the case may be. The meeting will need to elect a Chair as necessary.

In the event of the death or resignation of a Councillor, a substitute may be allocated to each Committee, Sub-Committee or Working Group, until any vacancy is filled by the Council.

### **3.1.7. Attendance at meetings**

Any Member may attend any Meeting of the Council of which they are not a member (with the exception of the Standards Hearing Sub-Committee) and shall be allowed to speak subject to having given prior notification to the Chair.

A Member who has moved a Motion which has been referred to another meeting has the right to attend the meeting and speak to the Motion to explain it.

When minutes/recommendations from one Committee are being considered by a second Committee, the Chair of the first Committee has the right to attend and take part in the discussion on the minutes/recommendations, but will not have any voting rights unless they are a member of the second Committee.

### **3.1.8. Time and Place of Meetings**

Meetings will usually commence at 7pm and take place at the Council Offices, Swale House, East Street, Sittingbourne, ME10 3HT. This will be displayed on the agenda for each meeting.

### **3.1.9. Notice and Summons to Meetings**

The Proper Officer will give public notice of the time and place of any meeting in accordance with the Access to Information Procedure Rules. At least five clear working days before a meeting, the Proper Officer will send a summons to every Member, giving the date, time, venue and business to be transacted, including reports as available.

### **3.1.10. Chairing the Meeting**

The Mayor or, in their absence, the Deputy Mayor will chair meetings of the Council. If both the Mayor and Deputy Mayor are not present, the Members at the meeting will elect a Chair for the meeting. The person presiding at the meeting may exercise any power or duty of the Mayor when conducting the meeting. The same principle applies to all other meetings of the Council (i.e. where the Chair is not present, the Vice-Chair will chair the meeting; if neither are present then the meeting will elect a Chair for the meeting). The committees will elect a Chair and Vice-Chair for the year at the first meeting of the committee in that municipal year. The Chair and Vice-Chair may be removed on a motion passed by the committee.

### **3.1.11. Quorum**

The quorum for full Council meetings shall be one quarter of the whole number of members.

The quorum for all committees and sub-committee shall be one third of the membership of the committee or sub-committee subject to a minimum requirement of three Members for Committees.

There are different rules which apply to the Standards Committee Hearings which are set out at Appendix 2 to these Rules and the Swale Joint Transportation Board which are explained in Appendix 3 to these Rules.

If there is not a quorum 20 minutes after the time the meeting was due to start, no business shall be transacted, and the Democratic Services representative shall record that there was no quorum and the meeting will not take place.

During the meeting, if the Mayor or Chair (references to the Mayor throughout these rules shall include Chair wherever a rule applies to committees) counts the number of Members present and declares that there is not a quorum present, then the business shall be adjourned immediately. If after five minutes a quorum is still not present at the meeting, the remaining business will be considered at a date and time fixed by the Mayor, or the next ordinary meeting. The Democratic Services representative shall record in the minutes, the names of those present and absent and the time of adjournment.

### **3.1.12. Duration of Meeting**

Meetings will finish by 10pm at the latest unless Members present vote for the meeting to continue for another half an hour. If at the end of that time there is still business to transact, Members can vote for further time (in periods of half an hour), or the remaining business will be considered either at the next ordinary meeting or at a time and date fixed by the Chair. This will not be later than seven clear days after the date of the adjournment.

### **3.1.13. Questions by Members**

A Member may give notice that they wish to ask the Mayor, Leader or the Chair of any Committee a question at full Council subject to the following rules:

- (i) The question must be in relation to a matter in which the Council has powers or duties, or which affects the Borough.
- (ii) Notice in writing of any question must be given to the Proper Officer no later than 4.30pm on the Monday of the week before the meeting.
- (iii) There shall be a limit of two questions per member at any one meeting;
- (iv) With the permission of the Mayor, a member may put to the Leader or the Chair of any Committee any question relating to urgent business, of which the notice in (i) above has not been given, but a copy of any such question shall be delivered to the Proper Officer not later than 11am on the day of the meeting;



- (v) Questions will be placed on the agenda in order of receipt by the Proper Officer and will be dealt with on that chronological basis at the meeting.

Every question shall be put orally and answered orally without discussion and this agenda item will be limited to a maximum of 30 minutes.

Supplementary questions may be allowed at the Mayor's discretion but must be short and succinct and relate to the original question.

An answer may take the form of:-

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

If a Member who has given notice of a question is not present at the Meeting at the appropriate time, the question shall not be asked. The Member can re-submit notice of the question at the appropriate time for the next meeting.

### **3.1.14. Motions with notice \***

#### **3.1.14.1 Notice of motions**

With the exception of motions which can be moved without notice, written notice of every motion, signed or forwarded by email by a proposer and seconder (or appropriate number of Members if the motion is submitted pursuant to Council procedure rule 3.1.19.2), must be given to the proper officer not later than 4.30pm on the Friday before the agenda is dispatched. These will be recorded and open to public inspection.

No more than two motions submitted by Members will be listed on the agenda for debate per meeting. Motions will be listed on the agenda in order of receipt. Once two motions have been received by the proper officer for a meeting, no further motions may be submitted until the close of that meeting. Motions will remain on agendas unless the Member giving notice states in writing that they wish to withdraw the motion or move it to a later meeting.

The Mayor may agree to late motions being added to the agenda, in addition to the maximum of two that have been accepted for debate, where they are of the opinion they are urgent.

No motions will be accepted, subject to the Mayor's discretion in respect of urgent matters, at key budget decision meetings. The latter are defined as the budget setting meeting and the meeting setting the Council's fees and charges.

#### **3.1.14.2 Treatment of motions**

Motions submitted by Members will be limited to a maximum of 30 minutes' debate for each motion.

If a motion set out on the agenda is not moved at the meeting, either by the Member that gave the notice or another Member, it shall, unless postponed by the consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

If the subject falls within the terms of reference of another meeting it may, upon being moved and seconded, be referred without discussion to the meeting as the Council determines, for consideration and report. Alternatively, the Mayor can decide that the motion can be considered at the Council meeting.

### **3.1.14.3 Subject of motions**

Motions must be about matters which the Council has responsibility for or which affect the borough.

Motions may seek to set a tone or general direction for future more detailed policy development work by the appropriate Council committees, or to provide an initial stimulus to that work, but the wording of a motion or an amendment must not be such that it could be interpreted as circumventing or seeking to circumvent the Council's constitutional decision-making processes.

Motions with the potential for budgetary or significant policy implications should request the relevant Committee to undertake the work necessary for a properly evidenced decision to be taken.

The monitoring officer will review the wording of all motions submitted and, in consultation with the Mayor, may if necessary reject a motion on the basis that its wording is in breach of this rule or that it is otherwise out of order, illegal, irregular or improper.

The monitoring officer will work with the Member who wishes to propose the motion to bring the wording into compliance with this rule in a way which is acceptable both to the Member and to the Mayor and monitoring officer, provided this can be completed before the deadline for the submission of motions. Where the Mayor is of the view that it would be helpful, any of the Council's statutory chief officers may append a concise note to a motion or amendment setting out any budgetary or other significant implications.

In the event that no agreement on wording can be reached and the motion is formally rejected by the monitoring officer in consultation with the Mayor, the monitoring officer will advise the member in writing of the reasons for this decision and submit a report of the decision to the next council meeting. This report will be noted without discussion.

In the event that a motion seeking to set a tone or general direction for, or to provide initial stimulus to, future policy development work is moved and seconded but not carried when put to the vote, this will in no way prevent the Policy and

Resources Committee or any relevant committee from working to develop policy along the lines proposed in the motion. In general the rejection of a motion at full Council will have no bearing on the future work of the Council or any committee (but refer to Rule 3.1.20.2 for the bearing it can have on future motions).

#### **3.1.14.4 Motion to Remove the Leader**

The Leader may be removed from office by resolution of the Council on the basis of a motion signed by five Members of the Council and included on the agenda for a Council Meeting.

Such motion must be given in writing to the Proper Officer at least 14 days prior to the relevant meeting and shall indicate the reasons for the motion. The motion shall take precedence over any other item of business.

If the Council passes a resolution to remove the Leader, a new Leader is to be elected:-

- (a) at the meeting at which the Leader is removed from office, or
- (b) at a subsequent meeting.

In the interim, the Deputy Leader must act in the Leader's place unless the Deputy Leader is unable to act.

#### **3.1.15 Motions without Notice**

The following Motions and amendments may be moved without notice:-

- (1) Appointment of a Chair of the meeting at which the Motion is moved.
- (2) Motions relating to the accuracy of the Minutes.
- (3) To change the order of business on the Agenda.
- (4) To refer something to an appropriate body or individual.
- (5) To receive reports or adopt recommendations of Committees, Groups or officers and any resolutions following from them.
- (6) That a Motion be withdrawn.
- (7) That the Council proceed to the next business.
- (8) That the question be now put.
- (9) That the debate be now adjourned.
- (10) That the Council do now adjourn.

- (11) That the Council continue its business.
- (12) Suspending Standing Orders (Procedure Rules), in accordance with Council Procedure Rule No. 3.1.30.
- (13) Motion to exclude the press and public from Meetings.
- (14) That a Member named be not further heard or be able to leave the Meeting.
- (15) By the Mayor under Procedure Rule 3.1.23 that a Member leaves the meeting;
- (16) A Motion under Section 100A(4) of the Local Government Act 1972, as amended, to exclude the press and public;
- (17) A request by any for the Policy and Resources Committee to review an existing policy or suggest a new policy by way of a motion (note: A policy shall not be re-considered by the Policy and Resources Committee within two years or before its built in review period, unless by resolution of the Full Council or as required by a change in legislation or national guidance;
- (18) A member may move, without comment, the following motions at the conclusion 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;
  - (d) to adjourn a meeting.
  - (i) if a Motion to proceed to the next business is seconded and the Mayor thinks the item has been sufficiently discussed, they will give the mover of the original Motion a right of reply, and then put the Motion to the vote and proceed to the next business;
  - (ii) if a Motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, they will put the Motion that the question be now put to the vote and if it is passed, will then give the mover of the original Motion their right of reply under Rule 3.1.16.7 of these Procedure Rules before putting their Motion to the vote;
  - (iii) if a Motion to adjourn the debate or the meeting is seconded and the Mayor thinks that the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, they shall put the adjournment Motion to the vote without giving the mover of the original Motion their right of reply.

When a Motion in any of the terms in Rule 3.1.15 (18) has been moved, no further Motion in any of those terms shall be allowed in the course of the debate on the same matter within fifteen minutes unless in the opinion of the Mayor the circumstances have materially altered.

### **3.1.16. Rules of Debate \***

A Motion or amendment shall not be discussed unless it has been proposed and seconded, and unless Notice has already been given in accordance with Procedure Rule 3.1.15 it shall, if required by the Mayor, be put into writing and handed to the Mayor before it is further discussed or put to the meeting.

#### **3.1.16.1 Secunder's Speech**

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

#### **3.1.16.2 Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order (see Rules 3.1.16.8 and 3.1.16.9). No speech may exceed three minutes without the consent of the Mayor, provided that in moving a Motion of which Notice in accordance has been given, a Member may speak for not exceeding five minutes.

#### **3.1.16.3 When a Member may speak again**

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

- (a) to speak once on an amendment moved by another Member;
- (b) if the Motion has been amended since they last spoke, to move a further amendment;
- (c) if their first speech was on an amendment moved by another Member, to speak on the main issue, whether or not the amendment on which they spoke was carried;
- (d) in exercise of a right of reply;
- (e) on a point of order;
- (f) by way of personal explanation.

#### **3.1.16.4 Amendments to Motions**

Written notice of every amendment to a motion which has been published in a Council agenda or to a recommendation in a report on a Council agenda, signed or forwarded by email by a proposer and seconder, must be given to the proper officer not later than 4.30pm on the Monday preceding the Council meeting. These will be recorded and open to public inspection.

The Mayor may waive this rule during a Council meeting where it appears to them that allowing an amendment to be proposed and seconded without notice having

been given would be conducive to enabling the meeting to articulate a common position on the matter under debate.

An amendment shall 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 other words; or
- (d) to insert or add words.

as long as the effect of (b) to (d) is not to negate the motion. This paragraph applies only to amendments to motions, and not to amendments to recommendations contained in reports.

The wording of an amendment must not be such that it could be interpreted as circumventing or seeking to circumvent the Council's constitutional decision-making processes. This rule is described more fully in Rule 3.1.14.3.

Notice of amendments to the budget are to be given in the same way as notice of other amendments. The rules on the wording of amendments set out in Council procedure rule 3.1.14.3 do not apply to budget amendments, but in proposing any changes to the budget, any amendment must ensure that the proposal achieves a balanced budget.

Amendments will be debated and voted on in the order in which notice was received. The Mayor may waive this rule during the meeting if they believe there are good reasons to do so.

Only one amendment may be moved and debated at a time, and no further amendment shall be moved until the amendment under discussion has been disposed.

If an amendment is lost, other amendments may be moved on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion. This becomes the substantive motion upon which any further amendments are moved, except such as would have the effect of reviving the original motion.

Amendments to recommendations contained in Committee or officer reports to be considered by Council will be debated in the same way as amendments to motions.

### **3.1.16.5 Alteration of Motion**

A Member may alter a Motion of which they have given notice with the consent of the meeting. The meeting's consent will generally be signified without discussion. Where it appears to be the Mayor that there is significant dissent, they may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

A Member may alter a Motion which they have moved without notice with the consent of both the meeting and seconder. The meeting's consent will generally be signified without discussion. Where it appears to the Mayor that there is significant dissent, they may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

A Member may alter a motion which they have moved without notice with the consent of the meeting and the seconder. The meeting's consent will generally be signified without discussion. Where it appears to the Mayor that there is significant dissent, they may allow the dissent to be voiced and hold a vote on whether to accept the alteration.

Only alterations which could be made as an amendment may be made.

If requested by any Member, the Mayor shall call upon the Democratic Services Officer to read back any alterations to any Motion.

#### **3.1.16.6 Withdrawal of Motion**

A Member may withdraw a Motion or amendment which they have moved with the consent of both the meeting and their seconder. The meeting's consent will be signified without discussion. No Member may speak upon it after the mover has asked permission for its withdrawal, unless permission is refused.

#### **3.1.16.7 Right of Reply**

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

If an amendment is moved, the mover of the original Motion shall also have a right of reply at the close of the debate on the amendment and may not otherwise speak on the amendment.

The mover of the amendment shall have no right of reply to the debate on their amendment.

When an amendment has been carried and a debate ensues on a further amendment, the right of reply to that further amendment shall be exercisable by the mover of the successful amendment, and not by the mover of the original Motion which it has replaced.

A Member exercising a right of reply shall not introduce new matters.

#### **3.1.16.8 Point of Order**

A Member may raise a point of order at any time. A point of order shall relate only to an alleged breach of a Procedure Rule or the law and the Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Mayor will be final and not open to discussion.

### 3.1.16.9 Personal Explanation

A Member may make a personal explanation at any time. A personal explanation may only be related to some material part of an earlier speech by the Member, which may appear to have been misunderstood in the present debate. The ruling of the Mayor will be final and not open to discussion.

### 3.1.17. Leader's Statement \*

At ordinary meetings of the Council (except the Annual Meeting) the Leader shall give an update report. The leader of any group which is not part of the administration may make a statement in response to the Leader's statement, following which any other member may also make a statement, subject to there being sufficient time. Any such statements must be a response to the subject matter raised in the leader's statement. The Leader will then be given an opportunity to respond to any such statements.

The Leader's statement will be a maximum of seven minutes. Any group leader who wishes to respond will have a maximum of five minutes. Any other member who wishes to speak will have a maximum of three minutes. The Leader will have a final right of reply at the end of the statement(s) of three minutes. The whole agenda item will have a time limit of 30 minutes.

### 3.1.18. Voting

(1) Unless this Constitution or the law provides otherwise, any matter will be decided by a simple majority of those present and voting at the meeting, by show of hands or electronic voting or, if no dissent, by affirmation of the meeting.

(2) If five councillors present at a Council meeting, three councillors present at a Committee/Panel or two Councillors present at a Sub-Committee meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

(3) Where immediately after a vote is taken at a meeting and any member so requires, there shall be recorded in the Minutes of the proceedings of that meeting whether that person cast their vote for the question or against the question or whether they abstained from voting. **(This rule cannot be suspended).**

(4) Voting on Appointments: Where there are more than two persons nominated for any position to be filled by the Council, and of the votes given there is not a majority in favour of one person, the name of the person having the least number of votes shall be struck off the list and a fresh vote shall be taken and continue until there is a majority of votes for one person. (Please see Rule 3.1.2 regarding voting on nominations for Mayor and Deputy Mayor.)

(5) Voting on decisions relating to the budget or Council Tax: In accordance with the Local Authorities (Standing Orders) (England) Regulations 2010 (as amended) the minutes will record how each member present voted on any decision relating to the budget or Council Tax. **(This rule cannot be suspended).**



(6) If there are equal numbers of votes for and against, the Chair will have a second or casting vote, regardless of whether they have used their first vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

(7) Members must be present in the room for the discussion in order to be able to vote at meetings of the Planning Committee, Licensing Sub-Committee and Standards Sub-Committee.

