

<b>Key Decision Required:</b>	<b>NO</b>	<b>In the Forward Plan:</b>	<b>NO</b>
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## CABINET

9 MAY 2014

### REPORT OF THE PLANNING AND CORPORATE SERVICES PORTFOLIO HOLDER

#### **A.3 AMENDMENTS TO THE COUNCIL'S CONSTITUTION – PHASE 2**

(Report prepared by Lisa Hastings, Monitoring Officer)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

This report asks the Cabinet to recommend to Council, proposed changes which have been suggested by Members and Officers as Phase 2 of the Constitution Review.

The changes include proposed revised Council Procedure Rules, Overview and Scrutiny Procedure Rules (including call-in), the Access to Information Rules and the delegated powers relating to property and the key changes are highlighted within the body of this Report and in the text of the Appendices.

##### **EXECUTIVE SUMMARY**

The Constitution Working Party (“CWP”) is chaired by the Portfolio Holder for Planning and Corporate Services, has cross party membership and is supported by the Monitoring Officer, Corporate Director (Corporate Services) and Democratic Services Manager. The CWP has spent a considerable amount of time reviewing the Council Procedure Rules and Overview and Scrutiny Procedures to provide greater clarity for the benefit of both Members and Officers, taking into account best practice and examples used in other local authorities.

A summary of the changes compared to the existing rules is provided under each heading below and the rules have been streamlined to remove duplication and reordered where necessary. In all instances, the CWP has suggested changes that work for the Council as a whole, will assist future Chairmen of all committees and in the majority of the suggestions after debate, there was agreement on the proposals.

#### **(a) The Council's Procedure Rules:**

(The new Rule Number is included for ease of reference)

**To assist with the running and timing of business, members of the CWP propose:**

- i. Changing the start time to 6.30pm – this is to ensure that the business on the agenda is, as far as is possible, dealt with on the night of the meeting (Rule 4);
- ii. To have the engagements from the Chairman tabled in written format;

- iii. Limit time for questions by members to 45 minutes (Rule 10.2) and consider introducing a timetable for the whole meeting to assist the Chairman – not required in the rules; and
- iv. Same questions submitted by Members within six months will be rejected, as is the position with questions submitted by members of the public (Rule 10.5).

**To provide clarity:**

- v. Members of the CWP requested that the rules for Council and Committees be split, where possible, to reduce confusion as to which rules applied where (Part 2 of the Rules (32-38) relate to committees;
- vi. Any reference to committee will state 'relevant committee';
- vii. That supplementary questions are not permitted in relation to statements under Rule 10.1;
- viii. Additional wording inserted into referred motions (to Cabinet or relevant committee) to provide clarity on how the motion will be dealt with (Rule 11.4);
- ix. The right of all Members to attend meetings is restricted to committees and sub-committees but excludes working parties;
- x. Approved duties under allowances only apply to attendance at the committees, sub-committees or working parties of which the councillor is a member of;
- xi. Clarification on officer titles; and
- xii. Amend any reference to the Executive to the Cabinet.

**Legislative requirements and best practice:**

- xiii. Site visits, briefings and specific training is mandatory for planning and licensing committees (Rule 37.1);
- xiv. Provision for Chairman to allow urgent motions with reasons explained for urgency (Rule 12 (r));
- xv. Mandatory named vote for budget and council tax (Rule 18.4);
- xvi. Provisions included relating to Statutory Officers advice being made available to all Members present at a meeting, on request. (Rule 27);
- xvii. Reference to the Petition Scheme now included (Rule 29); and
- xviii. Monitoring Officer permitted to make minor amendments to the Constitution following advice or guidance being issued, for example a change in legislation or as a consequence of a court judgement (Rule 30).

**(b) Overview and Scrutiny Procedure Rules**

The overall aims are to:

- i. Combine into one document, the procedure rules governing overview and scrutiny committees and call-in;

- ii. Ensure all references include both overview and scrutiny functions;
- iii. Make reference to the increase in number of overview and scrutiny committees;
- iv. Remove terms of reference and insert into Article 6 (applicable to Overview and Scrutiny);
- v. Include a provision for leaders of political groups to request an item to be included on the work programme (arising from Council in Committee discussion);
- vi. Include the exact procedure to be followed at meetings when considering matters which have been called in;
- vii. Introduce a requirement to give reasons for call-ins based on a set of assessment criteria;
- viii. Insert reference to the mediation stage of call in;
- ix. Enhance the Councillor Call for Action provisions, as permitted by legislation; and
- x. Amend any reference to the Executive to the Cabinet.

### **Access to Information**

At its meeting held on 19 February 2014, the CWP agreed the revised Access to Information Rules to include the provisions contained within the Local Authorities (Executive Arrangements) (Meetings And Access to Information) (England) Regulations 2012 and agreed by Council on 12 February 2013.

The only change proposed is in Rule 1 (Scope) to clarify that the Access to Information Rules do not apply to working parties. The text is set out in Appendix C.

### **Property Dealing Policy:**

At Council on 25 March 2014, when considering the Property Dealing Policy, an amendment was debated and passed as a substantive motion, that for substantial disposals (over £50,000) at least two valuations be sought as part of the process and that consideration also be given to a similar report on reallocations of use. The Monitoring Officer's advice is that this wording cannot be interpreted to support the desire of members, which was the subject of the debate, for the following reasons:

- The new provision does not require that external valuations be obtained, only that two valuations are sought and one could be in-house; and
- The new provision relates to disposals over a certain amount and not the value of the property being disposed of, which are separate issues.

Consequently, the Monitoring Officer would suggest that the following wording is recommended to deliver members wishes:

*"That where an initial valuation indicates that the property to be disposed of is in excess of £50,000, two external valuations are sought as part of the disposal"*

*process and both valuations are contained within the Report;*

*In assessing the value of property for this purpose, consideration is given to the freehold market value or the annual leasehold market rental as applicable.*

*That where consideration is given to reallocating and changing the use of a property, valuations should be sought in the same way that would be applicable to a disposal and the details are contained within the Report. This may include the appropriation of land”.*

In addition to this change, it is proposed that the delegated powers contained in Part 3 of the Constitution relating to property management, should be amended to reflect the policy change made at the meeting of the Council held on 25 March 2014. A full review of delegated powers is scheduled for later this year. In the interim, the provisions detailed at Appendix D are proposed.

## **RECOMMENDATION**

**That Cabinet endorses the recommendations of the CWP as follows:**

- 1. The proposed changes to the Council Procedure Rules, Overview and Scrutiny Procedure Rules (including call-in) and the Access to Information Rules as detailed at Appendices A, B and C respectively be adopted;**
- 2. Article 6 of the Constitution is amended to include the terms of reference of Overview and Scrutiny Committees;**
- 3. The delegated powers relating to the management of property be amended as set out in Appendix D; and**
- 4. The Council’s Constitution be amended accordingly to reflect the changes set out in this report.**

**That Cabinet considers:**

- 5. The wording proposed by the Monitoring Officer with reference to property valuations as set out in this report and determines whether to recommend the wording to Council on 25 March 2014 be approved;**
- 6. Whether there are any other recommendations it wishes to make to Council**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

Agreeing the proposed changes will ensure that the Council operates efficiently in pursuit of its priorities.

### **FINANCE, OTHER RESOURCES AND RISK**

**Risk**

Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Councils governance arrangements.

## **LEGAL**

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority consider appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, the power to make amendments to the standing orders and the Constitution rests with full Council.

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by full Council after receiving a recommendation from the Executive following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance.

## **OTHER IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

There are no other implications arising from this report.

## **PART 3 – SUPPORTING INFORMATION**

### **CURRENT POSITION**

A review of the Council's current Constitution is currently being undertaken. The review is being undertaken in three phases, as follows:

Phase 1 (Procurement Rules, Property Dealing Policy, Cabinet (Executive) Procedure Rules) presented to and adopted by Council on 25 March 2014 together with an urgent delegation for emergency planning enforcement.

#### Phase 2

- Council Procedure Rules
- Overview and Scrutiny Rules
- Access to Information Rules
- Property Management Delegated Powers

#### Phase 3

Part 2 – Articles

Part 3 - Scheme of Delegation

Part 5 - Rules of Procedure (Budget and Policy Framework and Officer Employment Procedure Rules)

Part 6 – Codes and Protocols  
Part 7 – Members' Allowances Scheme

Once Phase 3 of the review is completed and approved, currently scheduled for November 2014, these sections will be produced in A5 hard copy for each Member, should they wish to receive a copy, and a complete Constitution will be maintained on the Council's website. Members will only receive hard copy updates of the Booklet, as and when these are agreed.

Members will be encouraged to, in the first instance, refer to the Council's website should they require access to any part of the Constitution not contained within the Booklet.

#### **BACKGROUND PAPERS FOR THE DECISION**

There are no background papers (as defined by the Local Government Act 2000) arising from this report.

#### **APPENDICES**

- A.1 – Appendix A: Council Procedure Rules**
- A.2 – Appendix B: Overview and Scrutiny Procedure Rules**
- A.3 - Appendix C: Access to Information**
- A.4 – Appendix D: Property Management Delegated Powers**

## **A.3 - Appendix A**

### **COUNCIL PROCEDURE RULES**

#### **PART 1 – Council Meetings**

#### **1 ANNUAL MEETING OF THE COUNCIL**

##### **1.1 Timing and Business**

In a year when there is an ordinary election of councillors, the annual meeting will take place on the third Tuesday after the elections. In any other year, the annual meeting will take place in March, April or May. No business except that identified below in this Rule and Rule 1.2 will be included on the Agenda of the Annual Council meeting and all other Council Procedure Rules shall be construed accordingly.

The annual meeting will:

- (i) Receive apologies for absence;
- (ii) Elect a person to preside if the Chairman and Vice Chairman of the Council are not present;
- (iii) Elect the Chairman of the Council for the ensuing year;
- (iv) Elect the Vice Chairman of the Council for the ensuing year;
- (v) Receive any announcements from the Chairman and/or the Chief Executive;
- (vi) Fix the allowances for the Chairman and Vice Chairman for the municipal year
- (vii) Elect the Leader (if it is the annual meeting immediately following the District Council Elections);
- (viii) Reaffirm the Council's Constitution;
- (ix) Approve a programme of ordinary meetings of the Council and committees for the year; and
- (x) Consider any other business set out in the notice convening the meeting.

##### **1.2 Selection of Councillors on Committees**

At the annual meeting, the Council will:

- (i) Appoint the committees and sub-committees it considers appropriate for the municipal year;
- (ii) Decide the size and the terms of reference and delegated powers for any new committees and sub-committees;

- (iii) Decide the allocation of seats for all committees and sub-committees to political groups in accordance with the political balance rules.
- (iv) Appoint Members to each committee and sub-committee and the Chairman and Vice-Chairman of each committee and sub-committee as appropriate.

## **2 ORDINARY MEETINGS**

Ordinary Meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. Such programmes shall ensure that the first ordinary meeting is held within 15 working days of the annual meeting of the Council except in a year when there is an ordinary election of Councillors. The order of business at every ordinary meeting of the Council shall (subject to (v) below) be as follows:

- (i) To receive apologies for absence;
- (ii) To elect a person to preside if the Chairman and Vice Chairman are not present;
- (iii) To deal with any business required by Statute to be dealt with before any other business;
- (iv) To approve the minutes of the last meeting (or in the case of the first ordinary meeting of the municipal year, to approve the minutes of the Annual meeting and the preceding meeting);
- (v) To approve and set the Council's Budget and Council Tax, at the relevant meeting.
- (vi) To receive any announcements from the Chairman and the Chief Executive and any statements from the Leader and Members of the Cabinet;
- (vii) To deal with any petitions;**
- (viii) In accordance with Rule 14, to receive questions from, and provide answers to, the public in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the meeting.
- (ix) To receive questions from Members in accordance with Rule 16.2;
- (x) To receive a report from the Leader on any Cabinet decisions taken as a matter of urgency in accordance with Access to Information Procedure Rule 17.3, Budget and Policy Framework Procedure Rule 5(b) and Overview and Scrutiny Procedure Rule 16(i);
- (xi) To deal with any business from the last Council meeting;
- (xii) To receive the minutes of Committees (with the exception of Licensing and Planning) meetings and to receive questions and answers from Councillors on any of those minutes;



- (xiii) To receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- (xiv) To consider motions (in the order in which notice has been received);
- (xv) To consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's budget and Policy Framework, other reports from the Cabinet, reports of the Overview and Scrutiny Committees for debate and reports from officers for consideration; and
- (xvi) **Urgent Matters for Debate**

Matters which are not on the agenda and which a Member considers should be reported urgently to the Council may, with the consent of, and in a form approved by, the Chairman, be brought before the meeting by way of a short written statement which shall be read by the Chief Executive and s.151 or Monitoring Officer, as part of his or her reports and communications. The Member concerned may, by leave of the Chairman, speak on the statement and move a motion unless advised otherwise by the Chief Executive, Monitoring or Section 151 Officers.