### **3.1.19. Previous Decisions and Motions**

#### **3.1.19.1 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.

#### **3.1.19.2 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 Council Members. Once the Motion or amendment is dealt with, no one can propose a similar Motion or amendment for six months.

### **3.1.20. Minutes**

(i) The Mayor/Chair will ask the meeting if they agree that the minutes of the previous meeting of the Council are correct, and if agreed will sign them as a correct record. The only part of the Minutes that can be discussed is their accuracy.

(ii) There is no requirement to sign the minutes of the previous meeting as a correct record, at an extraordinary meeting, instead those minutes, together with the minutes of the extraordinary meeting, will be considered at the next ordinary meeting. **(This rule cannot be suspended).**

### **3.1.21. 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.

### **3.1.22. Exclusion of the Public**

Members of the public and the press may only be excluded from the meeting in accordance with the Access to Information Procedure Rules in Part 3.2 of this Constitution or Council Procedure Rule 3.1.24.

If any question arises at a meeting (to which Section 100A (4) of the Local Government Act 1972, as amended, applies) as to the appointment, promotion, dismissal, salary,

superannuation or conditions of service, or as to the conduct of any person employed by the Council, such question shall not be subject to discussion until the meeting has decided whether or not to exclude the press and public.

### **3.1.23. Members' Conduct**

When a Member speaks at full Council, they must normally stand and address the meeting through the Chair. 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 personal explanation. Whenever the Mayor rises during a debate, any Member speaking at the time must stop and sit down. The Council shall be silent.

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

If the Member continues to behave improperly after such a motion is carried, the Mayor may move either that 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.

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as they think necessary.

### **3.1.24. Disturbance by the Public**

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

If there is a general disturbance in any part of the meeting room open to the public, the Chair may ask for that part to be cleared.

### **3.1.25. Form of Address for Members**

Irrespective of gender, whenever a Member is addressed the title 'Councillor' shall be used, followed only by the relevant surname, unless another form of address is requested by the individual Member concerned.

### **3.1.26. Recording of Proceedings**

In accordance with The Openness of Local Government Bodies Regulations 2014, any person attending a meeting of the Council is permitted to report on proceedings by way of filming, photographing, the making of an audio recording, or by any other means including social media which enables those persons not present to see or hear proceedings. No oral reporting or oral commentary on a meeting is permitted if the person reporting or providing the commentary is present at the meeting.

The reporting of proceedings must not be undertaken in a disruptive manner, and this could result in expulsion from the meeting room.

The reporting of proceedings is not permitted when the public are excluded from the meeting in accordance with Procedure Rule No. 3.1.22 – Exclusion of the Public.

### **3.1.27. Vacancies or Resignations from Committees/Panels**

Appointments to Committees/Panels will be agreed by the Annual Council meeting. Any resignations by Members during the year should be given to the Proper Officer. The leader of any group may notify any changes of committee membership to the Proper Officer for approval at the next meeting of Council.

### **3.1.28. Ad-hoc Groups or Panels**

The Council may set-up groups or panels which shall elect a Chair and Vice- Chair at their first meeting before proceeding to any other business. All business transacted shall be reported back to the appropriate body in accordance with their terms of reference. The group/panel will then be disbanded after it has discharged its terms of reference.

### **3.1.29. Joint Meetings**

In every case in which a resolution of the Council refers any matter of business to two or more Committees/Panels, the Committee/Panel first named shall take the initiative in inviting the other Committee or Committees interested to a joint meeting, and the report shall be presented by the Chair of the Committee taking the initiative who shall preside at the Joint Meeting. Any Committees/Panels may confer together by mutual agreement on any matter of joint interest.

### **3.1.30. Suspension and Amendment of Council Procedure Rules**

Except where proposed at a meeting of the Council any Motion to add to, vary or revoke these Standing Orders shall, when proposed and seconded, stand adjourned without discussion to the next Ordinary Meeting of the Council.

Subject to the paragraph below, any of the Procedure Rules other than those which are prescribed (as stated) may be suspended so far as regards any business at the meeting where its suspension is moved.

A Motion to suspend Procedure Rules/Standing Orders shall not be moved without Notice unless there shall be present at least one-half of the whole number of the Council.

### **3.1.31. Mayor and Chair's Ruling on Procedure Rules**

(1) The interpretation by the Mayor or Chair of the meeting of any of these Procedure Rules shall be such as not to annul, reverse or substantially alter the intent of any Procedure Rules.

(2) All disputes relating to the correct interpretation of any of these Procedure Rules shall be resolved by a ruling from the Mayor or the Chair of the meeting after open

consultation with the Monitoring Officer or their delegated representative. The Mayor's or Chair's ruling shall be final.

### **3.1.32 Deputations and Petitions**

Every deputation wishing to be received by the Council, a Committee, Sub-committee Panel or Group shall give reasonable notice in writing (including email) to Democratic Services.

The Council or other specified body shall decide whether such deputation shall be received and, if so, whether at that or a subsequent meeting.

The notice of deputation shall state the nature and objects of the deputation which must relate to local government matters concerning the Borough.

No deputation shall exceed six in number and except with the express consent of the Mayor or Chair, no more than two Members may address the meeting, except in reply to questions put by Members. The total time allowed for a deputation to address the meeting, other than time allowed for questions, shall not exceed 15 minutes.

The Council has agreed a Petitions Scheme. This sets out procedures regarding petitions received by the Council, both paper petitions and those submitted electronically via the epetition scheme. The Scheme is attached as Appendix 1 to these rules.

### **3.1.33. Public Questions at Council \***

Members of the public may ask questions of Committee Chair at ordinary meetings of the Council, subject to the question being put in writing (including email) to Democratic Services no later than 4.30 pm on the Wednesday the week before the day of the meeting. Each question must give the name and address of the questioner and must name the Member to whom it is to be put.

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

At any one meeting no person may submit more than two questions and no more than two questions may be asked on the same topic.

The Monitoring Officer may reject a question if it:

- (i) is not about a matter for which the Local Authority has a responsibility or which affects the Borough within the context of the power of "wellbeing";
- (ii) is defamatory, frivolous or offensive;
- (iii) is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- (iv) requires the disclosure of confidential or exempt information.

Each question will be open to public inspection and Democratic Services will immediately send a copy of the question to the Member to whom it is to be put.

Rejected questions will include reasons for rejection. Copies of all questions will be circulated to all Members and will be made available to the public attending 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. The Mayor may ask the question on the questioner's behalf, indicating that a written reply will be given or decide, in the absence of the questioner, that the question will not be taken.

A questioner who has put a question in person may also put one supplementary question, without notice, with a three minute time limit for the question and answer, to the Member who has replied to their original question. A supplementary question must arise directly out of the original question or the reply. The Mayor may reject a supplementary question on any of the grounds that the Monitoring Officer can, as set out above.

Every question shall be put and answered without discussion and this agenda item will be limited to a maximum of 30 minutes.

Any question which cannot be answered during public session, either because of lack of time or because of the non-attendance of the Member to whom it was to be put, will be answered by a written reply.

Unless the Chair decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to any Committee, Sub-Committee, Forum, Group or Panel as appropriate. Once seconded, such a Motion will be voted on without discussion.

### **3.1.34 Application to Committees etc.**

The rules apply to Council and/or Committee meetings except for Rules 3.1.1, 3.1.2, 3.1.3, 3.1.14, 3.1.16, 3.1.17 and 3.1.33 which are marked \*. Where they apply to Committees, references to the Mayor should be interpreted as references to the Chair. There are separate additional procedure rules which apply to certain Committees, as set out in the rules below and in the appendices to this part of the Constitution.

### **3.1.35 Licensing Committee**

Members of the public will have the opportunity to speak at meetings of the Licensing Committee, in accordance with the procedure set out below:

Anyone wishing to present a petition (related to an item included on the agenda) or speak on an application or item which is due to be considered at a meeting of the Licensing Committee is required to register with the Democratic Services by noon on the day before the meeting.

Only one person will be allowed to speak in each of the following categories. The right to speak will be allocated within the categories on a “first come first served” basis: -

- (a) Applicant
- (b) Objector

At the meeting, applications on which the public have registered to speak, will usually be moved forward in Agenda item order and considered before applications which do not have any registered speakers.

Members of the public who have registered to speak will be invited to do so in the order set out above for each application, and will have a maximum of three minutes to make their statement.

The right to speak does not give the opportunity to ask questions or participate in the Committee’s decision and determination of a Licensing application.

In respect of meetings that consider matters regarding Hackney Carriage and Private Hire Vehicles, members of the public may speak for a maximum of three minutes in respect of an agenda item. (Members of the trade also get the opportunity to give their views at Liaison meetings which are facilitated by the Council).

### **3.1.36 Swale Joint Transportation Board**

Members of the public will have the opportunity to speak at meetings of the Swale Joint Transportation Board in accordance with the procedure set out below.

Anyone wishing to present a petition (related to an item included on the agenda) or speak on an application or item which is due to be considered at a meeting of the Swale Joint Transportation Board is required to register with Democratic Services by noon on the day before the meeting.

In the case of the Swale Joint Transportation Board, only two people will be allowed to speak on each item and each person is limited to asking two questions. Questions that have not been submitted in accordance with the procedure above will not be accepted.

At the meeting, applications on which the public have registered to speak, will usually be moved forward in Agenda item order and considered before applications which do not have any registered speakers.

Members of the public who have registered to speak will be invited to do so by the Chair at the appropriate time and will have a maximum of three minutes to make their statement. The right to speak does not give the opportunity to ask questions or participate in the Board's decision and determination of an agenda item.

### **3.1.37 Area Committees**

At the start of each area committee meeting there will be a 20-minute session (which may be extended or reduced as necessary at the chair’s discretion) for members of

the public to ask relevant questions and make relevant comments to the committee. Questions will be for the chair to answer, but the chair will have discretion to invite other Members to contribute.

The chair will have discretion to invite comments from members of the public on any items while they are being discussed at meetings of the area committee.

### **3.1.38 Planning Committee Procedure**

#### Opening the meeting

3.1.38.1. The Chair will introduce themselves and explain that this is a Planning Committee meeting to be conducted in accordance with the Council's Constitution (including the Procedure Rules) which is available on the Council's Website.

3.1.38.2. The Chair will remind those present that the meeting has a quasi-judicial role and determines the rights and obligations of the applicant. They will remind Members that they should not vote according to party lines but must consider each application and everything that is said in the meeting concerning the application, and then make their decision based solely on their planning judgment of the information available to them.

3.1.38.3. The Chair will also explain that following a decision by Members, delegated authority is given to the planning officer to issue the decision notice. Planning permission is not granted until the issue of the decision notice. All the application documents are published on the internet and the decision notice will be published in due course.

3.1.38.4. The Chair will explain the role of, and introduce, any visiting Members. Any Member who is not a Member of the Planning Committee may attend as a visiting Member and may speak, provided s/he gives prior notification to the Chair. Such visiting Members may include ward Members. The Chair will explain that these visiting Members can speak on an application but cannot vote.

3.1.38.5. The Chair will welcome any members of the public who are registered to speak on any item. They will inform the meeting that in the event that an item is deferred to a site meeting of the Planning Working Group, members of the public may speak both at this meeting and at the site meeting, but there will be no further opportunity to speak on the matter when it comes back to the Planning Committee for final determination.

3.1.38.6. Any substitute Members will be introduced by name and it will be explained that when acting as a substitute on the Planning Committee the substitute Member must also have undertaken appropriate training.

3.1.38.7. The Chair will invite any declarations of disclosable pecuniary or disclosable non-pecuniary interests. The Chair will remind the meeting that where it is possible that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that a Member might be predetermined or

biased on any agenda item, the Member should declare this possibility. The Member may speak on the item as a visiting member and then leave the room while that item is considered. The Chair will invite any such declarations.

3.1.38.8. The Chair will remind the meeting that, Members must remain in the meeting for the whole time from the announcement of the item by the Chair through to the resolution of the Planning Committee and should not vote on that item unless they have done so.

3.1.38.9. The Chair will explain that the meeting will follow the order set out in the agenda, except where there is good reason to do otherwise. In particular, the Chair will explain that the Committee will take any items where a member of the public has registered to speak first, before moving on to the remainder of the agenda, and where this is relevant they will verbally re-order the agenda as appropriate.

#### Pre-Meeting Questions

3.1.38.10. Planning Committee members are invited to put forward questions of clarification of the facts of the case or matters of law to officers in advance of the Planning Committee. It is requested that these questions should be presented to the Officers by Noon on the third working day before the actual meeting e.g. Noon on the Monday before the Thursday Planning Committee. Officer's will ensure responses are made available to those questions by Noon the day before the Planning Committee and that the questions and responses will be circulated to all Members of the Planning Committee that afternoon and tabled at the meeting. Any urgent clarification questions to be put at the Planning Committee meeting will be at the Chair's discretion Introducing and debating each agenda item.

#### Public Participation General

3.1.38.11 Members of the public will have the opportunity to speak at meetings of the Planning Committee in accordance with the procedure set out below:

Anyone wishing to present a petition (related to an item included on the agenda) or speak on an application or item which is due to be considered at a meeting of the Planning Committee, including deferred items, are required to register with Democratic Services by noon on the day before the meeting. In the case of the Planning Committee, only one person will be allowed to speak in each of the following categories. The right to speak will be allocated within the categories on a "first come first served" basis: -

- (a) Parish or Town Council representative of the parish in which the application is situated
- (b) Parish or Town Council representative of any other parish affected by the application
- (c) Supporter
- (d) Objector
- (e) Applicant or Agent



At the meeting, applications on which the public have registered to speak, will usually be moved forward in Agenda item order and considered before applications which do not have any registered speakers.

Members of the public who have registered to speak will be invited to do so in the order set out above for each application, and will have a maximum of three minutes to make their statement.

The right to speak does not give the opportunity to ask questions or participate in the Committee's decision and determination of an agenda item or Planning application.

PLEASE NOTE: There is no right to speak on applications that are being determined under the Minutes of the Planning Working Group, as members of the public will have had the opportunity to speak on these applications at a previous meeting of the Planning Committee and at the Planning Working Group meeting.

### Agenda Items

3.1.38.12. The Chair will introduce each item, setting out the agenda item number, the planning application number and the location.

3.1.38.13. The Chair will remind any Members who have disclosed a pecuniary interest or declared the possibility of predetermination or bias on the item at hand that they must leave the room while that item is considered and must not speak or vote on that item. Members who have disclosed a non-pecuniary interest in an item may remain in the room and may speak and vote.

3.1.38.14. The Chair will then invite the Planning Officer to summarise the item. If the Chair has not stated the agenda item number, the planning application number and the location then the Planning Officer will do so. The Planning Officer will provide a verbal summary of the application, outlining its main proposals. Where relevant the Planning Officer will also provide any necessary verbal updates to the Committee report and reference to any pre-Committee questions put forward by Planning Committee members and the responses from officers (See para 3.1.35.10).

3.1.38.15. The Chair will then invite any members of the public who have registered to speak to do so in accordance with the public participation rules.

3.1.38.16. The Chair will then move the officer recommendation, a seconder will be found and the debate will open.

3.1.38.17. The Chair will first invite the visiting member(s) and any Committee members acting as Ward Member(s) for this item, if present, to speak, reminding them that they will have a maximum of three minutes to make their representation.

3.1.38.18. The Chair will then open the debate to the Planning Committee members. The Chair will remind the meeting that any Member wishing to speak on the item should do so by presenting their views without repeating any questions already dealt with through pre-committee clarification questions and responses, ensuring that their views are presented concisely and without repetition of any points previously made

by Members and ensuring their views focus on the material planning considerations involved.

3.1.38.19. The Chair can, at their discretion, refer technical or legal issues arising during the debate to relevant officers to respond as required during the discussion of the item.

#### Voting on each agenda item

3.1.38.20. When a vote is taken, the Democratic Services Officer will make a note of the number of votes for and against and the number of abstentions. If this is unclear, the meeting will wait until the Democratic Services Officer is satisfied that the vote is clear.

#### Where the vote is in accordance with the officer recommendation

3.1.38.21. If the vote follows the officer recommendation to approve the application for the reasons given in the report then planning permission will be granted subject to the issue of the decision notice.

3.1.38.22. If the vote follows the officer recommendation to refuse the application for the reasons given in the report then planning permission will be refused subject to the issue of the decision notice.

#### Where the vote does not follow the officer recommendation to approve

3.1.38.23. If the vote does not follow the officer recommendation to approve then:

a. the Chair will invite the Head of Planning to request the Committee to consider if the application should be deferred to the next meeting of the Committee.

b. If the decision is not deferred to a future meeting, a further motion must be made to refuse the application. Before voting on this new motion:

i. The Chair will give the planning officer the opportunity to explain the implications of any decision contrary to their recommendation.

ii. The Chair will remind the meeting that the courts have expressed the view that the Committee's reasons for refusal should be clear and convincing, capable of articulation and open to public scrutiny and be material planning reasons. The precise wording of the reasons for refusal must be clearly defined before the Committee votes on the motion. The Chair will propose a short adjournment of the meeting to allow officers to draft the framework wording rather than leaving the reasons to the officers to draft following the meeting, and to provide delegated authority to the Head of Planning to make any necessary detailed wording changes. A detailed minute of the Planning Committee's reasons (which should be full, clear and relate to material planning considerations) should be made by the Democratic Services Officer and a copy placed on the application file.

If the vote is passed then planning permission will be refused subject to the issue of the decision notice.

#### Where the vote does not follow the officer recommendation to refuse

3.1.38.24. If the vote does not follow the officer recommendation to refuse for the reasons given in the report, the Chair will invite the Head of Planning to request the Committee to consider if the application should be deferred. If the decision is not deferred to a future meeting:

- a. A further motion must be made to approve the application with delegated authority given to the Head of Planning to impose suitable conditions;
- b. If the vote is passed then planning permission will be approved subject to the issue of the decision notice.

#### Clarity on the outcome of the voting

3.1.38.24. The outcome of the voting will be announced by the Chair before moving on to the next item. If the Chair fails to do this then the Head of Planning will step in and announce the outcome.

#### Debating motions to undertake a site visit or defer the item

3.1.38.25. If during the debate on an item a motion is moved to undertake a site visit or to defer the item to a future meeting then a seconder for this motion will be sought and any further debate will be to this new proposal rather than the substantive motion. The new motion will be voted upon following the debate. If this motion is defeated, a further vote will be taken on the substantive motion.

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## PART 3.1 APPENDIX 1 – PETITIONS SCHEME

### Introduction

1. We particularly welcome petitions as one way in which you can let us know your concerns. In this Scheme we set out how the authority will respond to petitions which you send us, how we will acknowledge them, and what we intend to do with the petition.

### What is a petition?

2. We treat as a petition any communication which is signed by or sent to us on behalf of a number of people. For practical purposes, we normally set a requirement for at least 10 signatories or petitioners before we treat it as a petition.

### Who can petition?

3. Whilst we like to hear from people who live, work or study in Swale, this is not a requirement, and we would take equally seriously a petition from, for example, 10 visitors to the District on the subject of facilities at one of our visitor attractions or leisure facilities.

### What should a petition contain?

4. A petition must include the following.

- (i) A clear statement of your concerns and what you want the authority to do. This must relate to something which is our responsibility, or over which we have some direct influence. Where a petition relates to a matter which is the responsibility of another public authority, we will ask the petition organiser whether s/he would like us to redirect the petition to that other authority. We work with a large number of local partners and, where possible, we will work with them to respond to the petition. Where a petition relates to a matter over which the authority has no responsibility or influence, we will return the petition to the petition organiser with an explanation for that decision.
- (ii) The name and contact details of the ‘petition-organiser’ or someone we can address any correspondence to about the petition. Contact details may be either a postal address or an email address.
- (iii) The names of at least 10 petitioners (which can include the petition organiser). Where the petition is in paper form, this can include an actual signature from each petitioner, but this is not essential. Where the petition is in electronic form, a list of the names of the petitioners will suffice. You may include the addresses of petitioners, which can be useful to the authority (for example, in assessing the degree of local support or opposition to a planning application), but this is not essential. With an e-petition the petition organiser will need to decide how long you would like the petition to be open for signatures. Most petitions are expected to last for six months, but a shorter or longer timeframe can be chosen, up to a maximum of 12 months. Action on an e-petition will only start when it has closed for signature.
- (iv) If you want your petition to be debated at a meeting of the Council (a Petition for Debate), or to trigger a public meeting of an at which a specific

officer will be required to report (a Petition to hold an Officer to Account), your petition will need to contain a higher number of signatories or petitioners (see below), and be received in good time to be included on the agenda for any given such meeting.

5. If you are submitting the petition in response to our consultation on a specific matter, please identify the matter which it relates to, so that we can ensure that your petition is considered along with original matter.

### Who should you send a petition to?

6. Where you submit a petition in response to consultation by the authority, please address it to the return address set out in the consultation invitation. This will ensure that it is reported at the same time as the matter to which it relates is considered.

7. We have appointed a Petitions Officer who is responsible for receiving, managing and reporting all other petitions sent to the authority. For such petitions, please address them to:

The Petitions Officer, Swale Borough Council, Swale House, East Street, Sittingbourne, ME10 3HT, or to [petitions@swale.gov.uk](mailto:petitions@swale.gov.uk).

8. The Petitions Officer will ensure that your petition is acknowledged to the petition organiser and entered on the authority's petitions website ([Swale Petitions website](#)), and that the website is regularly up-dated with information on the progress of your petition. The Petitions Officer can also provide you with advice about how to petition the authority or the progress of your petition, at either of the above addresses or by telephone at 01795 417268.

### Types of Petition

9. There are five different types of petition, as set out below. How we deal with a petition depends on which type you submit.

Type of petition	Description and arrangements
<b>Consultation Petitions</b>	<p>These are petitions in response to an invitation from the authority for representations on a particular proposal or application, for example on planning or licensing applications or proposals for parking restrictions or speed limits.</p> <p>Consultation petitions which are received by the response date in the consultation invitation will be reported to a public meeting of the person or body which will be taking the decision on the application or proposal.</p>
<b>Statutory Petitions</b>	<p>Particular Acts of Parliament require the Council to consider petitions, for example a petition for a review of Parish Councils (community governance reviews), or a petition for a directly-elected Mayor (Mayoral referendums).</p> <p>Where a petition is submitted under such a specific statute, we will report it to the next available meeting of the Council in accordance with the statutory requirements.</p>

<p><b>Petitions for Debate</b></p>	<p>If you want your petition to be reported to and debated at a meeting of the Council, it must contain at least 1,500 signatories or petitioners.</p> <p>Where a petition relates to a local issue, that is to say, it affects no more than two electoral wards within the authority's area, and it received 200 or more signatories or petitioners, then it will be referred to the relevant Committee.</p>
<p><b>Petitions to Hold an Officer to Account</b></p>	<p>If you want your petition to be considered at a meeting where an officer, identified either by name or by post title, will be required to answer questions on the conduct of a particular matter, your petition should contain at least 500 signatories or petitioners (this is reduced to 200 signatories or petitioners where the petition relates to a local issue, affecting no more than two electoral wards within the authority's area).</p> <p>The authority has determined that such petitions must relate to the Chief Executive, a Director, or a Head of Service of the authority, and must be matters for which they may be held responsible.</p> <p>Please note that, where the petition raises issues of competence or misconduct, the petition will be referred to the Chief Executive (or to the Monitoring Officer in respect of the Chief Executive) and will be considered under the authority's Disciplinary Procedures and any relevant legislation, and not under this Petitions Procedure.</p>
<p><b>Ordinary Petitions</b></p>	<p>These are petitions which do not come within any of the previous specific types.</p> <p>Please note that petitions which raise issues of possible councillor misconduct will be taken as complaints arising under the Local Government Act 2000 and so will be reported to the Standards Referrals Sub-Committee, rather than considered under this Petitions Procedure.</p>

10. Determining which category of petition a petition that is received falls into, and the validity of the petition, will be a matter for the Petitions Officer, whose decision will be final.

## **The Petitions Website**

11. The authority maintains a petitions website at:

<http://www.swale.gov.uk/epetitions/Browse.aspx>

12. When a petition is received, within five working days the Petitions Officer will open a new public file within the website and will put in that file the subject matter of the petition, its date of receipt and the number of signatories or petitioners. The petition organiser's name and contact details will only be included on the website if they so request. Please note the exceptions in paragraphs 42 to 45, which provide details of petitions which will not be reported.

13. As soon as it is decided who the petition will be considered by within the authority, and when that consideration will occur, this information will be entered on the website at the same time as it is sent to the petition organiser. Once the petition has been considered, the authority's decision will be notified to the petition organiser and put on the website within five working days of that consideration.

14. Petitions are presented on the petition's website in the order in which they are received, but the website can be searched for keywords to identify all petitions relating to a particular topic. All petitions are kept on the website for two years from the date of being posted.

## **The role of Ward Councillors**

15. When a petition is received which relates to a local matter (particularly affecting specific electoral wards), the Petition Officer will send a copy of the petition to each relevant Ward Councillor at the same time as acknowledging receipt of the petition to the petition organiser.

16. When the petition is reported to the person or body within the authority who can take a decision on the matter to which it relates, the relevant Ward Councillor will be invited to attend and to address the decision taker for no more than three minutes (or three minutes each), immediately after the petition organiser.

## **What happens when a petition is received?**

17. Whenever a petition is received, the Petitions Officer will acknowledge receipt to the petition organiser within five working days of receipt.

18. In some cases, the Petitions Officer may be able to resolve the petitioners' request directly, by asking the relevant Committee Chair or officer to take appropriate action. For example, where the petition relates to fly-tipping and the authority can arrange for it to be cleared up directly. Where this is done, the Petitions Officer will ask the petition organiser whether s/he considers that the matter is resolved.

19. Unless the matter has been resolved to the satisfaction of the petition organiser, the Petitions Officer will, within five working days of receipt of the petition, provide a substantive response to the petition organiser setting out who the petition will be reported to for consideration, when and where that will take place, and inviting the petition organiser to attend that meeting and to address the meeting for up to three minutes on the issue covered



by the petition. The invitation to the petition organiser to address the meeting is in addition to any other public speaking rights at that meeting.

20. Whilst we are committed to dealing with petitions promptly, a petition will normally need to be received before the final agenda for that meeting has been determined if it is to be reported to that meeting. This usually means at least 10 working days before a relevant meeting. Where it is necessary to undertake a significant amount of work to collect information and advice to enable the matter to be properly considered, it may be necessary for the Petitions Officer to decide that the petition will be held over until the following meeting of the relevant body. It is therefore suggested that, wherever possible, early contact should be made with the Petitions Officer to ensure that petitions can be reported to the earliest appropriate meeting. The Council has an agreed timetable of meetings and this is available on the council's website.

21. At the same time as responding to the petition organiser, the Petitions Officer will notify party group Leaders and all Ward Councillors of receipt of the petition.

22. Within five working days of receipt of a petition, the Petitions Officer will open a new public file for the petition on the authority's petitions website, setting out the subject matter of the petition, the date of receipt and the number of petitioners. The petition organiser's name and contact details will only be included on the website if they so request.

23. At each stage of the consideration of the petition, the Petitions Officer will ensure that the petitions website is updated within five working days of any decision, to ensure that petitioners can track progress of their petition.

24. The process after this stage differs for the various types of petitions. These processes are set out below.

### **What happens to a Consultation Petition?**

25. Consultations Petitions are submitted in response to an invitation from the Council for representations on a particular proposal or application, such as a planning or licensing application.

26. The petition will be reported to the person or body who will take the decision on the proposal or application at the meeting when they are due to take the decision on that application or proposal. The Council's Constitution defines who will take different types of decision, as set out in the Scheme of Delegations and the terms of Reference of Committees and Sub-Committees. Planning applications are determined by the Planning Committee, subject to any delegations to the Head of Planning Services who is enabled to take decisions, particularly where there are no objections. In such cases, where a petition supports the planning application, it may be determined by the Head of Planning Services and so not reported at the Planning Committee.

27. Where the petition relates to a matter which is within the delegated power of an officer, unless it is in support of the recommended decision, s/he will not exercise those delegated powers but will automatically refer the matter up to the relevant Committee or Council.

### **What happens to a Statutory Petition?**

28. Particular Acts of Parliament require the Council to consider petitions, for example a petition for a review of Parish Councils, or a petition for a directly-elected Mayor. Where a petition is submitted under such a specific statute, we will report it to the next available meeting of the Council in accordance with the statutory requirements.

### **What happens to Petitions for Debate?**

29. Petitions for Debate that reach the required threshold of signatures will be reported to the next convenient meeting of Council. Petitions will not be considered at the Annual Meeting of Council, the budget setting meeting of Council or at Extraordinary Meetings of Council, which are not convened to consider the subject matter of the petition.

30. The petition organiser will be invited to address the meeting for up to three minutes on the subject of the petition. They are entitled to send a substitute if they are unable to attend or otherwise unable to address the meeting.

### **What happens to a Petition to Hold an Officer to Account?**

31. Petitions to hold an officer to account that are a matter for the Council and which have reached the required threshold of signatures, will be reported to the next convenient meeting of the relevant Committee.

32. In advance of the Committee meeting, the petition organiser will be invited to submit a list of questions which s/he would like put to the officer at the meeting. These questions will be provided to the Chair of the Committee, who will decide whether they are appropriate, and to the officer concerned, in advance of the meeting.

33. At the meeting, the Chair will invite the petition organiser (or a substitute of their choosing) to address the Committee for a maximum of three minutes on the issue, and the relevant officer will then be required to report to the Committee in relation to the conduct of the subject matter of the petition. Members of the Committee may question the officer, and the Chair may invite the petition organiser to suggest questions for him/her to put to the officer.

### **What happens to an Ordinary Petition?**

34. The Petitions Officer will arrange for each Ordinary petition to be reported to the next convenient meeting of the Council or of a Committee or Sub-Committee of Council which has the power to take a decision on the matter.

35. At the meeting, when the matter to which the petition relates is considered:

(i) petitions which do not relate to an ordinary item of business will be considered before the

normal business of the meeting, and will be considered in the order in which they were received, unless the Chair at the meeting determines otherwise. A maximum of 30 minutes will be allowed at each meeting for considering such petitions, and any petitions not reached in the time allowed will be referred to the relevant Committee Chair for consideration or deferred until the next meeting;

(ii) any petitions relevant to particular items of business, such as petitions relating to planning applications, will be taken together with that item of business, in the normal order of business;

(iii) the Chair of the meeting may invite a relevant officer to set out the background to the issue before inviting the petition organiser to address him/her for up to three minutes. The Chair may then ask questions of the petition organiser, and will then invite any relevant Ward Councillors present to address him/her on the matter for up to three minutes (each);

(iv) the Chair will then invite a relevant officer(s) to advise him/her/the meeting, after which the matter will be open for debate among members of the decision-making body.

36. At each stage, the Petitions Officer will enter the relevant information on the website at the same time as it is sent to the petition organiser. As with other petitions, the petition and what happens to it will remain on the Council's website for two years from the date of posting.

### **The role of the Petition Organiser**

37. The petition organiser will receive acknowledgement of receipt of the petition within two working days of its receipt by the authority.

38. Where the petition is not accepted for consideration, the petition organiser will be advised by the Petitions Officer of the rejection and the grounds for such rejection.

39. Where the petition is accepted for consideration, the petition organiser will be advised by the Petitions Officer within five working days of receipt by the authority as to whom the petition will be considered by, and the date, time and place of the meeting at which it will be considered, and will be invited to address the meeting for up to three minutes. The meeting may then ask the petition organiser questions on the subject matter of the petition.

40. The petition organiser may nominate another person to address the meeting and to answer any questions on the matter.

41. The petition organiser will be regularly informed by the Petitions Officer of any decisions in respect of the petition, and will be formally notified of the outcome of the petition's consideration within five working days of such decision.

### **Petitions which will not be reported**

42. As well as petitions where the threshold number of signatures has not been reached, or that do not relate to something which is the responsibility of the authority or over which the authority has some influence, the following petitions will also not be reported.

43. **Duplicate Petitions:** where more than one petition is received in time for a particular meeting, each supporting the same outcome on one matter, each petition organiser will be treated as an independent petition organiser, but only the petition organiser of the first petition to be received will be invited to address the relevant meeting.

44. **Repeat Petitions:** a petition will not normally be considered where they are received within six months of another petition being considered by the authority on the same matter.

45. **Rejected Petitions:** petitions will not be reported if, in the opinion of the Petitions Officer, they are rude, offensive, vexatious, defamatory, scurrilous or time-wasting.

### **PART 3.1 Appendix 3 - SWALE JOINT TRANSPORTATION BOARD**

#### **Member Arrangements as set out in the Agreement on Joint Transportation Boards**

- 1.1 A Joint Transportation Board (JTB) will be established by the Kent County Council (KCC) and the District Council.
- 1.2 Each party shall be responsible for their own costs incurred in the operation of the JTB.
- 1.3 The JTB shall be a non-statutory forum.

#### **Membership**

- 2.1 JTB Membership will comprise all KCC Members for divisions in the District Council's area, an equal number of members appointed by the District Council and three representatives of the Parish and Town Councils within the District. The Council may appoint substitutes for its Members.
- 2.2 The Parish and Town Council representative will be nominated by the Area Committee of the Kent Association of Local Councils or other representative body for Parish Councils if this provides a more complete representation. A substitute member may also be nominated. The Parish or Town representative may speak, vote, propose a motion or an amendment.
- 2.3 Any KCC Cabinet Member responsible for transportation functions, Council Member, the Chairman of the KCC Highways Advisory Board or KCC local member may place a relevant item on the agenda and/or attend and speak at any meeting of the JTB but may not vote nor propose a motion nor an amendment (unless voting members of the JTB).
- 2.4 The Chairman of any Parish or Town Council (or a Member nominated by him/her) may attend any meeting to speak with the permission of the Chairman on any item on the agenda of particular relevance to that Parish.