With the exception of items (i) to (v) and (vii), the order of items may be varied at the discretion of the Chairman or by a resolution passed on a motion (which need not be in writing) duly moved and seconded, which shall be put without discussion. At the last ordinary meeting of Council in the municipal year, following item (vi) the meeting will receive the annual State of Tending Statement from the Leader and the Annual Statement of Performance of the Tending Regeneration Company.

### **3 EXTRAORDINARY MEETINGS**

#### **3.1 Calling Extraordinary Meetings**

Those listed below may request the Chief Executive to call an Extraordinary Council meeting in addition to Ordinary Meetings, where such a request is received the meeting will be held within 14 days of the request:

- (i) The Chairman of the Council;
- (ii) The Council by resolution;
- (iii) The Monitoring Officer in circumstances where a Section 5 report is to be presented; and
- (iv) Any five members of the Council if they have signed a requisition to the Chairman of the Council and he has refused to request a meeting or has failed to call a meeting to be held within seven clear working days of the requisition.

#### **3.2 Order of Business**

- (i) To receive apologies for absence;
- (ii) To elect a person to preside if the Chairman and Vice Chairman are not present;
- (iii) To deal with any business required by Statute to be dealt with before any other business;
- (iv) To consider any other business specified in the summons to the meeting

#### **4 TIME AND PLACE OF MEETINGS**

The time and place of Council meetings will be notified in the summons.

Meetings will normally be held at **6.30 p.m. (review in 6 months)** in the Princes Theatre, Town Hall, Clacton-on-Sea and the Council may, from time to time, vary the place, date or hour of a meeting or meetings. Where it is not practicable for the Council to meet to agree a variation, such variation shall be determined by the Chairman (or failing him the Vice-Chairman) of the Council.

#### **5 NOTICE OF AND SUMMONS TO MEETINGS**

The Democratic Services Manager will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the Democratic Services Manager will send a summons by post to every member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

#### **6 CHAIRING OF MEETINGS**

The person presiding may exercise any power or duty of the Chairman. Where these rules apply to committee and sub-committee meetings, references to the Chairman also include the Chairman of committees and sub-committees.

#### **7 QUORUM**

The quorum of a meeting will be one quarter of the whole number of Members, subject always to a minimum of three Members. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date to be fixed by the Chairman. If he does not fix a date, the remaining business will be considered at the next ordinary meeting.

#### **8 DURATION OF MEETING**

**8.1** The business of ordinary meetings of the Council shall cease at 10.00 pm on the day on which the meeting commenced, or such earlier or later time as the Chairman shall consider appropriate.

**8.2** When the business of a meeting is terminated in accordance with 8.1 above any remaining business shall stand adjourned until a date and time to be fixed by the Chairman.

**8.3** Where 8.2 applies, given that the agenda and associated reports and papers for the original meeting have been published, the adjourned meeting can be called as soon as practicable and without unnecessary delay, having regard to the remaining business and venue availability. In the case of committees and sub-committees, where substitutes have been appointed the same members should attend (the substituted members must not take their seats).

**8.4** Notice of the adjourned meeting will be published on the Council's website, unless the adjourned meeting is held within 24 hours.

## **9 QUESTIONS BY THE PUBLIC**

### **9.1 General**

Members of the public may ask questions of Members of the Cabinet or the Leader or committee Chairmen at ordinary meetings of the Council. The time limit for the asking of each question is two minutes and for the reply, five minutes. The Chairman shall determine the number of questions to be tabled at a particular meeting in order to limit the time for questions and answers to half an hour.

### **9.2 Order of Questions**

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

### **9.3 Notice of Questions**

A question may only be asked if notice has been given by delivering it in writing or by personal e-mail to the Democratic Services Manager no later than midday 7 working days before the day of the meeting. Each question must give the name and address of the questioner and must name the Member of the Council to whom it is to be put.

### **9.4 Number of Questions**

At any one meeting no member of the public may submit more than one question and no more than one such question may be asked on behalf of one organisation.

### **9.5 Scope of Questions**

The Democratic Services Manager and or Monitoring Officer will reject a question if in their judgement it:

- is not about a matter for which the local authority has a responsibility or which affects the district;
- is defamatory, frivolous or offensive;
- is substantially the same as a question already received to be put to the ordinary meeting of the Council in question;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.

### **9.6 Record of Questions**

The Democratic Services Manager will keep each question in a file open to public inspection and will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for rejection.

### **9.7 Asking the Question at the Meeting**

All questions will be set out in the agenda and the Chairman will invite the questioner to put the question to the Member named in the notice. There will be no further questions or debate. If the questioner is not present, the Chairman may ask the question on the

questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

### **9.8 Written Answers**

Any question that cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Member, to whom it was to be put, will be dealt with by a written answer, with a copy circulated to all Members.

### **9.9 Reference of Question to the Cabinet or a Committee**

No discussion will take place on any question, but any Member may formally, without discussion, move that a matter raised by a question be referred to the Cabinet or the appropriate committee or sub-committee. Once seconded, such a motion will be voted on without discussion.

### **9.10 Withdrawal of Question**

A Member of the public may withdraw their question by giving notice of their wish to do so to the Democratic Services Manager prior to the commencement of the meeting at which their question is to be put.

## **10 QUESTIONS BY MEMBERS**

### **10.1 On Statements made by the Leader or a Member of the Cabinet to the Council, Reports, or References from the Cabinet or Minutes of Committees**

A Member of the Council may ask the Leader or a Member of the Cabinet any question without notice about any statement made by the Leader or a Member of the Cabinet to the Council when that item is being received.

A Member of the Council may ask the Leader or a Member of the Cabinet or the Chairman of a committee any question without notice upon a report or recommendation of the Cabinet or the minutes or reference from a committee when that item is being received by the Council.

**Supplementary Questions will not be permitted under this rule.**

### **10.2 Questions on Notice at Full Council**

Subject to Rules 10.4, 10.5 and 10.6 a Member of the Council may ask at an ordinary meeting of the Council:-

- the Chairman;
- a Member of the Cabinet;
- the Chairman of any committee or sub-committee
- the Representative of the Sole Member of Tendring Regeneration Limited

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

The time allocated for receiving and disposing of questions shall be a maximum 45 minutes.

Any question not disposed of at the end of this time shall be the subject of a written response, copied to all Members unless withdrawn by the questioner.