#### **Chairman**

- 3.1 In alternate years a Member of KCC (who is a member of the JTB) will chair the JTB and a District Council Member (who is a member of the JTB) will be Vice-Chairman of the JTB and then a Member of the District Council will chair the JTB and a KCC Member will be Vice-Chairman of the JTB and so on.
- 3.2 The Chairman and Vice-Chairman will be appointed by the respective Councils as they may determine within their constitutional arrangements. The Chairman and

Vice-Chairman of the JTB will take office at the first meeting of the JTB following the Annual Meetings of both Councils each year.

## **Meetings**

- 4.1 The JTB will generally meet four times a year on dates and at times and venues to be specified by the District Council in accordance with its normal arrangements in consultation with KCC.
- 4.2 The quorum for a meeting shall be five comprising at least two voting members present from each of KCC and the District Council and 1 Parish representative.
- 4.3 Subject to 2, 3 and 4.2 above taking precedence, the District Council's procedural rules shall apply to JTB Meetings as if they were Council Committees.
- 4.4 The JTB will be clerked by an Officer of the District Council. Copies of all papers shall be sent to the Monitoring Officers of both Councils who may attend and speak at any meeting (or instead each Monitoring Officer may arrange for a substitute officer to speak on his/her behalf).
- 4.5 The Access to Information principles shall be applied to the JTB as if it were a Council Committee.

## **Terms of Reference**

- 5.1 The JTB will consider:-
  - (i) capital and revenue funded works programmes
  - (ii) traffic regulation orders
  - (iii) street management proposalsand will provide advice on these matters to the relevant Executive and/or Policy and Resources Committee as appropriate.
- 5.2 Be a forum for consultation between KCC and the District Council on policies, plans and strategies related to highways, road traffic and public transport.
- 5.3 Review the progress and out-turn of works and business performance indicators.
- 5.4 Recommend and advise on the prioritisation of bids for future programmes of work.
- 5.5 Receive reports on highways and transportation needs within the District.

## **Overview and Scrutiny**

- 6.1 An Overview and/or Scrutiny Committee or other relevant Committee if there is no Overview and Scrutiny Committee of either Council can require the Member of that

Council holding the office of Chairman or Vice-Chairman of the JTB to attend and be asked questions subject to the provisions of that Council's constitution.

- 6.2 The Overview and Scrutiny Committee or other relevant Committee if there is no Overview and Scrutiny Committee of either Council can request (but not compel) Members of the other Council who serve on the JTB and Officers employed by the other Council who report to the JTB to attend and be asked questions.
- 6.3 Overview and Scrutiny Committees or other relevant Committee if there is no Overview and Scrutiny Committee of both Councils will abide by the protocol on inter-authority co-operation on Overview and Scrutiny agreed by the former Kent Association of Local Authorities and as set-out below.

### **Local Member and Parish Consultation**

- 7.1 The local Members of both the KCC and the District Council and the Parish or Town Council(s) will be consulted on any relevant scheme proposals (other than routine operational maintenance of the highway) within the scope of this agreement.

### **Executive/Committee Action**

- 8.1 The KCC Executive will normally act in accordance with the advice or views of the JTB. If the Executive is minded to act otherwise, no decision will be taken until after a discussion at the KCC Highways Advisory Board at which the Chairman and Vice-Chairman of the JTB may attend and speak.
- 8.2 The relevant Service Committee of Swale Borough Council will normally act in accordance with the advice or views of the JTB. If a Service Committee is minded to act otherwise, no decision will be taken until after a discussion between the Service Committee Chairman and the Chairman and Vice-Chairman of the JTB.

## **Overview and Scrutiny - Inter-Authority Co-operation (Protocol as agreed by the former KALA during November 2001)**

### **Aim of Protocol**

1. To ensure that the Overview and Scrutiny Committees or other relevant Committee if there is no Overview and Scrutiny Committee of all Kent Local Authorities can review issues of community interest effectively and with efficient use of all local authority staff resources.

### **Principles**

2. All authorities should be supported in considering issues of community well-being wider than the responsibilities of their Councils.
3. Authorities should work together to maximise the exchange of information and views, minimise bureaucracy and make best use of the time of Members and Officers of local and other Authorities.

## Procedures

4. Authorities should seek to exchange information of programmes and results of reviews.
5. If an Overview and Scrutiny Committee or other relevant Committee if there is no Overview and Scrutiny Committee wishes to review an issue in which another Authority has a statutory role or in which evidence from the Officers of another Authority would be helpful, it should consult with that Authority about:-
  - (a) the purpose of the review;
  - (b) the areas of interest to the other Authority;
  - (c) the input that can be given by Members or Officers of the other Authority.
6. Consideration should be given to whether the issue is more appropriately discussed in another forum, for example a joint committee, or whether there is scope for joint action including the co-opting of Members of the other Authority onto the Overview and Scrutiny Committee or other relevant Committee if there is no Overview and Scrutiny Committee for the purpose of the review.
7. Where a proposal is subject to a public consultation process, scrutiny is most helpful if conducted as part of that process e.g. allowing any findings and recommendations to be available in time to influence the final decision.
8. Subject to prior consultation, Authorities will seek to respond positively to requests for information or for a Member or Officer to attend meetings of Overview and Scrutiny Committees or other relevant Committee if there is no Overview and Scrutiny Committee.
9. While it is ultimately for each Authority to decide who it considers the most appropriate person(s) to speak on its behalf to an Overview and Scrutiny Committee or other relevant Committee if there is no Overview and Scrutiny Committee, consideration will be given at the meeting to specific requests.
10. Dates and times of Member and Officer attendance at Overview and Scrutiny Meetings should be agreed with them.
11. Each Authority will nominate a contact officer for the operation of these procedures.



### PART 3.2 – ACCESS TO INFORMATION PROCEDURE RULES

#### 3.2.1. Scope

These rules apply to all meetings of the Council, Committees, Forums and Panels but do not apply to Working Groups. The rules for Working Groups will be determined by the Committee which creates such Groups.

#### 3.2.2. Additional Rights to Information

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

#### 3.2.3. Rights to Attend Meetings

Members of the Public may attend meetings, subject to the exceptions outlined in these rules. There is public seating for 36 people in the Council Chamber and 22 people in the Committee Room. For numbers exceeding this it may be necessary to wait in the foyer/adjoining room.

#### 3.2.4. Notice of Meetings

The Council will give at least five clear days' notice by posting details of the meeting at the Council's Offices in Sittingbourne, at the District Offices in Faversham and the Gateway at Sheerness. Clear days are defined as working days excluding the day of publication of the agenda and the day of the meeting, weekends and bank holidays. Details will also be posted on the website <http://services.swale.gov.uk/meetings/uucoverpage.aspx?bcr=1> If the meeting is called at shorter notice then details will be made available at the time the meeting is convened.

#### 3.2.5. Access to Agenda and Reports before Meetings

The Council will make copies of the agenda and reports available (except where they contain confidential or exempt information) for inspection at least five clear days before the meeting, and on the website <http://services.swale.gov.uk/meetings/uucoverpage.aspx?bcr=1> Where a meeting is called at shorter notice, this information will be made available for inspection from the time the meeting is convened. Where reports are prepared after the summons has been sent out, the designated officer shall make the report available to the public as soon as it is completed and sent to Members.

#### 3.2.6. Supply of Copies

The Council will supply copies of any agenda, reports (unless they contain confidential or exempt information), any further statements of particulars necessary to indicate the nature of the items in the agenda, and if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item. This will be subject to payment of a charge for postage and any other costs. The agenda and reports can be viewed online:

<http://services.swale.gov.uk/meetings/ucoverpage.aspx?bcr=1> A reasonable number of copies of agenda, reports and minutes will be made available at meetings (free of charge).

### **3.2.7. Access to Minutes etc. after the meeting**

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

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

### **3.2.8. Background Papers**

#### **3.2.8.1 List of background papers**

The author of each report will include a list of documents (called background papers) in their report, relating to the subject matter of the report, and where they can be inspected, which in his/her opinion:

- (a) Disclose any facts or matters on which the report, or an important part of the report, is based;
- (b) Were relied on to a material extent in preparing the report;

but does not include published works or those that contain exempt or confidential information (as defined in Rule 3.2.10 of these rules).

#### **3.2.8.2 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. The background papers can be viewed at the Council offices during normal business hours for printing by members of the public or for supply by post as requested on payment of copying and postage.

### **3.2.9. Summary of Public's Rights**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept and be made available to the public, at the Council's offices. As this Constitution must be made available to the public, these rules constitute that written summary.

### **3.2.10. Exclusion of Access by the Public to Meetings**

#### **3.2.10.1 Confidential Information - Requirement to Exclude the Public**

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

#### **3.2.10.2 Meaning of Confidential Information**

Confidential information means:

- (i) information given to the Council by a Government department on terms (however expressed) which forbid the disclosure of the information to the public; or
- (ii) information, the disclosure of which, to the public is prohibited by or under any enactment or by the order of a Court, and in either case, a reference to the obligations of confidence to be construed accordingly.

#### **3.2.10.3 Exempt Information - Discretion to Exclude the Public**

Schedule 12A of the Local Government Act 1972 provides that a meeting may only exclude press and public by reason of exempt information where it is of the opinion that the public interest in maintaining confidentiality over-rides the public interest in disclosure.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their positions, Article 6 of the Human Rights Act 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.

#### **3.2.10.4. Meaning of Exempt Information**

Exempt information means information falling within the following categories:

<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). See note below
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 in connection with the prevention, investigation or prosecution of crime.

Relevant to No. 3 - Information falling within No. 3 is not exempt information if it is required to be registered under:

- (a) the Companies Act 1985
- (b) the Friendly Societies Act 1974
- (c) the Friendly Societies Act 1992
- (d) the Industrial and Provident Societies Acts 1965 - 1978
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

Information is not exempt if it relates to a 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.

Relevant to all: Information 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.

### **3.2.11. Exclusion of Access by the Public to Reports**

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which, in his or her opinion, relate to items during which, in accordance with Rule 10 above, the meeting is likely not to be open to the public. Such reports will be marked, 'not for publication', together with the category of information which is likely to be disclosed.

### **3.2.12. Member and Officer Access to Exempt Reports**

All Members will be served notice of all meetings of the Council and other committees and will therefore generally be in receipt of exempt reports. In exceptional circumstances, to be decided by the Monitoring Officer in consultation with the Council Leader and the Chair of the relevant Committee, the exempt report will not be published as part of the full agenda and will instead be tabled at the meeting whereby members and officers will have to sign for a numbered copy of the report which is to be returned at the end of the meeting before leaving the meeting room.

Exceptional circumstances are defined as, and limited to:

- (i) Where the business to be conducted involves commercially sensitive information, the disclosure of which could prejudice the Council's negotiating position; or
- (ii) Where there is a need to preserve legal professional privilege, the disclosure of which could prejudice any action contemplated by the Council.

### **3.2.13. Freedom of Information Act 2000**

Members also share the same rights of access to information as members of the public under the Freedom of Information Act 2000. A request for information under the Act must:

- Be in writing (electronic requests are acceptable);
- Contain a name and address for correspondence;
- Describe the information requested.

The Council will comply with all requests for information under the Act, unless one or more of the statutory exemptions apply.

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### **PART 3.3 – BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

#### **3.3.1. The framework for decisions**

The Council will be responsible for the adoption of its budget and policy framework. Once a budget or a policy framework is in place, it will be the responsibility of the Committees to implement it within the Financial Regulations.

#### **3.3.2. The policy framework**

The policy framework means the relevant plans and strategies which Full Council has determined must be approved by it. Some plans and strategies are required by law to be part of the policy framework, where others are for the Council to decide whether they should form part of the policy framework.

The Council has resolved to include the following policies in the authority's policy framework:

- i. Community Safety Strategy (Crime and Disorder Reduction Strategy)
- ii. Licensing Authority Policy Statement
- iii. Approval of the Authority's budget strategy and supporting documents
- iv. Any plan or strategy relating to borrowing, investment or capital expenditure
- v. Plans and strategies which together comprise the Development Plan Documents (LDF)
- vi. Corporate Plan and supporting strategies
- vii. Equalities Strategy or Scheme

#### **3.3.3. Process for developing the budget and policy framework**

The Policy and Resources Committee will oversee the process of developing the framework for recommendation to Council. Relevant Service Committees will be involved within the development process, and the Policy and Resources Committee will conduct appropriate public consultation. In reaching a decision, the Council may adopt the Policy and Resources Committee's proposals, amend them, refer them back to the Policy and Resources Committee for further consideration, or substitute its own proposals in their place. In approving the policy framework, the Council may also specify the degree of in-year changes to the framework which may be undertaken by Committees. Any other changes to the budget and policy framework are reserved to the Council.

#### **3.3.4. Decisions outside the budget or policy framework**

(a) Subject to the financial procedure rules (Part 3.5 of this constitution, and particularly Section A3 on virements,) any committees and any officers, or Joint Arrangements discharging Council functions cannot take decisions which are contrary to the policy framework, or contrary to or not in accordance with the Budget. 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 3.3.5 below (urgent decisions outside of the budget and policy framework).

(b) If the Policy and Resources Committee or any Service Committee and any officers, or Joint Arrangements discharging Council functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Director of Resources 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 3.3.5 (urgent decisions outside the budget and policy framework) shall apply.

### **3.3.5. Urgent decisions outside the budget or policy framework**

(a) The Policy and Resources Committee, or the Chief Executive if that Committee is unable to meet, 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:

(i) if it is not practical to convene a quorate meeting of the Full Council or the Urgent Decisions Committee; and

(ii) In the case of a decision by the Chief Executive, if it is not practical to convene a meeting of the Full Council, the Urgent Decisions Committee or the Policy and Resources Committee, and the Chair of the Policy and Resources Committee (or in their absence the Vice-Chair) agrees that the decision is a matter of urgency.

The record of the decision must include the reasons it is not practical to convene a quorate meeting of the Full Council, the Urgent Decisions Committee or the Policy and Resources Committee, and in the case of an urgent decision by the Chief Executive, the consent of the Chair (or Vice-Chair) of the Policy and Resources Committee to the decision being taken as a matter of urgency.

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

### **3.3.6. In-year changes to the budget and policy framework**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Committees or officers discharging functions must be in line with it. No changes to any policy and strategy which forms part of the policy framework may be made by those bodies or individuals except changes which:

(i) will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;

(ii) are necessary to ensure compliance with the law, ministerial direction or government guidance;

(iii) would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.



## **PART 3.4 – OFFICER EMPLOYMENT PROCEDURE RULES**

### **3.4.1. Recruitment and appointment – general provisions**

(a) Declarations

(i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons. (This will be included in application forms).

(ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant Head of Paid Service or Director or an officer nominated by them.

(b) Seeking support for appointment

(i) The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

(ii) A Councillor 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.

### **3.4.2 Recruitment of senior officers**

Where the authority proposes to appoint a Head of Paid Service, Director or Head of Service, it shall :

(a) Draw-up a statement specifying

(i) the duties of the officer concerned; and

(ii) any qualifications or qualities to be sought in the person to be appointed;

(b) 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

(c) Make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

### **3.4.3 Appointment to senior posts**

#### **3.4.3.1 Appointment of Head of Paid Service**

The Full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by the Appointments

Sub-Committee. The Full Council must approve the appointment before an offer of appointment is made to that person.

### **3.4.3.2 Appointment of Directors, Chief Financial Officer and Monitoring Officer**

The Appointments Sub-Committee will appoint Directors and will make a recommendation to Council regarding the appointment of the Head of Paid Service, Chief Financial Officer and the Monitoring Officer.

### **3.4.3.3 Other Appointments**

- (a) Officers below Directors – Appointment of officers below Directors (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors. This is subject to the provisions of the Chief Executive's general delegation number two which states that for Heads of Service appointments, a joint member officer consultation panel will be constituted, the membership of which will be agreed between the Chair of Policy and Resources and Chief Executive. The Chief Executive will make the decision on appointment in consultation with the other members of the panel.
- (b) Other Statutory Appointments – In relation to the Data Protection Officer a joint member officer consultation panel will be constituted, the membership of which will be agreed between the Chair of Policy and Resources and Chief Executive. The Chief Executive will make the decision on appointment in consultation with the other members of the Panel.
- (c) On occasions where it is appropriate in the business interests of the Council to appoint from among existing officers on an interim basis to cover roles at Head of Service level and above, then the same arrangements as set out in 3.6.2 will apply but with solely internal advertisement. In the event of these interim arrangements continuing in place for a period of six months (or such other shorter period agreed between the Head of Paid Service and the Chair of Policy and Resources Committee), then any proposal to make arrangements permanent will be subject to a competitive process as set out in 3.6.2. Where the role involved is a shared service role then regard should be had to any comments received from the chief executives and leaders of the partner authorities.