Questions shall not be submitted to the Annual Meeting of the Council or to an Extraordinary meeting of the Council.

### **10.3 Notice of Questions**

A Member may only ask a question under Rule 10.2 or 10.3 if either:

- (a) notice has been given by delivering it in writing (or by personal e-mail) to the Democratic Services Manager no later than midday 7 working days before the day of the meeting; or
- (b) the question relates to urgent matters, he has the consent of the person to whom the question is to be put and the content of the question is given to the Democratic Services Manager by noon on the day of the meeting.

### **10.4 Number of Questions**

At any one meeting no Councillor may submit more than two questions.

### **10.5 Scope of Questions**

The Monitoring Officer will reject a question if in their judgement it could be considered to be defamatory or offensive or requires the disclosure of confidential or exempt information.

The Monitoring Officer will reject a question if in their judgement it is substantially the same as a question which has been put at a meeting of the Council in the past six months.

### **10.6 Response**

An answer may take the form of:

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

## **10.7 Supplementary Questions**

After the response has been given to a Question on Notice, the Member who asked the question may ask one supplementary question, of which no notice is required. The supplementary question must relate to the original question and/or the response received. The ruling of the Chairman on the admissibility of the supplementary question is final.

## **10.8 Time Available for Questions**

Questions from Members will be set out in the agenda in the order in which they were received. The time limit for asking each question is two minutes and the time limit for each reply is five minutes.

## **10.9 Withdrawal of Question**

A Member may withdraw their question by giving notice of their wish to do so to the Democratic Services Manager prior to the commencement of the meeting at which their question is to be put.

## **11 MOTIONS ON NOTICE**

### **11.1 Notice**

Except for motions which can be moved without notice under Rule 12, written and signed notice (or notice by personal e-mail) of every motion by the Member or Members submitting it, must be delivered to the Democratic Services Manager no later than midday 7 working days before the day of the meeting.

No Member shall, under the provisions of this Rule, submit more than one motion for consideration at any ordinary meeting of the Council. Motions shall not be submitted to the annual meeting of the Council or to an extraordinary meeting of the Council.

### **11.2 Motion Set Out in Agenda**

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

If a motion thus set out in the agenda is not moved either by a Member who gave notice thereof or by a Member nominated by him of the same political group it shall unless postponed by consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.

### **11.3 Scope**

Motions must be about matters for which the Council has a responsibility or which affect the Tendring District.

## 11.4 Referral of Motions

The Chairman may, if the mover has provided reasons with the motion, consider it convenient and conducive to the despatch of business, and allow the motion to be dealt with at the meeting at which it is brought forward or refer it.

If the subject matter of any motion of which notice has been duly given comes within the province of the Cabinet or any Committee(s) it shall, upon being formally moved and seconded, stand referred without speeches or discussion to the Cabinet or relevant Committee(s) as the Chairman may determine, for consideration and report.

Where a motion is to be so referred then notwithstanding the provisions of Council Procedure Rule 15.1 the mover shall explain the motion to the Cabinet or relevant Committee and not at the meeting of the Council at which it is moved.

The Cabinet or any relevant Committee shall (subject to the provisions of Rule 11.5) be required to consider such motion and to advise the Council, of the Cabinet's or relevant Committee's opinion **and reason** as to whether such motion should be supported in its original format. If the Cabinet or relevant Committee decides to advise the Council of its opinion that such motion in its original format be not supported, the Cabinet or relevant Committee may, in addition suggest to the Council that an **amended** motion be proposed.

Once Cabinet or any relevant Committee has considered the motion it will be referred back to Council with the recommendation. If an amended motion is proposed by Cabinet, or relevant Committee, when presented back to Council, the amended motion will be debated first, in accordance with Rule 15.5.

## 11.5 Referred Motions - Right of Mover to Attend Meeting

If a motion has, in accordance with the provisions of Rule 11.4, been formally moved and seconded and referred to the Cabinet or relevant Committee(s), the mover (or some other Member on his behalf) shall attend the first practicable meeting of the Cabinet or relevant Committee(s) immediately following the Council meeting at which the motion was moved. The motion shall not be considered unless and until the mover (or other Member) has explained it and, if they do not attend the meeting, the motion shall be treated as withdrawn, unless the Cabinet or relevant Committee(s) at their sole discretion permit the mover (or other Member) to attend a subsequent meeting.

## 12 MOTIONS WITHOUT NOTICE

The following motions may be moved without notice:

- (a) To appoint a chairman of the meeting at which the motion is moved;
- (b) In relation to the accuracy of the minutes;
- (c) To change the order of business in the agenda;
- (d) To refer something to or back to an appropriate body, individual, or relevant committee;
- (e) To appoint a committee or Member arising from an item on the summons for the meeting;

- (f) To receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- (g) To withdraw a motion;
- (h) To amend a motion;
- (i) To proceed to the next business;
- (j) That the question be now put;
- (k) To adjourn a debate;
- (l) To adjourn a meeting;
- (n) To exclude the public and press in accordance with the Access to Information Procedure Rules;
- (o) That a Member named under Rule 22.3, Disorderly Conduct not to be heard further or to exclude them from the meeting under Rule 22.4;
- (p) To give the consent of the Council where its consent is required by this Constitution; and
- (q) To extend the time limit for a speech.
- (r) In the case of urgency, notice of motion may be given, in writing, signed by the Member, or Members, giving the notice and the reason for its urgency and delivered by noon on the morning of the day of the meeting at the office of the Chief Executive who will immediately advise the Chairman of its receipt. If, in the opinion of the Chairman, the matter is not urgent, the Chairman may direct that it be disallowed.

### **13 MOTIONS NOT PERMITTED**

No motion shall be submitted on a matter that relates to an item which;

- (a) is to be considered on the same Council agenda;
- (b) is substantially the same as a motion already received to be put to the ordinary meeting of the Council in question;
- (c) is substantially the same as a motion which has been put at a meeting of the Council in the past six months;
- (d) has been the subject of a Key Decision in the previous six months;
- (e) is included within the work programme of an Overview and Scrutiny Committee;
- (f) is, at the time of submission, subject to a call-in.



## **14 MOTIONS OR QUESTIONS AFFECTING PERSONS EMPLOYED BY THE COUNCIL**

If any question arises at a meeting of the Council or of a committee or sub-committee 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 the subject of discussion until the Council, committee or sub-committee has decided whether or not the power of exclusion of the public shall be exercised.

## **15 RULES OF DEBATE**

### **15.1 No Speeches until Motion Seconded**

No speeches may be made after a motion has been proposed and explained until it has been seconded. However, a motion that the recommendations from the Cabinet or the minutes or references from the relevant committee shall be adopted need not be seconded.

A Member when seconding a motion or amendment may, if he then declares his intention to do so, reserve his speech until a later period of the debate, subject to the (Rule 15.10 – Closure Motions).

### **15.2 Right to Require Motion in Writing**

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

### **15.3 Content and Length of Speeches**

Speeches must be directed to the motion under discussion or to a personal explanation or point of procedure. No speech (including those to move motions) other than the statement by the Leader on the State of the District and the Leader's presentation of the budget may exceed five minutes except with the consent of the Council.

### **15.4 When a Member May Speak Again**

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

- (a) to speak once on an amendment moved by another Member;
- (b) to move or second a further amendment if the motion has been amended since he last spoke;
- (c) if his first speech was on an amendment moved by another Member, to speak on the main issue (provided the amendment has not been carried);
- (d) in exercise of a right of reply;
- (e) on a point of procedure; and / or
- (f) by way of personal explanation.

## **15.5 Amendments to Motions**

- (a) An amendment to a motion must be relevant to the motion and either be:
  - (i) to refer the matter to an appropriate body, individual or relevant committee for consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion.

- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of. However the Chairman may permit a Member to give formal notice of the terms of any further amendment which he proposes to move at a later stage in the proceedings.
- (c) If an amendment is not carried, other amendments to the original motion may be moved.
- (d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (e) After an amendment has been carried, the Chairman will read out the substantive motion before accepting any further amendments, or if there are none, put it to the vote.

## **15.6 Alteration of Motion**

- (a) A Member may alter a motion of which he has given notice with the consent of the meeting. Consent will be signified without discussion.
- (b) A Member may alter a motion that he has moved without notice with the consent of both the meeting and the seconder. Consent will be signified without discussion.
- (c) Only alterations that could be made as an amendment may be made.

## **15.7 Withdrawal of Motion**

A Member may withdraw a motion that he has moved with the consent of both the meeting and the seconder. Consent will be signified without discussion. No Member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

## **15.8 Right of Reply**

- (a) The mover of a motion (including the mover of a motion on which an amendment has been moved) and the mover of an amendment have a right of reply at the end of the debate on the motion or amendment. Following this, the appropriate portfolio holder or the Chairman of the relevant committee shall have the right to speak on the motion or amendment immediately before it is put to the vote. Where the mover

of the motion or amendment was the Leader of the Council, he shall have the final right to speak.

- (b) A Member exercising a right of reply shall confine his remarks to answering the arguments employed or observations made during the debate and shall not introduce any new matter.

## **15.9 Motions Which May be Moved During Debate**

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

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) to extend the time for speeches;
- (h) to give any consent required by these procedure rules;
- (i) to suspend one or more of the procedure rules;
- (j) to exclude the public and press in accordance with the Access to Information Procedure Rules; and
- (k) that a Member named under Rule 22.3 below (Disorderly Conduct), not to be heard further or to exclude them from the meeting under Rule 22.4.

## **15.10 Closure Motions**

(a) A member may move, without comment, the following motions at the conclusion of a speech of another Member:

- (i) That the Council proceeds to the next business;
- (ii) That the question now be put;
- (iii) That the debate now be adjourned; or
- (iv) That the Council does now adjourn;

(b) On the seconding of which the Chairman shall, unless in their opinion the matter before the meeting has been insufficiently discussed, proceed as follows:

- (i) On a motion to proceed to the next business: they shall first give the mover of the original motion a right of reply, and then put to the vote the motion to proceed to the next business;
- (ii) On a motion that the question now be put: they shall put to the vote the motion that the question now be put, and if it is passed then give the

mover of the original motion their right of reply under Rule 15.8 above before putting their motion to the vote;

- (iii) On a motion to adjourn the debate or the meeting: they shall put the adjournment motion to the vote without giving the mover of the original motion their right of reply on that occasion.

(c) A motion will be considered closed if, at the meeting of Cabinet or relevant Committee to which the motion was referred, it is agreed to support a motion in its original format, subject to the mover agreeing that referral back is not required. This prevents any unnecessary delay.

#### **15.11 Point of Procedure**

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

#### **15.12 Personal Explanation**

A Member has the right to make a personal explanation when directly related to some material part of an earlier speech by the Member if it appears to have been misunderstood in the present debate. The ruling of the Chairman on the admissibility of a personal explanation will be final.

### **16 STATE OF TENDRING STATEMENT**

At the last ordinary meeting before the Annual Council meeting each year, the Leader will make a Statement on the State of the Tendring District. The Annual Statement of Performance of the Tendring Regeneration Company will also be presented. The Chairman may permit debate following the statements.

### **17 PREVIOUS DECISIONS AND MOTIONS**

#### **17.1 Motion to Rescind a Previous Decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least 12 Members.

#### **17.2 Motion Similar to One Previously Rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 12 Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

This procedure rule does not apply to motions moved to adopt a recommendation to the Council from the Cabinet or a committee.

## **18**      **VOTING**

### **18.1**     **Majority**

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

### **18.2**     **Chairman's Casting Vote**

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how or whether the Chairman chooses to exercise a casting vote. In the case of an equality of votes for the election of the Chairman of the Council, the retiring Chairman or the person presiding at the meeting must exercise a casting vote.

### **18.3**     **Show of Hands**

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

### **18.4**     **Recorded Vote**

If 11 Members present at the meeting so require 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.

A recorded vote is mandatory on any decision relating to the budget or council tax. This includes not only on the substantive budget motions agreeing the budget and setting council taxes, but also on any amendments proposed at the meeting.

### **18.5**     **Right to Require Individual Vote to be Recorded**

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

### **18.6**     **Voting on Appointments**

Where there is more than one person nominated and seconded for any position to be filled by the Council then unless the Council decides otherwise at the time, the person receiving most votes shall be appointed. Where there is only one person nominated and seconded, Members will cast their votes either for or against that person. The person nominated will be appointed if the votes for are more than the votes against.

## **19**      **MINUTES**

### **19.1**     **Signing the Minutes**

The Chairman will sign the minutes of the proceedings at the next suitable ordinary meeting. The Chairman will move that the minutes of any previous meeting be signed as a correct record. The only issue in relation to the minutes that can be discussed is their accuracy.

## **19.2 Form of Minutes**

Minutes of any Council, Committee and Sub-Committees meeting shall comprise a brief summary of the proceedings of, and business transacted at, the meeting. Minutes will not record details of the debate or the views or comments of individual Members.