### **3.4.4 Disciplinary Action against Designated Statutory Officers (“DSOs”)**

If a complaint of misconduct is received about the Chief Executive, Chief Financial Officer or Monitoring Officer, the complaint will be dealt with in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2010 (as amended).

- (a) The dismissal of any of the Head of Paid Service, the Chief Finance Officer or Monitoring Officer, the DSOs, may only be made by the Council following consideration and recommendation by the Investigation and Disciplinary Committee and consideration by the Independent Persons Panel, 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:
- a. an independent person who has been appointed by the authority and who is a local government elector;
  - b. any other independent person who has been appointed by the authority;
  - c. an independent person who has been appointed by another authority or authorities.
- (b) 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:
- a. any advice, views or recommendations of the Sub-committee;
  - b. the conclusions of any investigation into the proposed dismissal; and
  - c. any representations from the relevant Officer.
- (c) The authority must approve the dismissal before notice of dismissal is given to that person.

#### **Procedure: Investigation**

- (d) It is in the interests of all parties that the proceedings be conducted expeditiously and fairly.
- (e) In respect of any complaints alleging misconduct by a DSO these will initially be considered by the Head of Paid Service (or if the allegation relates to the Head of Paid Service, the Monitoring Officer, in consultation with the Chair of Policy and Resources Committee. At this stage the available decisions to the officer will be to:
- a. Take no action; or
  - b. Refer the matter to the Investigation and Disciplinary Sub-committee;

- (f) If the matter is referred to the Sub-committee the officer making the decision may in consultation with the Chair of Policy and Resources Committee suspend the DSO until the matter is considered by the Sub-committee;
- (g) In the exercise of its function, the Investigation and Disciplinary Sub-committee is to receive and consider any complaint/allegations referred to it. It may:
  - a. make such enquiries of the relevant officer or any other person as it considers appropriate;
  - b. request additional information, explanations or documents from any person;
  - c. invite or receive representations from any person.
- (h) The Sub-committee having carried out such steps as it considers appropriate and having heard representations from the DSO or their adviser shall decide whether the issues:
  - a. require no further formal action, or
  - b. should be referred to an Independent Investigator (“II”).
- (i) In considering whether the threshold in deciding to appoint an II has been met the Sub-committee will assess whether:
  - a. 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;
  - b. there is evidence in support of the allegation/issue sufficient to require further investigation.
  - c. In deciding whether the threshold for the appointment of an II has been reached the Sub-committee 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.
- (j) Before deciding to appoint an II or suspend a DSO the Investigation and Disciplinary Sub-committee 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 Sub-committee Meeting.
- (k) Any matters of discipline referred to the Sub-committee shall be dealt with under the JNC Scheme of Conditions of Service for Chief Officers.
- (l) The Sub-committee 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.

#### Procedure: Receiving the II's Report/ Hearing

- (m) The Sub-committee should receive any report produced by an II in relation to a DSO within one month of the receipt of the report by the Council.
- (n) The DSO shall have the right to attend and be accompanied at the Sub-committee Meeting which considers the II's report.
- (o) The Sub-committee shall consider the II's report and shall invite representations from the officer and/or their representative. The Sub-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.
- (p) If the sub-committee determines that disciplinary action short of dismissal should be taken then the DS may appeal against that decision to the Statutory Officers Appeals Disciplinary Appeals Sub-committee
- (q) Any decision by the Investigation and Disciplinary Sub-committee that a DSO shall be dismissed shall be subject to referral to Full Council. The consideration by Full Council shall be an appeal against the decision to dismiss and Full Council may confirm the decision to dismiss or reach a different conclusion.

#### **3.4.5 Disciplinary Action**

Councillors will not be involved in any disciplinary action nor dismissal against any officer (other than the Statutory Officers mentioned in paragraph 3.6.4 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 Councillors in respect of disciplinary action or capability from decisions made by the Chief Executive or the involvement of Councillors in consultation with the Chief Executive in relation to disciplinary matters.

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### STATUS OF FINANCIAL REGULATIONS

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In order to comply with statutory provisions it is necessary to compile a set of Regulations as a means of guidance and assistance to both Members and officers. The Financial Regulations are intended to operate within the context of senior management's (Chief Executive/Directors/Heads of Service) responsibility for corporate management and their responsibility to give advice to the Council and Committees and cover the main principles of financial control.

Whilst the terms 'Chief Executive' and 'Head of Service' are used within this document for defining overall responsibility, all employees have a duty to comply with Financial Standing Regulations.

### FINANCIAL REGULATIONS

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#### 3.5.1. Financial Management

##### 3.5.1.1 Council

3.5.1.1.1 The Full Council is responsible for adopting the authority's constitution, the Members' code of conduct and for approving the policy framework and budget within which the authority operates. The Full Council is also responsible for approving procedures for recording and reporting decisions taken. This includes key decisions delegated by and decisions taken by the council and its committees.

##### 3.5.1.2 Policy and Resources Committee

3.5.1.2.1 The Policy & Resources Committee is responsible for proposing the policy framework and budget to the Full Council, regulating and controlling the finances of the Council.

3.5.1.2.2 A Committee can delegate its decision making powers to a Director. In doing so the Director must take account of legal and financial liabilities and risk management issues that may arise from the decision.

##### 3.5.1.3 The Statutory Officers

3.5.1.3.1 The Head of Paid Service (Chief Executive) is responsible for the corporate and overall strategic management of the authority as a whole. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all the Full Council's decisions.

3.5.1.3.2 The Monitoring Officer is responsible for promoting and maintaining high standards of conduct. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the Full council and/or to the Policy and Resources Committee, and for ensuring that procedures for recording and reporting key decisions are operating effectively.

3.5.1.3.3 The Monitoring Officer (together with the Director of Resources) is responsible for advising the Committees or Full Council about whether a decision is likely to be considered contrary or not wholly in accordance with the budget.

3.5.1.3.4 The Director of Resources has statutory duties in relation to the financial administration and stewardship of the authority. This statutory responsibility cannot be overridden. The statutory duties arise from:

- Section 151 of the Local Government Act 1972
- The Local Government Finance Act 1988
- The Local Government and Housing Act 1989
- The Local Government Acts 2000
- The Local Government Act 2003
- The Accounts and Audit Regulations

3.5.1.3.5 The Director of Resources is responsible for:

- the proper administration of the authority's financial affairs
- setting and monitoring compliance with financial management standards
- advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
- providing financial information
- preparing the revenue budget and capital programme
- treasury management.

3.5.1.3.6 Section 114 of the Local Government Finance Act 1988 requires the Director of Resources to report to the Full Council and the external auditor if the authority or one of its officers:

- has made, or is about to make, a decision which involves incurring unlawful expenditure
- has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the authority
- is about to make an unlawful entry in the authority's accounts.

3.5.1.3.7 Section 114 of the 1988 Act also requires:

- the Director of Resources to nominate a properly qualified member of staff to deputise should they be unable to perform the duties under section 114 personally
- the authority to provide the Chief Financial Officer with sufficient staff, accommodation and other resources – including legal advice where this is necessary – to carry out the duties under section 114.



3.5.1.3.8 Senior Management are responsible for:

- ensuring that Members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Director of Resources
- signing contracts on behalf of the authority.

3.5.1.3.9 It is the responsibility of Senior Management to consult with the Director of Resources and seek approval on any matter liable to affect the authority's finances materially, before any commitments are incurred.

3.5.1.3.10 The Strategic Management Team shall report to the Policy and Resources Committee with respect to the level of resources proposed to be utilised in each financial year and shall keep the Policy and Resources Committee informed with respect to the Council's finances and financial performance and other Committees informed with respect to the financial implications of their activities.

3.5.1.3.11 Full Council is responsible for making, and amending, such financial regulations as it considers necessary for the supervision and control of the finances and assets of the Council. The Policy and Resources Committee is to be responsible for proposals to make or amend such financial regulations.

3.5.1.3.12 The Committees, Forums and Panels shall observe the Council's Financial Standing Orders and Financial Regulations in all aspects of their work.

3.5.1.3.13 The Strategic Management Team and each Head of Service are responsible for the observance of the Council's Financial Regulations, and for the accountability and control of staff and the security, custody and control of all resources including plant, materials, cash and stores appertaining to their area of activity.

#### **3.5.1.4 Other Financial Accountabilities**

3.5.1.4.1 The Council is responsible for agreeing procedures for virement of expenditure between budget headings. The Strategic Management Team is responsible for agreeing in-year virements within delegated limits, in consultation with the Director of Resources where required.

3.5.1.4.2 The Policy and Resources Committee is responsible for agreeing procedures for carrying forward under and overspendings on budget headings.

3.5.1.4.3 The Director of Resources is responsible for selecting accounting policies and ensuring that they are applied consistently.

3.5.1.4.4 The Director of Resources is responsible for determining the accounting procedures and records for the authority, and for ensuring statutory accounting returns are made to the relevant body.

3.5.1.4.5 The Director of Resources is responsible for ensuring that the annual statement of accounts is prepared in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom* (CIPFA/LASAAC). The Audit Committee is responsible for approving the annual statement of accounts.

## **3.5.2. Financial Planning**

### **3.5.2.1 Budgeting**

3.5.2.1.1 The detailed form of capital and revenue estimates shall be determined by the Director of Resources consistent with the general directions of the Policy and Resources Committee and in accordance with the budget policies, in particular the Medium Term Financial Plan and Corporate Plan and its priorities. The Medium Term Financial Plan should be reviewed annually by the Policy and Resources Committee and recommend any changes in budget policy to the Council.

3.5.2.1.2 Revenue and capital estimates shall be prepared by the Heads of Finance in consultation with the senior management who shall collate the approved estimates and report to the Policy and Resources Committee thereon, such report to include compliance with the financial plan(s) approved by the Council and other financial implications. Opportunities to improve economy, efficiency and effectiveness; by encouraging the best use of resources and value for money should be reflected in service planning.

3.5.2.1.3 The Director of Resources and the Chair of Policy and Resources Committee shall prepare the annual budget report to the Policy and Resources Committee. Following receipt of any comments from the Policy and Resources Committee and taking into account the views of the Service Committees and making any amendments that as a result seem appropriate, the Policy and Resources Committee shall make recommendations to the Full Council for approval.

3.5.2.1.4 By 11 March each year the Full Council shall consider the proposals on the budget and policy framework and the recommendation as to the amount of the Council Tax to be levied for the ensuing financial year. The Council shall set the amount of Council Tax to be levied after taking into account the precepts issued by the County Council, Police and Fire and Rescue Services and Town/Parish Councils.

### **3.5.2.2 Maintenance of Reserves**

3.5.2.2.1 It is the responsibility of the Director of Resources to advise the Policy and Resources Committee and Council on prudent levels of reserves for the authority.

3.5.2.2.2 The use of reserves during the year to cover operational expenditure will be handled through the virement rules.

### **3.5.3. Risk Management and Control of Resources**

#### **3.5.3.1 Risk Management**

3.5.3.1.1 The Council is responsible for approving the Council's risk management strategy. The Audit Committee is responsible for the review and monitoring of the Council's arrangements for managing risk.

3.5.3.1.2 The Head of Audit Partnership is responsible for preparing the Council's risk management strategy and for promoting it throughout the Council.

#### **3.5.3.2 Internal Control**

3.5.3.2.1. Internal Control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.

3.5.3.2.2 The Director of Resources is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.

3.5.3.2.3 It is the responsibility of the Strategic Management Team to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency, and effectiveness and for achieving their financial performance targets.

#### **3.5.3.3 Audit Requirements**

3.5.3.3.1 The Accounts and Audit Regulations require every local authority to maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control.

3.5.3.3.2 The Council shall be responsible for ensuring that there are continuous arrangements to measure, evaluate and report upon the effectiveness of internal control and efficient use of resources, by the establishment of an adequate internal audit function.

3.5.3.3.3 The Council has the option to opt into the "appointing person" national auditor appointment arrangements established by the Public Sector Audit Appointments (PSAA). The Audit Committee will make a recommendation to Council on whether to opt in to this arrangement. The basic duties of the external auditor are governed by Section 5 of the Audit Commission Act 1998. The Local Audit and Accountability Act 2014

requires a relevant Council/Authority to appoint a local auditor to audit its accounts for a financial year not later than 31 December in the preceding year.

#### **3.5.3.4 Preventing Fraud and Corruption**

3.5.3.4.1 The Head of Audit Partnership is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

#### **3.5.3.5 Non-property Assets**

3.5.3.5.1 Officers should ensure that records and assets are properly maintained and securely held. They should ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.

#### **3.5.3.6 Treasury Management**

3.5.3.6.1 This Council has adopted CIPFA's Code of Practice on Treasury Management in Local Authorities.

3.5.3.6.2 This Council:

- will create and maintain a treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities;
- will create and maintain suitable treasury management practices (TMP's), setting out how those policies and objectives will be achieved;
- will receive an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close;
- has nominated the Audit Committee to be responsible for ensuring effective scrutiny of the treasury management strategy and policies;
- has delegated responsibility for the implementation and regular monitoring to Audit Committee and
- has delegated responsibility for the execution and administration of treasury management decisions to the Director of Resources or, through them, to their staff, who shall all be required to act in accordance with CIPFA's Code of Practice on Treasury Management in Local Authorities.

3.5.3.6.3 Unless statutory or regulatory requirement demand otherwise, all monies in the hands of the Council will be aggregated for cashflow and investment management purposes and will be under the control of the Director of Resources being the officer designated for the purposes of Section 151 of the Local Government Act 1972.

3.5.3.6.4 The Council shall invest only with institutions approved, and within criteria set by the Council on recommendation by the Policy and Resources Committee within the terms of the Treasury Management Policy Statement and Investment Strategy.

3.5.3.6.5 All investments and borrowing of money under its control shall be made in the name of the Council or in the name of nominees approved by the Council; bearer securities shall be excluded from this rule but any purchase of such securities shall be reported to the Council.

3.5.3.6.6 All securities held in the name of the Council or its nominees shall be held by the Director of Resources under secure arrangement.

3.5.3.6.7 The Director of Resources shall be the Council's registrar of stocks, bonds and mortgages and shall maintain records of all borrowing of money by the Council.

3.5.3.6.8 All officers acting as trustees by virtue of their official position shall deposit all securities etc. relating to the trust with the Chief Executive, unless the deed otherwise provides.

### **3.5.3.7 Staffing**

3.5.3.7.1 The Head of Paid Service is responsible for the terms and conditions of all staff and for providing overall management to staff. They are also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.

## **3.5.4. Systems and Procedures**

### **3.5.4.1 Income & Expenditure**

3.5.4.1.1 The collection, recording and banking of money due to the Council shall be under the supervision of or under arrangements approved by the Director of Resources.

3.5.4.1.2 All payments must be made in accordance with the internal controls and authorisations approved by the Director of Resources.

3.5.4.1.3 All arrangements with the Council's Bankers shall be made by or under arrangements approved by the Director of Resources, who shall be authorised to operate such banking accounts.

### **3.5.4.2 Payments to Employees and Members**

3.5.4.2.1 The payment of all salaries, Member's allowances, compensations, gifts and other emoluments to all employees or former employees of the Council shall be made by the Head of Human Resources.

### **3.5.4.3 Taxation**

3.5.4.3.1 The Director of Resources is responsible for advising senior management, in light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the authority.

3.5.4.3.2 The Director of Resources is responsible for maintaining the authority's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.

### **3.5.4.4 Trading Accounts**

3.5.4.4.1 It is the responsibility of the Director of Resources to advise on the establishment and operation of trading accounts and business units.

## **3.5.5. External Arrangements**

### **3.5.5.1 Partnerships**

3.5.5.1.1 Financial matters relating to arrangements whereby one Council administers funds jointly on behalf of itself and others shall be subject to the Financial Regulations of the administering Council, unless these Rules are more stringent.

3.5.5.1.2 The Director of Resources must ensure the accounting arrangements to be adopted relating to partnerships are satisfactory.

### **3.5.5.2 External Funding**

3.5.5.2.1 The Director of Resources is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the authority's accounts.

### **3.5.5.3 Work for Third Parties**

3.5.5.3.1 The relevant Committee is responsible for approving the contractual arrangements for any work for third parties or external bodies.

## FINANCIAL REGULATIONS APPENDICES

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This section expands upon the core principles outlined in the financial regulations, and provides a more detailed list of responsibilities, agreed procedure and guidance.

### A. Financial Management

#### Why is this important?

All staff and Members have a duty to abide by the highest standards of probity in dealing with financial issues. This is facilitated by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met. This set of Financial Standing Orders and Financial Regulations prescribe the main standards and controls. Each Head of Service shall ensure that their staff are fully aware of these standards and controls and comply with them whilst carrying out their duties

1.1 Senior management shall consult the Director of Resources with respect to any matter within their remit which is liable to affect the finances, other than provided in estimates, of the Council before any provisional or other commitment is incurred or before reporting thereon to the relevant Committee.

1.2 The Director of Resources is responsible for ensuring the proper administration of the financial affairs of the Council and that financial management standards and controls are in place and are effectively monitored for compliance.

### A1. Accounting

#### Why is this important?

Maintaining proper accounting records is one of the ways in which the Council discharges its responsibilities for stewardship of public resources. The Council has a statutory responsibility in preparing its annual accounts to present fairly its operations during the year. These accounting records are subject to external audit. This audit provides assurance that the accounts are prepared properly, that approved accounting practices have been followed and that quality arrangements have been made for securing economy, efficiency and effectiveness in the use of the Council's resources.

A1.1 All accounting procedures, accounting policies, and financial records of the Council and its officers shall be as determined by the Director of Resources. The financial procedures and records maintained in other Service Units are the responsibility of Senior Management and shall be subject to the approval of the Director of Resources.

A1.2 The Director of Resources shall make proper arrangements for the external audit of the Council's accounts in accordance with the most recent Accounts and Audit Regulations.

A1.3 Senior Management are required to maintain adequate records to provide an audit trail leading from the source of income/expenditure through to the accounting statements and to provide such information as required to enable the Statement of Accounts to be completed in accordance with the guidelines issued by the Director of Resources.

A1.4 Senior Management are to consult and obtain approval from the Chief Financial Officer before making changes to accounting records and procedures.

A1.5 The following principles shall be observed in the allocation of accounting duties:-

- The duties of providing information regarding sums due to or from the Council and of calculating, checking and recording these sums, shall be separated as completely as possible from the duty of collecting or disbursing them;
- Officers charged with the duty of examining and checking the accounts of each transaction shall not themselves be engaged in any of those transactions.

A1.6 Schedules of authorised signatories are held within the Finance Unit, which should be updated at least on an annual basis and where necessary senior management should inform Finance of any intervening changes such as the appointment of new staff.

## **A2. Budgetary Control**

### **Why is this important?**

Budget management ensures that once the budget has been approved by the Full Council, allocated resources are used for their intended purposes and are properly accounted for. Budgetary control is a continuous process, enabling the Council to review and adjust its budget targets during the financial year. It also provides the mechanism that calls to account managers responsible for defined elements of the budget.

By continuously identifying and explaining variances against budgetary targets, the Council can identify changes in trends and resource requirements at the earliest opportunity. The Council itself operates within an annual revenue limit, approved when setting the overall annual budget. To ensure that the Council in total does not overspend, each service is required to manage its own expenditure within the budget allocated to it. For the purposes of budgetary control by managers, a budget will normally be the planned income and expenditure excluding support and capital charges, for the service area or cost centre.



A2.1 Where it appears that the amount of any budget estimate of approved expenditure may be exceeded or the amount of any head of approved income may not be reached by a significant amount, it shall be the duty of the Senior Management concerned after consultation with the Director of Resources, to inform the Strategic Management Team and the Policy and Resources Committee.

A2.2 A summary of such variations from budgeted amounts, whether or not previously reported, shall be included within the monthly reports to Strategic Management Team and quarterly reports to Policy and Resources Committee. This summary would include income and expenditure programmed for the remainder of the financial year, effectively presenting an updated outturn for the financial year. The Strategic Management Team would advise of any remedial action required to adjust the overall budget to bring it back in line with the original budget, subject to any Policy and Resources Committee approval to vary the original budget.

A2.3 The Director of Resources shall provide each Head of Service with periodic statements of receipts and payments under each head of approved budget. It is the responsibility of senior management to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Director of Resources. They should report on variances within their own areas. They should also take any action necessary to avoid exceeding their budget allocation and alert the Director of Resources to any problems.

### **A3. Budget Virement**

#### **Why is this important?**

The scheme of virement is intended to enable the Policy and Resources Committee, senior management and their staff to manage budgets with a degree of flexibility within the overall policy framework determined by the Full Council, and therefore to optimise the use of resources.

A3.1 Under virement a Head of Service may propose to spend more than originally planned on one budget head provided that this is matched by a corresponding reduction on some other budget head within their control. Within the Council scheme of virement there are other rules to be applied as detailed in the following table.

## Virement Limits

<b>Level of authority</b>	<b>Value of virement</b> (including any partnership funding)	<b>Notes</b>
Budget holders	Up to £5,000 for any single virement within the approved budget framework coming under the budget holder's individual responsibility	Must be approved by service accountant.
Heads of Service	Up to £20,000 for any single virement within the approved budget framework coming under the Head of Service's individual responsibility	Must be approved by the Director of Resources and Chief Executive
Chief Executive	Up to £100,000 for any single virement within the approved budget framework	Must be approved by the Director of Resources
Policy and Resources Committee	£100,000 and above for any single virement within the approved budget framework	Requires a joint report from the Head of Service and Director of Resources and endorsed by the Chief Executive
Full Council	Any amount outside of the approved budget framework or which would significantly affect service standards	Requires a joint report from the Head of Service and Director of Resources and endorsed by the Chief Executive

Services not within the control of a Head of Service, (eg depreciation, recharges from central services such as Finance, Legal, etc.) are not available for virement except at the discretion of the Executive Management Team.

Any virement that is likely to impact on the level of service of another Head of Service should only be implemented after the agreement with the relevant Head of Service. Where in setting the annual budget there is an approved lump-sum budget intended for allocation during the year, its allocation will not be treated as a virement, provided that the amount is used in accordance with the purposes for which it was established.

## **B. Financial Planning**

### **B1. Budget Preparation**

#### **Why is this important?**

The budget determines the level of activity which can be delivered in each service area.

B1.1 The revenue and capital budget proposals for the year ahead and the Medium Term Financial Strategy will be submitted to the Policy and Resources Committee. Any submission should take into account the Corporate Plan and the associated corporate priorities.

B1.2 The Policy and Resources Committee shall consider the aggregate effect of these proposals upon the Council's financial resources and shall submit them to the Council for approval with a recommendation of the council tax to be levied for the ensuing financial year.

B1.3 Each Member of the Council shall be provided with a copy of the Revenue and Capital Budget and Medium Term Financial Plan together with a statement and report by the Director of Resources of their effect on the Council's finances including reserves and the council tax to be levied before any meeting of the Council at which such matters will be considered.

B1.4 The Policy and Resources Committee shall review fees and charges as part of the annual budget setting process.

B1.5 The Director of Resources is responsible for ensuring that a revenue budget is prepared on an annual basis and a Medium Term Financial Plan on a three-yearly basis for consideration by Policy and Resources Committee, before submission to the Full Council. The Full Council may amend the budget.

B1.6 The Director of Resources is responsible for issuing guidance on the general content of the budget as soon as possible following approval by the Full Council.

B1.7 It is the responsibility of senior management to ensure that budget estimates reflecting agreed service plans are submitted to the Policy and Resources Committee and that these estimates are prepared in line with guidance issued by the Director of Resources.

B1.8 The Director of Resources is responsible for providing appropriate financial information to enable budgets to be monitored effectively. They must ensure processes are in place for monitoring and controlling expenditure and income against

budget allocations and report to the Policy and Resources Committee on the overall position on a regular basis.

B1.9 It is the responsibility of senior management to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Director of Resources. They should report on variances within their own areas. They should also take any action necessary to avoid exceeding their budget allocation and alert the Director of Resources to any problems as early in the financial year as possible.

B1.10 The Director of Resources is responsible for developing and maintaining a resource allocation process that ensures due consideration of the Full Council's policy framework.

B1.11 The Director of Resources is responsible for ensuring that a capital programme is prepared on an annual basis for consideration by the Policy and Resources Committee before submission to the Full Council.

B1.12 Guidelines on budget preparation are issued to senior management by the Director of Resources following agreement with the Strategic Management Team. The guidelines will take account of:

- legal requirements
- medium-term planning prospects
- the corporate plan
- available resources
- spending pressures
- best value and other relevant government guidelines
- other internal policy documents
- cross-cutting issues (where relevant).

B1.13 Senior management shall prepare schemes and estimates for new capital schemes, including associated revenue expenditure, for consideration by the Strategic Management Team. The Director of Resources will co-ordinate these capital bids and following ranking according to the Council's priority matrix, present the draft capital programme to the Strategic Management Team.

B1.14 Those new schemes that are approved by the Strategic Management Team together with an updated position of the existing capital schemes forming the new three year Capital Programme shall be presented to the Policy and Resources Committee for consideration. The Policy and Resources Committee submits its recommendations on the capital programme to the Council. Upon the approval by the Council of a programme of capital expenditure senior management shall be authorised:-

- To take steps to enable land required for the purposes of the programme to be acquired in due time;

- To submit to tender in accordance with the accompanying contract standing orders those works and/or services approved in the capital programme;
- Secure the partnership funding including taking into account any governance arrangements necessary to pursue a joint funded capital scheme.

B1.15 It is the responsibility of the Director of Resources to advise the Policy and Resources Committee and/or the Full council on prudent levels of reserves for the authority.

## **B2. Reserves**

### **Why is this important?**

The Council needs to maintain Reserves to enable it to deal with unexpected events and thereby protect it from overspending should such an event occur.

Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items

B2.1 Section 25 of the Local Government Act 2003 requires the Director of Resources to report on the robustness of the estimates and the adequacy of financial reserves held by the Council. As part of the setting of the annual budget and the level of the council tax the Director of Resources shall report to the Council on the robustness of the estimates and the adequacy of financial reserves. The report will include an evaluation of the risk to the General Fund and the General Reserve, the two principal reserves. A full schedule of all the reserves will be part of the report to Council.

B2.2 The Director of Resources shall approve the setting up and the purpose of any reserves and funds where they are within the approved budget framework. The Director of Resources has authority to rationalise reserves that are no longer required.

B2.3 The Director of Resources will be responsible for the authorisation and expenditure from reserves in consultation with the senior management. For some, reserves authorisation by the Policy and Resources Committee is required.

## **C. Risk Management and Control of Resources**

### **C1. Audit Requirements**

#### **Internal Audit**

##### **Why is this important?**

The requirement for an internal audit function for local authorities is implied by Section 151 of the Local Government Act 1972, which requires that authorities “make arrangements for the proper administration of their financial affairs”. The Accounts and Audit Regulations more specifically require that a “relevant body must undertake an adequate and effective internal audit of its accounting records and of its system of internal control in accordance with the proper practices in relation to internal control.

The role of Internal Audit shall be based upon the principles contained within the most recent Code of Practice for Internal Audit in Local Government. Accordingly, internal audit is an independent and objective appraisal function established by the Council for reviewing the system of internal control. It examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.

C1.1 The Council shall be responsible for ensuring that there are continuous arrangements to measure, evaluate and report upon the effectiveness of internal control and efficient use of resources. These aspects will be subject to evaluation and review by Internal Audit which shall be headed by the Head of Audit Partnership normally reporting directly to the Chief Executive, but who also has rights of unrestricted access to Members. The Head of Audit Partnership shall report regularly to the Audit Committee.

C1.2 The Head of Audit Partnership will consult with the Director of Resources, the Council’s Section 151 officer, and the external auditors in drafting the annual Internal Audit Plan to be approved by the Audit Committee.

C1.3 The Council will once a year conduct a review of the effectiveness of its internal audit. The findings of the review must be considered as part of the consideration of the system of internal control by the Audit Committee.

C1.4 The Head of Audit Partnership has authority to:-

- Enter at all reasonable times on any Council premises or land;
- Have access to all records, documents and information relating to the business of the Council;
- Require and receive such explanations as are necessary concerning any matter under examination, and,

- Require any employee of the Council to produce cash, stores or any other Council property under their control.

C1.5 The Internal Audit Section shall be sufficiently independent to enable its auditors to perform their duties in a manner which will allow their professional judgements and recommendations to be effective and impartial.

C1.6 It is a management responsibility to apply sound internal controls in the Authority's systems and to maintain those controls. This includes responsibility for the prevention and detection of fraud and other illegal acts. However, the Head of Audit Partnership should be consulted about any significant proposed changes to existing systems and implementation of new systems, and make recommendations on the standard of control to be applied.

C1.7 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council, or any suspected irregularity in the exercise of the functions of the authority, the Head of Service concerned shall forthwith notify the Director of Resources and the Head of Audit Partnership. The Director of Resources and the Head of Audit Partnership and, as necessary, the Council's Monitoring Officer, shall also be informed of the steps that the senior management has taken/intends to take by way of investigation or other action.

C1.8 The Accounts and Audit Regulations require that any officer or Member must;

- Make available such documents and records as appear to be necessary for the purposes of the audit; and
- supply such information and explanation as the Head of Audit considers necessary for that purpose.

## External Audit

### **Why is this important?**

Public audit allows authorities to be held accountable for the public money at their disposal.

Auditors are to satisfy themselves that the authority's accounts have been prepared in accordance with the necessary directions; proper practices have been observed in the compilation of accounts; and proper arrangements are in place for securing economy, efficiency and effectiveness of use of resources.

C1.9 The external auditors shall be given access at all reasonable times to premises, personnel, documents and assets that they consider necessary for the purposes of their work.

C1.10 There should be effective liaison between the external and internal auditors.

C1.11 The external auditors will present their Audit Plan, Annual Governance Report and other findings to the Audit Committee and/or Full Council as deemed necessary.

## **C2. Internal Control**

### **Why is this important?**

The authority is complex and beyond the direct control of individuals. It therefore requires internal controls to manage and monitor progress towards strategic objectives. The authority faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to manage these risks.

### **Authorised Signatories**

C2.1 The Senior Management shall determine who is authorised to sign official documents on their behalf.

C2.2 The Senior Management shall provide the Director of Resources with up-to-date lists of specimen signatures of authorised officers.

C2.3 The Director of Resources shall maintain a register of all officers authorised to sign official documents.

C2.4 The Head of Legal Partnership, and any other officer authorised by them, are authorised to seal any document.

## **C3. Preventing Fraud and Corruption**

### **Why is this important?**

The Council will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Council. The Council's expectation of propriety and accountability is that Members and officers at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices. The Council also expects that individuals and organisations (e.g. suppliers, contractors, service providers) with whom it comes into contact will act towards the Council with integrity and without thought or actions involving fraud and corruption.

C3.1 The Head of Audit Partnership will maintain an anti-fraud and anti-corruption policy.



C3.2 All Heads of Service are expected to maintain adequate and effective internal control arrangements, with advice from the Head of Audit Partnership and/or Director of Resources.

C3.3 Where suspected irregularities are reported to the Head of Audit Partnership, Director of Resources or Chief Executive, the necessary investigations will be carried out expediently and any resulting actions will be reported as appropriate.

C3.4 The Council will comply with the requirements of the Bribery Act 2011.

## **C4. Assets**

### **Why is this important?**

The Council holds assets in the form of property, computers, equipment, vehicles, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register is a prerequisite for proper fixed asset accounting and sound asset management.

### **Inventories**

C4.1 Senior Management shall be responsible for the security and safe keeping of all equipment, stores and other property under their control.

C4.2 Each senior manager shall be responsible for maintaining an inventory of assets under their control, for taking action in relation to surpluses or deficiencies and annotating the inventory accordingly.

C4.3 The Council's property shall not be removed otherwise than in accordance with the ordinary course of the Council's business or used otherwise than for the Council's purposes.

C4.4 Any acquisition, disposal or transfer of items of property must be recorded on the inventory at the time when the physical transaction takes place.

C4.5 None of the Council's property shall be sold, scrapped or otherwise disposed of without prior sanction of the responsible senior manager. All disposals shall be by competitive tender or by a method approved by the Director of Resources.

### **Land and Property**

C4.6 The Head of Legal Partnership shall maintain a terrier of all properties owned by the Council (except dwellings provided under the Housing Acts), and a record of the Council's interests in land.

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C4.7 The form of the record is as laid down by the Head of Legal Partnership, but should detail:-

- The purpose for which the property is held;
- Location and plan reference;
- Area/size of land/property;
- The Council's interest in the land/property (e.g. freehold/leasehold);
- Purchase details;
- Rents payable;
- Tenancies granted;
- The vesting body.

C4.8 The Head of Legal Partnership shall notify the Director of Resources and other appropriate senior managers of rights and liabilities in connection with land or property newly acquired or controlled by the Council and shall also advise of any disposal of land or property.

C4.9 The Head of Legal Partnership shall have the custody of all Title Deeds under secure arrangements.

C4.10 The Head of Property Services shall keep up-to-date records of maintenance, rent reviews and other related matters of all properties owned or controlled by the Council.

## **Security**

C4.11 Maximum limits for cash holdings shall be agreed with the Director of Resources and shall not be exceeded without their express permission.

C4.12 Each Senior Manager shall be responsible for maintaining proper security at all times for stocks, stores, furniture, equipment, cash, etc under their control. Officers having responsibility for buildings or the sections of buildings will be designated.

C4.13 The specification of all safes and similar receptacles is to be checked for compliance with the Director of Resources to ensure its acceptability to the Council's insurers.

C4.14 Keys to safes and similar receptacles are to be kept securely by the person responsible at all times; the loss of any such keys must be reported to the Chief Financial Officer immediately. Combination for safes and receptacles are to be held by the person responsible, and by the Chief Financial Officer.

C4.15 The Head of ICT Partnership shall be responsible for maintaining proper security and privacy in respect of information held on the networked computer systems.