Minutes will contain all motions and amendments in the exact form and order the Chairman accepted them as being proper motions/amendments and put them to the vote.

## **20 RECORD OF ATTENDANCE**

All Members present during the whole or part of any meeting must sign their names on the attendance sheets before the end of that meeting to assist with the record of attendance.

## **21 EXCLUSION OF PUBLIC**

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Part 4 of this Constitution or Rule 23 (Disturbance by Public).

## **22 MEMBERS' CONDUCT**

### **22.1 Standing to Speak**

When a Member speaks at full Council they must stand (if possible) and address the meeting through the Chairman. If more than one Member stands, the Chairman 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 procedure or a point of personal explanation.

### **22.2 Chairman Standing**

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

### **22.3 Member not to be Heard Further**

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

### **22.4 Member to Leave the Meeting**

If the Member continues to behave improperly after a motion in Rule 22.3 is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

## **22.5 General Disturbance**

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

## **23 DISTURBANCE BY PUBLIC**

### **23.1 Removal of Member of the Public**

If a Member of the public interrupts proceedings, the Chairman will warn the person concerned. If he continues to interrupt, the Chairman will order his removal from the meeting room.

### **23.2 Clearance of Part of Meeting Room**

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

## **24 SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES**

### **24.1 Suspension**

All of these Council Procedure Rules except Rule 18.5 and 19.1 may be suspended by motion on notice or without notice if at least 45 Members of the Council are present and 31 Members vote in favour of suspension. Suspension can only be for the duration of the meeting.

### **24.2 Amendment**

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

## **25 RESIGNATION OF CHAIRMANSHIP ETC**

The Chairman or Vice-Chairman of the Council may at any time, by notice in writing delivered, to the Chief Executive, resign their position and such resignation shall take immediate effect on delivery of the notice.

## **26 CASUAL VACANCIES ETC**

On a casual vacancy occurring in the office of Chairman or Vice-Chairman of the Council an election to fill the vacancy shall be held not later than the next ordinary meeting of the Council after the date on which the vacancy occurs, or if that meeting is held within fourteen days after that date, then not later than the next following ordinary meeting of the Council, and shall be conducted in the same manner as an ordinary election.

## **27 STATUTORY OFFICERS ADVICE**

The Chief Executive, Monitoring Officer and Section 151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to the Chairman **and, if requested, to all Councillors present.**

## **28 INTERPRETATION OF PROCEDURE RULES**

At any meeting, the ruling of the Chairman as to the construction or application of any of the Council Procedure Rules, or as to any proceedings of the Council, shall not be challenged. Any advice provided by the Statutory Officers in assisting the Chair for the application of the Rules can be shared with all Councillors.

## **29 PETITIONS**

Petitions will be dealt with in accordance with the Scheme approved by Council, contained within Part 5 of the Constitution.

The Rules and time limits applicable to speeches and rules of debate will be in accordance with the Council Procedure Rules.

## **30 MINOR AMENDMENTS OF GUIDANCE**

Any minor amendment of these rules as a consequence of any written Advice or Guidance to Officers and Members is delegated to the Monitoring Officer.

## **31 APPLICATION TO COMMITTEES AND SUB-COMMITTEES**

All of the Council Procedure Rules apply to meetings of the Council.

None of these rules apply to meetings of the Cabinet.

Rules 5 – 8, 10.3-10.5, 10.7-9, 15 (excluding 15.4), 18 (excluding 18.4 & 18.6), 19 – 23 (excluding 22.1 and 22.2), 25, 27, 28 and 30 including those in Part 2 below apply with any necessary modifications to meetings of committees and sub-committees. Rule 38 applies only to the Planning Committee.



## **PART 2 – Committee Meetings**

### **32. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES, SUB-COMMITTEES AND WORKING PARTIES**

#### **32.1 General**

Substitute members may attend, speak and vote at meetings of committees and sub-committees of the Council, subject to Rule 32.3 and 32.4. In the case of the Overview and Scrutiny Committees, such substitute Members may not be Members of the Cabinet. Substitute Members may not be appointed to any Working Parties unless that working party has been established in full accordance with the Widdicombe Rules.

#### **32.2 Eligibility**

A substitute shall belong to the same political group (as defined in the Local Government and Housing Act 1989) as the Member for whom he is a substitute. Substitution by or of Members not in a political group is not permitted.

The procedure for appointing substitute members is contained in Part 5 (Rules of Procedure).

#### **32.3 Substitute Members of Audit, Licensing, Planning and Standards Committees**

Group Leaders shall, provide named substitute Members (in accordance with proportionality rules) and all substitutions will only be permitted from this list. Any member of a political group shall be eligible to act as a named substitute member providing that they have received training in relation to all relevant Audit, Licensing, Standards-related or Planning matters under a continuing programme arranged by the Council. When naming a designated substitute, Group Leaders shall, as far as reasonably practicable, satisfy themselves that the named Member is as conversant with all relevant Audit, Licensing, Standards-related or Planning matters as the appointed members of those Committees.

In addition to specific training required as and when necessary, all members (and named substitute members) appointed to Audit, Licensing, Planning and Standards Committees shall undertake annual training on an appropriate date and time after each annual meeting of the Council and such training shall be mandatory.

#### **32.4 Substitute Members of Premises/Personal Licences Sub-Committees**

Substitutes for Members of a Premises/Personal Licences Sub-Committee shall be made from the appointed Membership of the Licensing Committee. Such substitute need not be a Member of the same political group and the provisions of Rule 32.4 shall not apply.

The Democratic Services Manager will, at the request of the Group Leader of a member of a Premises/Personal Licences Sub-Committee or at the request of the Member concerned, appoint a substitute from amongst the appointed Membership of the Licensing Committee who should have received training in relation to licensing under a continuing programme arranged by the Council. Such request need not be in writing.

The Democratic Services Manager will ensure that a fourth or standby Member, drawn from amongst the appointed membership of the Licensing Committee, is present at every meeting of a Premises/Personal Licences Sub-Committee. Such Member shall act as a

member of the Sub-Committee in the event that one of the three Sub-Committee members becomes unable to act due to e.g. illness, conflict of interest.

### **32.5 Resignation of Chairmanship**

Any Chairman, Vice Chairman or Member of a committee, sub-committee or working party may at any time, by notice in writing delivered, to the Chief Executive, resign his position and such resignation shall take immediate effect on delivery of the notice.