C4.16 Each Senior Manager shall be responsible for maintaining proper security and privacy of all information held within their Service Unit, including that held on PC and laptop based systems.

C4.17 Each Senior Manager shall ensure there are controls in place so that staff do not carry out private work in Council time and that staff are aware of an employer's rights with regard to intellectual property.

C4.18 Senior Managers shall immediately report all breaches of security (and associated damage) to the Police. The Senior Manager, in consultation with the Director of Resources and Head of Audit Partnership shall consider both insurance and internal control implications and take appropriate action.

### **Insurances**

C4.19 The Director of Resources shall effect all insurance cover and negotiate all claims in consultation with other officers where necessary.

C4.20 Heads of Service shall give prompt notification to the Director of Resources of all new risks, properties, equipment (including portable equipment) or vehicles which require to be insured and of any alterations affecting existing insurances.

C4.21 Senior managers will notify the Director of Resources in writing of any loss, liability or damage or any event likely to lead to a claim.

C4.22 All appropriate employees of the Council shall be included in a suitable fidelity guarantee insurance.

C4.23 The Director of Resources shall periodically review all insurance in consultation with other senior managers as appropriate.

C4.24 Senior managers shall consult the Director of Resources and the Head of Legal Partnership regarding the terms of any indemnity which the Council is requested to give.

C4.25 To comply with the Council's insurance policies, no admission of liability shall be made by any officer without the prior agreement of the insurers.

## **Intellectual Property and Management of Information (Financial and Non-Financial)**

C4.26 Intellectual property is a generic term that includes inventions and writings if these are created by any employee during the course of their employment. As a general rule, they belong to the employer, not the employee.

C4.27 Certain activities undertaken within the Council may give rise to items that may be patentable, for example, software development. These items are collectively known as intellectual property.

### **D. Financial Systems and Procedures**

#### **Why is this important?**

Public money should be spent with demonstrable probity and in accordance with the Council's policies. Authorities have a statutory duty to achieve best value. The Council's procedures should help to ensure that its services obtain value for money from their purchasing arrangements.

#### **D1. Selective Tendering**

(Please refer also to Standing Orders with Regard to Contracts).

D1.1 All Selective Tendering procedure shall comply with Standing Orders with Regard to Contracts.

D1.2 For work carried out on an agency basis for the Kent County Council, or other statutory authority, the Council shall adopt the use of such authorities' procedures for the appointment of contractors and other contractual processes. In the absence of any established agent procedures Swale Borough Council's own requirements, as outlined within these Financial Regulations and Contract Standing Orders, shall prevail.

#### **D2. Contracts for Services, Building, Constructional or Engineering Work**

D2.1 The responsible Senior Manager shall provide the Director of Resources with the details and conditions of any contracts/agreements in respect of Capital Works, Repairs and Maintenance where payment is to be made net of retention monies, and which require payment by instalments. This shall also apply to Professional Fees to be paid by instalments.

D2.2 The responsible Senior Manager shall provide the Director of Resources with the details and conditions of any contracts/agreements in respect of Goods and Services which require payment by instalments. Included in this category would be the major service contracts for Refuse Collection, Street Sweeping, Public Conveniences, Leisure Management and Grounds Maintenance.

D2.3 Where a certificate is not available for a Services Contract, payment shall be made on an invoice or other documentation in a form acceptable to the Director of Resources, and certified by an authorised officer.

D2.4 All variations shall be authorised in writing by an authorised officer or consultant.

D2.5 Any variation or costs which are likely to have a significant effect on the approved tender sum shall be reported by the Head of Service to the relevant Committee and the Council as soon as is practicable. The report shall detail the cumulative effect on the original tender sum. Significance shall be determined by the Strategic Management Team and/or the appropriate Head of Service in consultation with the Director of Resources.

D2.6 The final certificate of completion of any contract shall not be issued until the contractor, private architect, engineer or consultant, has produced a detailed statement of account, and all relevant documents to the Council's officer responsible for the supervision of the contract as defined under the terms of the particular contract who shall examine final accounts for contracts and make all such enquiries and receive such information and explanations as they may require in order to satisfy themselves as to the accuracy of the accounts.

D2.7 Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Head of Legal Partnership for consideration of the authority's legal liability and, where necessary, to the Director of Resources for financial consideration before a settlement is reached.

### **D3. Orders for Work, Goods and Services**

D3.1 Official orders and associated commitments are only to be raised and entered into the accounting system by officers authorised by the appropriate senior manager, who shall be responsible for official orders issued from their Service Unit. The estimated cost of the order should always be entered on the system.

D3.2 Official orders shall be issued for all work, goods or services to be supplied to the Council except for supplies of public utility services, for periodical payments such as rent or rates, for petty cash purchases or such other exceptions as the Director of Resources may approve. Verbal orders must be confirmed by the issue of an Official Order clearly marked "Confirmation Only".

D3.3 Each order shall conform with the directions of the Council with respect to central purchasing and the standardisation of supplies and materials. Quotations or tenders for all orders should be sought in accordance with the Council's Standing Orders with Regard to Contracts.

D3.4 A copy of each order shall be kept by the senior manager raising the order and be available for inspection by the Director of Resources and their nominated staff.

D3.5 The detailed rules and thresholds in relation to contracts and procurements are set out in the Contract Standing Orders in Part 3.9 of this Constitution.

#### **D4. Payments**

D4.1 The normal method of payment of money due from the Council shall be by BACS or other instrument drawn on the Council's banking account by the Director of Resources.

D4.2 All electronic payments such as CHAPS and BACS must be made in accordance with the internal controls and authorisations approved by the Director of Resources.

D4.3 All cheques, shall be ordered only on the authority of the Director of Resources who shall make proper arrangements for their safe custody.

D4.4 Cheques on the Council's banking accounts, shall bear the facsimile signature of the Director of Resources, signed by the Director of Resources or other officer authorised to do so. Two signatures are required on cheques in excess of £50,000.

D4.5 All payments made on purchase cards must be made in accordance with the internal controls and expenditure limits approved by the Director of Resources. Officers who are cardholders shall be responsible for maintaining a log of transactions and providing adequate documentation to support expenditure.

D4.6 The Head of Service, when issuing an order is responsible for examining, verifying and certifying the related invoice(s) and any other payment vouchers or accounts arising from sources in his Unit. Such certification shall be via the Agresso certification workflow system based on the scanned images of the related invoices or such other payment vouchers by or on behalf of the Head of Service.

D4.7 The Senior Manager must ensure that all invoices or other payment vouchers including internally generated proformas are sent to the Exchequer Section for scanning into the Agresso certification workflow system as soon as they are received or internally generated. This will help to make payment within the Performance Indicator target of 30 days from receipt of invoice.

D4.8 Certification of accounts should not be unduly delayed, BUT before certifying an account, the certifying officer shall be satisfied that:-

- The work, goods or services to which the account relates have been received, carried out, examined and approved;

- The prices, extensions, calculations, trade discount, other allowances, credits and tax are correct. With regard to VAT, VAT invoices may only be altered with the permission of the Customs and Excise Department. Otherwise adjustments must be made with the knowledge of the supplier, normally by issuing credit notes or supplementary invoices;

- The relevant expenditure has been properly incurred, and is within the relevant estimate provision;
- Appropriate entries have been made in inventories, stores' records or stock books as required, and,
- The account has not been previously passed for payment and is a proper liability of the Council.

D4.9 The payment of all salaries, Members' allowances, compensations, gifts and other emoluments to all employees or former employees of the Council shall be made by the Head of Human Resources.

D4.10 Each Senior Manager shall notify Human Resources as soon as possible of all matters affecting the payment of such emoluments, and in particular:-

- Appointments, resignations, dismissals, suspensions, secondments, transfers and casual employment;
- Absences from duty for sickness or other reason, apart from approved leave;
- Changes in remuneration, other than normal increments and pay awards and agreements of general application;
- Information necessary to maintain records of service for superannuation, income tax, national insurance and the like.

D4.11 All time records or other pay documents shall be in a form prescribed or approved by the Head of Human Resources and shall be certified in manuscript by or on behalf of the senior manager.

D4.12 Each Senior Manager shall, as soon as possible after 31st March notify the Director of Resources of all outstanding expenditure relating to the previous financial year, (i.e. Goods and services received by 31st March but not yet paid for, known as "Reserved Creditors").

D4.13 Claims for payment of car allowances, college expenses, travelling and subsistence allowances shall be made in a form approved by the Head of Human Resources.

D4.14 Claims shall be certified by another authorised officer or another elected Member in the case of their own claims.

D4.15 Claims shall normally be made monthly and passed to the Payroll Section within 5 calendar days of the end of the month.

D4.16 Certifying officers are responsible for ensuring, to the best of their knowledge, that the claims relate to journeys made and expenses properly incurred whilst carrying out official duties or training.

## **D5. Income**

### **Why is this important?**

Effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. It is preferable to obtain income in advance of supplying goods or services as this improves the Council's cashflow and also avoids the time and cost of administering debt.

D5.1 The collection, recording and banking of money due to the Council shall be under the supervision of or under arrangements approved by the Director of Resources.

D5.2 Each senior manager shall furnish the Director of Resources with such particulars in connection with work done, goods supplied or services rendered and of all other amounts due as may be required by them, to record correctly all sums due to the Council and to ensure the prompt rendering of accounts for the recovery of income due (i.e. the raising of sundry debtors). The accounts for Housing Benefit overpayments are dealt with separately within the Benefits Section.

D5.3 The Director of Resources shall be notified promptly of all money due to the Council and of contracts, leases and other agreements and arrangements entered into which involve the receipt of money by the Council.

D5.4 Receipt forms, tickets, official order forms and other such financial stationery (excluding cheques and other negotiable instruments) shall normally be ordered and held as controlled stationery by the appropriate Senior Manager, who shall be responsible for their adequate security and control. Such arrangements, together with the design and format of financial stationery, shall be approved by the Director of Resources. Certain multi-user items shall be ordered and controlled by the Director of Resources who shall also periodically review the Authority's overall controlled stationery arrangements.

D5.5 All money received by an officer on behalf of the Council shall without delay be paid to the Director of Resources or, as they may direct, to the Council's banking account or PayPoint account; no deduction may be made from such money.

D5.6 Personal cheques shall not be cashed out of the money held on behalf of the Council.

D5.7 Payments to staff or for goods and services shall not be paid from monies received.



D5.8 Once raised, no bona fide debt may be cancelled, except by full payment or by its formal writing off, unless the debt has a factual inaccuracy or administrative error in the calculation or other administrative error. In all cases the reason for cancellation shall be documented.

D5.9 Once raised, no bona fide debt or part of the debt may be written off, unless the reason for write off is fully documented and approved by the Director of Resources.

- (a) all debts arising from bankruptcies and liquidations, which are not covered by distributions from liquidators, receivers or administrators; and
- (b) any other single amount due to the Council up to £5,000 or with Strategic Management Team approval £10,000. Any outstanding debt in excess of this amount can only be written off with the consent of the Policy and Resources Committee.

D5.10 It is the responsibility of all senior managers to assist with appropriate recovery action in conjunction with the Director of Resources, including legal action where necessary, for debts not paid promptly, by providing any further information requested by the debtor, and in pursuing the matter on the Council's behalf.

D5.11 Each senior manager shall as soon as possible after 31 March notify the Director of Resources of all uncollected income on accounts not rendered relating to the previous financial year (i.e. Goods and services delivered by 31st March but not yet paid for, known as "Reserved Debtors").

## **E. External Arrangements**

### **E1. Partnerships**

#### **Why is this important?**

Increasingly local authorities are working in partnership to deliver services. It is important that the financial arrangements around partnerships are clearly defined and liabilities and risks are made explicit.

E1.1 Financial matters relating to arrangements whereby one Council administers funds jointly on behalf of itself and others shall be subject to the Financial Standing Orders and Regulations of the administering Council, unless the other parties rules are more stringent.

E1.2 The Director of Resources will ensure that the accounting arrangements are satisfactory.

E1.3 Senior Managers will maintain a record of all contracts entered into with external bodies in accordance with procedures specified by the Chief Financial Officer.

E1.4 Senior Managers will ensure that, before entering into agreements with external bodies, a risk management appraisal has been prepared for the Strategic Management Team and Policy and Resources Committee.

E1.5 Senior Managers will ensure that such agreements and arrangements do not impact adversely upon the services provided by the Council.

E1.6 Senior Managers will ensure that all agreements and arrangements are properly documented and that the appropriate governance arrangements have been approved by the Director of Resources.

E1.7 Senior Managers will provide appropriate information to the Director of Resources to enable a note to be entered into the Council's Statement of Accounts concerning material items.

## **E2. External Funding**

### **Why is this important?**

Funding from external agencies will remain an important potential source of funding for the Council. Such opportunities need to be maximised whilst ensuring that the Council can meet any financial obligations which may be placed on it.

E2.1 The appropriate senior manager will ensure that any decisions are made by Strategic Management Team and Policy and Resources Committee within the appropriate governance framework.

E2.2 The Director of Resources to ensure that all funding notified by external bodies is received and properly recorded in the Council's accounts.

E2.3 The Director of Resources to ensure that the match-funding requirements are considered prior to entering into the agreements and that future revenue budgets reflect these requirements.

E2.4 The Director of Resources to ensure that all specified audit requirements are met.

E2.5 The appropriate Senior Manager to ensure that all claims for funds are made by the due date.

E2.6 The appropriate Senior Manager to ensure that the project progresses in accordance with the agreed project and that all expenditure is properly incurred and recorded.

## PART 3.6 – CONTRACT STANDING ORDERS (CSOs)

### 3.6.1 Introduction – Purpose of the Contract Standing Orders

3.6.1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:

- 3.6.1.1.1 Furthers its corporate objectives.
- 3.6.1.1.2 Uses its resources efficiently.
- 3.6.1.1.3 Purchases quality goods, services and works.
- 3.6.1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.

3.6.1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.

3.6.1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.

3.6.1.4 These Contract Standing Orders do not provide guidelines on the best way to purchase works, supplies (goods) and services but set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide, Procurement Strategy, Code of Conduct, Safety Policy, Equal Opportunities Policy, Local First Policy, Safeguarding Policy, Commissioning Framework, Protected Disclosure Policy (Whistleblowing) and Data Quality Standard.

### 3.6.2 General Principles – Application and Compliance with Contract Standing Orders

3.6.2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.

3.6.2.2 These Contract Standing Orders 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.

3.6.2.3 These Contract Standing Orders do not apply to:

- 3.6.2.3.1 Employment contracts;
- 3.6.2.3.2 Contracts relating solely to the purchase or sale of interests in land;
- 3.6.2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings;

- 3.6.2.3.4 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies;
- 3.6.2.3.5 Contractual arrangements with other local authorities or similar bodies where the Council is not the lead authority in which case the lead authority's Standing Orders shall prevail. For contracts involving shared services, the CSO of the lead authority in the partnership shall apply even if different from the Council's;
- 3.6.2.3.6 Framework Agreements providing that the Head of Mid Kent Legal Services and Finance has agreed the terms of the Framework Agreement.
- 3.6.2.3.7 Election expenditure under the UK threshold.

### **3.6.3 General Principles Applying to All Contracts**

- 3.6.3.1 All orders used in connection with Contracts shall be on the Council's official order template;
- 3.6.3.2 The Council's standard contract clauses or other terms and conditions approved in advance by Legal and Finance, shall be used in all contracts of a value of £25,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet;
- 3.6.3.3 As a minimum, all contracts of a value of £25,000 or more shall include clauses which set out:
  - 3.6.3.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied;
  - 3.6.3.3.2 The time within which the contract is to be performed;
  - 3.6.3.3.3 Quality requirements and / or standards which must be met. Including arrangements for securing good data quality;
  - 3.6.3.3.4 Requirements on the contractor to hold and maintain appropriate insurance/s / licences;
  - 3.6.3.3.5 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part);
  - 3.6.3.3.6 Requirements on the contractor and sub-contractors to comply with all relevant equalities and health and safety legislation;
  - 3.6.3.3.7 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972;
  - 3.6.3.3.8 Arrangements required to address Public Interest Disclosure (Whistleblowing) issues that arise;

- 3.6.3.3.9 Reference to the Bribery Act 2010;
- 3.6.3.3.10 All contracts above the relevant UK threshold must contain reference to the Social Value Act, consideration of the Act should also be made in relation to contracts below the relevant UK threshold.
- 3.6.3.3.11 Reference to the Data Protection Act 2018.
- 3.6.3.3.12 All contracts with a bronze, silver or gold level of safeguarding assurance must have adequate provision to ensure that appropriate safeguarding measures are in place throughout the life of the contract.
- 3.6.3.3.13 Reference to the Freedom of Information Act 2000
- 3.6.3.3.14 Reference to the Modern Slavery Act 2015
- 3.6.3.3.15 Reference to the Government's Prevent requirements.

3.6.3.4 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council. In this context, "non-commercial" means requirements unrelated to the actual performance of the contract.