### **32.6 Casual Vacancies**

In the case of a casual vacancy in the office of a chairmanship or vice-chairmanship of a committee, sub-committee or working party an item shall be placed on the agenda of the next meeting of the relevant body which shall, before proceeding to any other business, elect from its Members a Chairman or Vice-Chairman as the case may be for the remainder of the year.

## **33 MEETINGS OF COMMITTEES**

### **33.1 Ordinary Meetings**

The committees of the Council will normally hold meetings (known as Ordinary Meetings for the purposes of these Procedure Rules) on dates and at times as the Council decides at its Annual Meeting.

The Chairman (or failing him the Vice-Chairman) of a committee may, from time to time, vary the place, date or hour of a meeting or meetings of that Committee.

### **33.2 Special Meetings**

The Chairman of a committee can call a Special Meeting of a committee at any time. A Special Meeting shall also be called on the requisition of not less than a quarter of the whole number of Members of the committee, delivered in writing, by fax or by email to the Chief Executive but in no case shall less than three Members requisition a Special Meeting.

No business except that set out in the Summons and Agenda shall be carried out at a Special Meeting of a committee.

## **34 ATTENDANCE AT MEETINGS**

Except as otherwise provided in this Constitution and in particular having regard to the provisions of the Access to Information Procedure Rules: -

- 34.1** Every Member of the Council shall be entitled to attend all meetings of committees and sub-committees. A Member of the Council shall not take part in any discussion at a meeting of a committee or sub-committee, of which he is not a Member unless specifically invited to do so by the Chairman of that meeting, or unless he is attending the meeting of the committee under the provisions of Rule 11.5, and he shall in no case be entitled to vote. The Member shall obtain the permission of the appropriate Chairman prior to the relevant meeting if he wishes to speak at that meeting. Where a Member has, pursuant to notice duly given under Rule 11.5, moved a motion which has been referred to a committee, he shall be given an opportunity of explaining that motion.

Where the public speaking scheme (Rule 38) applies to a particular application or matter before the Planning Committee, no Member shall be entitled to address or speak to the Planning Committee under Rule 34.1. This does not detract from any rights the Member has under the public speaking scheme.

### **35 SUB-COMMITTEES AND WORKING PARTIES**

The Council, (usually at its Annual Meeting) will decide the establishment, terms of reference, delegated powers, number of Members and the allocation of seats to political groups for all new sub-committees.

Committees will appoint individual Members to standing sub-committees under their control and will appoint the Chairman and Vice Chairman of those sub-committees.

Every committee of the Council may appoint working parties for specified purposes in accordance with Part 3 of this Constitution. The committee may amend the constitution of the working parties or dissolve them at any time.

The Chairman and Vice Chairman of any working parties appointed by a Committee will be determined at the first meeting of the working party. Meetings of working parties will normally be convened, either at an earlier meeting of the working party or by the Democratic Services Manager in consultation with their Chairman.

### **36 QUESTIONS ON NOTICE AT COMMITTEES AND SUB-COMMITTEES**

Subject to Rules 10.4 and 10.5, and upon providing two working days' notice, a Member of a committee or sub-committee may, at a meeting thereof, ask the Chairman of it a question on any matter in relation to which the Council has powers or duties or which affect the Tendring District and which falls within the terms of reference of that Committee or Sub-Committee.

### **37 SITE VISITS, SPECIFIC BRIEFING OR TRAINING**

**37.1** Where a site visit, specific briefing or training is called by officers in relation to a planning or licensing application received by the Council, any member or substitute member of that committee who does not attend the site visit, specific training or briefing, shall not be eligible to take part at the meeting at which the application to which the site visit, specific training or briefing related is to be considered.

**37.2** Notification of site visits arranged by any committee or sub-committee shall be given to the Members for the ward in which the site is situated. Such Members shall have the right to attend the site visit but shall not take part in any discussion unless specifically invited to do so by the Chairman of the body that has arranged the site visit. The body arranging the site visit shall not exercise any delegated powers nor take any decisions in the course of the visit.

### **38 SCHEME TO PERMIT MEMBERS OF THE PUBLIC TO SPEAK AT MEETINGS OF THE PLANNING COMMITTEE**

A scheme providing a limited right for speaking by Members of the public in relation to certain applications at meetings of the Planning Committee shall apply to that committee. The scheme shall be in such form as the Monitoring Officer determines, after consulting with the Head of Planning and the Planning and Corporate Services Portfolio Holder.

## **A.3 - Appendix B**

### **OVERVIEW AND SCRUTINY PROCEDURE RULES**

#### **1 OVERVIEW AND SCRUTINY COMMITTEES**

The Council will have **four** Overview and Scrutiny Committees (“the Committees”), which together will perform all overview and scrutiny functions on behalf of the Council. They will each consist of eight members, who will be appointed by the full Council at its annual meeting. Their terms of reference and functions will be as set out in Article 6.

#### **2 MEMBERSHIP**

All councillors, except Cabinet Members, may be members of the Overview and Scrutiny Committees. However, no Member may be involved in scrutinising a decision **in which they have been directly involved in making.**

#### **3 CO-OPTED MEMBERS (WITHOUT VOTING RIGHTS)**

Each Overview and Scrutiny Committee shall be entitled to appoint people as Co-opted Members (without voting rights) as considered appropriate to enable them to perform their overview and scrutiny functions. The duration of the appointment will be determined by the Committee. In addition, the Council may determine which groups or bodies should be represented on a particular Committee by Co-opted Members (without voting rights).

#### **4 MEETINGS OF THE COMMITTEES**

There will usually be six ordinary meetings of the Committees in each year. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the Chairman of the relevant Committee, or by the Democratic Services Manager if considered necessary or appropriate.

#### **5 QUORUM**

The quorum for the Committees shall be as set out in Part 4.

#### **6 CHAIRMEN**

The Chairmen of the Committees shall be appointed as set out in Part 4.

The Chairmen of the Overview and Scrutiny Committees will meet regularly with the Democratic Services Manager to coordinate the business of the relevant Committees and determine which Committee will assume responsibility for any particular issue.

## 7 WORK PROGRAMME

Each Overview and Scrutiny Committee will submit a work programme for the year ahead and a review of the previous year's activities to the Annual Meeting of the full Council for approval. In addition, it will be responsible for coordinating and prioritising its work programme on an ongoing basis.

In preparing, coordinating and prioritising its programme, each Overview and Scrutiny Committee will take into account:

- the planned work on the preparation of elements of the Budget and Policy Framework, as set out in the Council's Business Plan;
- the need for statutory timetables to be met;
- the wishes of all members of the committee;
- requests from the Cabinet to carry out reviews; and
- requests from Group Leaders in accordance with Rule 8.