3.6.3.5 All contracts shall include relevant specifications and / or briefs / technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Purchasing Guide. All procurement documentation including specifications and / or briefs / technical requirements and relevant contractual documentation need to be advertised all at the same time regardless of the procurement procedure.

3.6.3.6 All contracts of a value of £120,000 (including VAT) or more or which involve a substantial risk to the Council are subject to a written risk assessment, which should be kept on the contract file and updated when required.

#### **3.6.4 Regulatory Context**

3.6.4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:

- 3.6.4.1.1 All relevant statutory provisions;
- 3.6.4.1.2 The Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and Scheme of Delegation;
- 3.6.4.1.3 The Council's Purchasing Guide and other policies and procedures of the Council as appropriate;

3.6.4.2 In the event of conflict, UK legislation will take precedence followed by the Council's Constitution, the Council's Purchasing Guide, guidelines, policies and procedures.

### **3.6.5 Responsibilities of Directors and Responsible Officers**

3.6.5.1 Each Director / Head of Service shall:

- 3.6.5.1.1 be responsible for the purchasing undertaken by their Directorate or Service;
- 3.6.5.1.2 be accountable to the relevant committee for the performance of their duties in relation to purchasing;
- 3.6.5.1.3 comply with the Council's decision-making processes including, where appropriate, implementing and operating a Scheme of Delegation;
- 3.6.5.1.4 take immediate action in the event of breach of these Contract Standing Orders.

3.6.5.2 A Responsible / Lead Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.

3.6.5.3 A Responsible / Lead Officer's duties in respect of purchasing are to ensure:

- 3.6.5.3.1 compliance with all Regulatory Provisions and integrity of the tender process;
- 3.6.5.3.2 compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process;
- 3.6.5.3.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used;
- 3.6.5.3.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings;
- 3.6.5.3.5 compliance with the Council's decision-making processes;
- 3.6.5.3.6 that all contracts of a value of £5999 (including VAT) or more are included on the Council's Contract Register;
- 3.6.5.3.7 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £25,000 or more;
- 3.6.5.3.8 All Contracts over £25,000 will be:
  - 1. In the form approved by Legal Services;
  - 2. executed;
  - 3. a minimum of three copies of this contract are required; one to be stored in the Council's strong room; the second to be sent to the winning bidder/s and the third to be sent to the lead officer or their

staff. An electronic copy of the signed / sealed contract is to be emailed to Procurement.

3.6.5.3.9 that value for money is achieved;

3.6.5.3.10 that a risk assessment is carried out to ascertain whether a bond or guarantee is required to protect the Council in the event of non-performance.

3.6.5.4 In considering how best to procure works, supplies and services, Directors / Heads of Service and / or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement / purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.

3.6.5.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Director of Resources.

3.6.5.6 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Head of Internal Audit.

### **3.6.6 Scheme of Delegation**

3.6.6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme(s) of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Director or Head of Service.

3.6.6.2 Officers shall, where appropriate, be informed by their Director or Head of Service of the extent of any delegated authority and applicable financial thresholds.

### **3.6.7 Financial Thresholds and Procedures**

3.6.7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values. All figures quoted in this document are inclusive of VAT.

3.6.7.2 There is a general presumption in favour of competition. Wherever possible, contract opportunities should be advertised by way of a public notice. At the time of writing, the Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the UK Threshold levels outlined below.

3.6.7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website

or other electronic media and / or in the press, trade journals or Find a Tender Service (from 1 January 2021), as appropriate. The Responsible / Lead Officer may choose to place one or more public notices in different media. As a minimum any Request for Quotation or tender valued at £25,000 or above will be advertised on [www.swale.gov.uk](http://www.swale.gov.uk), the Council's E-procurement System and Contracts Finder.

#### 3.6.7.4 Table setting out financial thresholds and procedures

Total value (including VAT)	Type of contract	Procedure to be used
£0 - £5999	works, supplies and services	<p><b>a) At least one quotation in advance</b></p> <p>b) All purchases however small to be in writing, on an official order;</p> <p>c) Approved by the relevant Head of Service or authorised officer;</p> <p>d) Officer should be able to provide a rationale for why they selected the provider used.</p> <p>e) All consultancy spend should be in agreement with the relevant Committee Chair</p>
£6000 - £24,999	works, supplies and services	<p><b>a) At least one quotation in advance</b></p> <p>b) One off, non-routine spend should be agreed by relevant Committee Chair</p> <p>c) Commissioning &amp; Procurement need to be made aware of any procurement where the whole life value is &gt;£6,000.</p> <p>d) All purchases however small to be in writing, on an official order;</p> <p>e) Approved by the relevant Head of Service or authorised officer;</p> <p>f) Officer should be able to provide a rationale for why they selected the provider used;</p> <p>g) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.</p>
<p><b>Procedure to be used</b></p> <p><b>£25,000 to £119,999</b></p>	works, supplies and services	<p><b>a) Request for quotation advertised on <a href="http://www.swale.gov.uk">www.swale.gov.uk</a>, the Council's <a href="#">E-procurement System</a> and <a href="#">Contract Finder</a>;</b></p> <p>b) Spend should be agreed by relevant Committee Chair;</p> <p>c) Consideration given to Purchasing Scheme's e.g. to provide better V.F.M.;</p> <p>d) Financial appraisals shall be carried out by Financial Services prior to award;</p> <p>e) Approved by the relevant Head of Service or authorised officer;</p> <p>f) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document or other terms and conditions approved in advance by Legal and Finance;</p> <p>g) Records maintained to demonstrate probity and V.F.M. obtained.</p> <p>h) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.</p>



<b>Procedure to be used</b> <b>£120,000 to £213,477**</b>	works, supplies and services	a) <b>At least three electronic tenders;</b> b) Spend should be agreed by relevant Committee Chair; c) Risk assessment conducted (in writing) and kept on the file. d) As a minimum to be advertised on <a href="http://www.swale.gov.uk">www.swale.gov.uk</a> , the Council's <a href="#">E-procurement System</a> plus <a href="#">Contract Finder</a> ; e) Tenders opened at the same time by the Democratic and Electoral Services Manager (or nominee), in the presence of the Responsible Officer (or nominee) and a suitable person from Legal Services (or Nominee); f) Financial appraisals shall be carried out by Financial Services prior to award; g) Approval required from the relevant committee for award of contract, waiver from CSOs and extensions to contracts h) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document or other terms and conditions approved in advance by Legal and Finance; i) Record to be entered on the Council's Contract Register at award stage.
<b>Procedure to be used</b> <b>£213,477 ** plus</b>	Supplies and services	a) Public Contracts Regs apply – full competitive process with tenders following advertisement in Find a Tender Service for supplies and services, there is a presumption in favour of advertising and a competitive process. This will also be advertised on the Swale website, The Council's e-procurement system and Contract Finder; b) Points a; b; c; d; e; f; g; h and i as above for works, supplies and services for £120,000 to £213,477**
<b>Procedure to be used</b> <b>£213,477 to £5,336,937**</b>	Works	a) Points a – i as above for works, supplies and services for £120,000 to £213,477**
<b>Procedure to be used</b> <b>£663,540 plus**</b>	Light Touch Regime Services	a) Points a – i as above for supplies and services for £213,477 plus**
<b>Procedure to be used</b> <b>£5,336,937** plus</b>	Works	a) Public Contracts Regs apply – full competitive process with tenders following advertisement in Find a Tender Service. b) Points a; b; c; d; e; f; g; h; and i as above for supplies and services for £213,477 plus**

\*\* or relevant threshold in force at the time under the Public Contracts Regs.

3.6.7.5 Where contracts are of a type and value which means that they are subject to the Public Contracts Regs then there are four main types of procedures available. These are the open, restricted, competitive dialogue and competitive negotiated procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of procedure should be sought from Legal Services or the Procurement team.

3.6.7.6 Financial appraisals shall be carried out by Financial Services on all contracts over £25,000 prior to award. They shall also have a financial appraisal undertaken by financial services annually on or near the anniversary date of the contract award date

3.6.7.7 Contracts with a high degree of complexity or where there is a lack of knowledge in house may require the assistance of a consultant with Director or Head of Service approval.

### **3.6.8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts**

3.6.8.1 For contracts over the relevant UK Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Director or Head of Service in advance.

3.6.8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with their general obligations under these Contract Standing Orders ensure, in particular that:

3.6.8.2.1 the appropriate approvals have been obtained to authorise that decision; and;

3.6.8.2.2 where appropriate, a standstill period complying with the Public Contracts Regs is incorporated into the final award process.

3.6.8.3 All contracts valued at £120,000 or above (including VAT) must be reported to the relevant committee for approval and shall be executed as a deed by Legal Services, All other contracts may be signed by officers with appropriate delegated authority.

3.6.8.4 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 Corporate Services. The Council shall use suitable, free software, such as Adobe, to create electronic signatures.

### **3.6.9 Calculating the Contract Value**

3.6.9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that it shall be the genuine pre- estimate of the value of the entire contract (whole life value) including Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

3.6.9.2 Contracts may be split into lots where it is practical to do so. However, the aggregated cost of the lots shall determine the contract's whole of life value and the procurement process to be followed. Artificial splitting of a contract to avoid the application of the procurement rules or these CSOs is not permitted. However, should lots not be used for tenders over the UK threshold, then Reg. 84 applies i.e. individual report as to why lots were not used.

3.6.9.3 The Public Contracts Regs cover contracts which are below the stated UK threshold where they constitute repeat purchases and / or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the rules where they envisage that they may require repeat purchases and / or purchases of a similar type.

### **3.6.10 Principles Underlying Tendering Processes and Tender Evaluation**

3.6.10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

- 3.6.10.1.1 Sufficient time is given to plan and run the process;
- 3.6.10.1.2 Equal opportunity and equal treatment;
- 3.6.10.1.3 Openness and transparency;
- 3.6.10.1.4 Probity;
- 3.6.10.1.5 Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

### **3.6.11 Submission and Opening of tenders**

3.6.11.1 An Invitation to Tender shall be issued by the Council for all contracts over £120,000 (including VAT) using the Council's e-procurement system and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.

3.6.11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:

- 3.6.11.2.1 addressed to the Democratic and Electoral Services Manager;
- 3.6.11.2.2 in a sealed envelope marked "Tender" followed by the subject matter to which it relates and not displaying the name of the tenderer;
- 3.6.11.2.3 kept in a safe place by the Democratic and Electoral Services Manager;
- 3.6.11.2.4 retained unopened until the date and time specified for its opening.

3.6.11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be submitted via the Council's [E-procurement System](#) or:

- 3.6.11.3.1 addressed to the e-mail address as notified in the Invitation to Tender;
- 3.6.11.3.2 in the format specified in the Invitation to Tender;
- 3.6.11.3.3 stored in a secure mailbox, which requires a code or other appropriate security measure, to open it;
- 3.6.11.3.4 retained unopened until the date and time specified for its opening:

3.6.11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Director or Head of Service, having consulted Procurement and Legal Services, is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to

have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.

3.6.11.5 All tenders of £120,000 (including VAT) and above are to be opened in the presence of the Democratic and Electoral Services Manager (or nominee), and a suitable person from Legal Services (or Nominee).

3.6.11.6 An immediate record shall be made of the tenders received including names and addresses and the date and time of opening, this record to be retained by the Democratic and Electoral Services Manager and Procurement.

### **3.6.12 Evaluation of Quotes and Tenders**

3.6.12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes / tenderers. Evaluations shall be undertaken in accordance with the Council's evaluation procedure, P.16.

3.6.12.2 Tenders subject to the Public Contracts Regs shall be evaluated in accordance with the Public Contracts Regs.

3.6.12.3 Save in exceptional circumstances approved in advance by the relevant Director, all contracts shall be awarded on the basis of the quote or tender which represents the Most Economical and Advantageous Tender to the Council and not on the basis of lowest price.

3.6.12.4 Post tender negotiations will only be used in special circumstances and after approval from the relevant Director or Head of Service, having consulted Procurement and Legal Services.

### **3.6.13 Waivers**

3.6.13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £25,000 may only be waived in the following circumstances.

3.6.13.1.1 For contracts which are not subject to the Public Contracts Regs, 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

3.6.13.1.2 the circumstances set out in Public Contracts Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the Regulations); or

3.6.13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or

3.6.13.1.4 at the discretion of the relevant Head of Service who may, for contracts exceeding £25,000 but not exceeding £119,999, proceed in a manner most expedient to the efficient management of the service / Council with reasons recorded in writing.

3.6.13.2 A Responsible / Lead Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.

3.6.13.3 All waivers from these Contract Standing Orders must be:

3.6.13.3.1 Fully documented;

3.6.13.3.2 Subject to a written report in an approved format. For contracts not exceeding £119,999 the report shall be submitted in advance to Procurement and include the reasons why the waiver is genuinely required. For contracts of £120,000 (including VAT) and above the report shall be submitted to the relevant committee;

3.6.13.3.3 Subject to agreement in advance by the Head of Finance and Procurement in consultation with the Head of Mid Kent Legal Services and the Director of Resources as appropriate, who shall, for contracts exceeding £25,000 but not exceeding £119,999 (including VAT), record that they have considered the reasons for the waiver and that they are satisfied with the circumstances justifying the waiver. Waivers from competitive purchasing processes for contracts of £120,000 (including VAT) and above must be approved in advance by the relevant committee. In the report to the committee a recommendation; "The committee agree to the waiver requested in relation to the [works, goods / services] contract and that the Head of Finance and Procurement be authorised to complete the necessary documentation". Prior to the committee meeting, the wavier should still be considered by the Head of Mid Kent Legal Services and the Director of Resources. In the absence of the Head of Finance and Procurement, the Commissioning Manager has the delegated authority to record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver and sign off waivers over £25,000 in consultation with the Head of Mid-Kent Legal Services and the Director of Resources, waivers above £120,000 (including VAT) are subject to committee approval;

3.6.13.4 All decisions on waivers must take into account:

3.6.13.4.1 Probity;

3.6.13.4.2 Best value / value for money principles.

3.6.13.5 For contracts subject to the Public Contracts Regs, any waiver from the requirement for competition must meet the conditions set out in the Public Contracts Regs in addition to the general requirements above.

3.6.13.6 A waiver shall not be applied for reasons of poor contract planning.

3.6.13.7 A wavier may only apply to the omission/s of certain item/s therefore, the Responsible / Lead Officer will be required to follow all other criteria in these Contract

Standing Orders other than what has been approved and agreed in the submitted waiver.

### **3.6.14 Extensions to Existing Contracts**

3.6.14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the advertisement / contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.

3.6.14.2 Any extension must be:

3.6.14.2.1 Fully documented;

3.6.14.2.2 Subject to a written report in an approved format, form P.24. For contracts where the extension value is not exceeding £119,999 (including VAT) , the report shall be submitted in advance to the relevant Director or Head of Service and include the reasons why the extension is required. For contracts where the extension value is £120,000 (including VAT) and above the report shall be submitted to the relevant committee;

3.6.14.2.3 Subject to approval in advance by the relevant Director or Head of Service who shall, for contracts where the extension value is not exceeding £119,999 (including VAT), record that they have considered the reasons for the extension, there is an extension option on the contract and that they are satisfied with the performance of the contract. Extensions for contracts where the extension value is £120,000 (including VAT) and above must be approved in advance by the relevant committee.

3.6.14.3 Any extension must take into account:

3.6.14.3.1 Probity;

3.6.14.3.2 Best value / value for money principles.

3.6.14.4 For contracts subject to Public Contracts Regs, any extension must meet the conditions set out in the Public Contracts Regs in addition to the more general requirements set out above.

### **3.6.15 Purchasing Schemes**

3.6.15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.

3.6.15.2 Responsible Officers must check in advance that

3.6.15.2.1 The Council is legally entitled to use the Purchasing Scheme;

3.6.15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme;

3.6.15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the Public Contracts Regs (where they apply) and meets the Council's own requirements.

3.6.15.3 A "Purchasing Scheme" may include:

3.6.15.3.1 Framework arrangements (including those set up by the Cabinet Office);

3.6.15.3.2 Purchasing arrangements set up by central purchasing bodies and commercial organisations;

3.6.15.3.3 Consortium purchasing;

3.6.15.3.4 Collaborative working arrangements;

3.6.15.3.5 Formal agency arrangements;

3.6.15.3.6 E-procurement / purchasing schemes and methods;

3.6.15.3.7 Other similar arrangements such as the IDeA Marketplace

3.6.15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

3.6.15.5 Prior to using any purchasing scheme / framework, the Responsible Officer / Lead Officer should consider whether the works, goods or services required can be procured locally.

### **3.6.16 Review and Changes to these Contract Standing Orders**

3.6.16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the UK Thresholds amended Contract Standing Orders shall be agreed and adopted by the Council. Revisions to the UK Thresholds shall be dealt with in accordance with the Constitution - Scheme of Delegation to the Head of Legal Partnership. Any other modifications to these Contract Standing Orders outside of the scope above will need to be presented to SMT, Policy and Resources Committee and then to Full Council for approval. These Contract Standing Orders will be updated automatically where there are any changes to legislation affecting them. They will be reviewed at least every three years to ensure that they continue to meet the Council's requirements.

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