## 8 AGENDA ITEMS

Any member of an Overview and Scrutiny Committee shall be entitled to give notice to the Democratic Services Manager that they wish an item relevant to the terms of reference and the functions of the Committee to be included on the agenda for the next meeting of that Committee. Such notice must be given by delivering it, in writing (or by personal e-mail), to the Democratic Services Manager no later than midday, seven working days before the day of the meeting. On receipt of such a notice, the Democratic Services Manager will ensure that the item is included on the agenda.

Any such requests by Members will be considered at the next available meeting where the Committee will decide if the item should form part of the work programme.

The Leader of any political group may request that an item be included on the Overview and Scrutiny work programme. The relevant Overview and Scrutiny Committee will consider the request on the agenda and determine at its meeting, whether the item is appropriate for inclusion in the work programme.

The relevant Overview and Scrutiny Committee will respond, as soon as their work programme permits, to requests from the Council and if it considers appropriate, the Cabinet to review particular areas of Council activity. Such referrals will be accompanied by Council/Cabinet's view on the matter under consideration to assist the relevant Overview and Scrutiny Committee in effective investigation of the matter. Where they do so, the relevant Overview and Scrutiny Committee shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or Cabinet shall consider the report at its following meeting.

## 9 COUNCILLOR CALL FOR ACTION

The Councillor Call for Action (CCfA) is an additional means for Councillors to raise issues of local community concern, for consideration by the Council's overview and scrutiny function, on behalf of residents. A Councillor Call for Action should only be raised where other means of resolving the matter have been exhausted.

- (a) Any Member of the Council may raise a Councillor Call for Action, which should be sent to the Council's Democratic Services Manager.
- (b) Once the Councillor Call for Action is received, the matter must be considered by the relevant Overview and Scrutiny Committee, whose terms of reference the matter falls within and they must endeavour to consider the matter within a reasonable timescale. Where the matter falls within the terms of reference of more than one committee, the Chairmen of the Committees will determine the most appropriate committee to deal with the matter, except where the matter relates to a crime and disorder issue where all such matters must be considered by the Overview and Scrutiny Committee responsible for crime and disorder matters.
- (c) If a Councillor Call for Action is deemed not to be valid, a letter will be sent to the Member concerned informing them of the reasons for this. Where the issue has been deemed not to be valid because other methods of resolution have not been exhausted, the Call for Action may be resubmitted, if necessary, once the Councillor concerned has pursued the matter further.

## 10 PROCEDURE AT COMMITTEE MEETINGS

- (a) The Committees shall consider the following business:
  - (i) Minutes of the last meeting;
  - (ii) Declarations of interest;
  - (iii) Questions raised on the forward plan in accordance with Rule 13
  - (iv) Responses of the Cabinet to reports of the Overview and Scrutiny Committee; and
  - (v) Responses of the Cabinet to called-in decisions referred for reconsideration;
  - (vi) Consideration of any matter referred to the Committee for a decision in relation to the call-in of a decision; and
  - (vii) The business otherwise set out on the agenda for the meeting.
- (b) Where an Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the relevant Committee may also ask people to attend to give evidence at Committee meetings that are to be conducted in accordance with the following principles:

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- (i) that the investigation be conducted fairly and all members of the committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (ii) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate, and shall make its report and findings public.

## **11. POLICY REVIEW AND DEVELOPMENT**

- (a) The role of the Overview and Scrutiny Committees in relation to the development of the Council's Budget and Policy Framework is set out in detail in the Budget and Policy Framework Procedure Rules within this Constitution.
- (b) In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, each Overview and Scrutiny Committee may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- (c) Each Overview and Scrutiny Committee where relevant to their terms of reference, may, as resources permit, hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

## **12 REPORTS FROM AN OVERVIEW AND SCRUTINY COMMITTEE**

- (a) Specific evidence based recommendations on proposals for development from an Overview and Scrutiny Committee will be submitted by way of a formal report for consideration by Cabinet. If the proposals would involve a change to the existing Budget and/or Policy Framework, the Cabinet will consider the matter and make a recommendation to Full Council. The report will be drafted by Officers and agreed by the relevant Chairman in respect of the proposals from the relevant Overview and Scrutiny Committee.
- (b) If an Overview and Scrutiny Committee cannot agree on one single final report to the Cabinet or Council, the report may refer to the contrary views of a Member, if the Member concerned specifically requests this.

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- (c) The Cabinet shall consider the report from the relevant Overview and Scrutiny Committee at the next meeting of the Cabinet for which the agenda has not yet been published.
- (d) In addition to making recommendations on specific proposals for development, the Overview and Scrutiny Committees may make more general comments/suggestions regarding matters they have considered, which they would like the relevant Cabinet Member to consider and take appropriate action. In such instances, a copy of the relevant minute will be sent to the Cabinet Member.
- (e) Where specific evidence-based recommendations on proposals for development from the Overview and Scrutiny Committees relate to matters that are the responsibility of Partner Authorities and organisations, notice in writing by way of a formal report will be provided to the relevant Partner Authority or organisation requiring them to have regard to the recommendations. The Partner or organisation will be requested to respond to the relevant Committee within two calendar months setting out action, if any, that is to be taken in response to the recommendations.
- (f) On occasions, matters may be referred to Overview and Scrutiny from Council. On such occasions, the Chairman of the relevant Overview and Scrutiny Committee will respond to the request, be this via an Overview and Scrutiny Committee or a Task and Finish Review Group. Upon concluding the necessary work, the matter and any recommendations made by Overview and Scrutiny will be referred to the Cabinet for consideration. The matter, along with the recommendations of Overview and Scrutiny, and any comments or recommendations of the Cabinet shall be referred back to Full Council for consideration.

### **13 SCRUTINY OF PROPOSED DECISIONS**

The Overview and Scrutiny Committees will, at their ordinary meetings, review the new and/or amended items relevant to their terms of reference contained in the latest forward plan. If they wish to enquire into any forthcoming decisions, such an enquiry might consist of questioning members of the Cabinet, and officers, and seeking the views of local stakeholders and/or other interested parties. The Cabinet will take into account any recommendations expressed by the relevant Overview and Scrutiny Committees when determining the final decision and record their response within any report and/or decision.

Matters may only be raised on the forward plan at Committee meetings where the Member has notified the Democratic Services Manager in writing (or by personal email) of the question they wish to ask, no later than midday, seven working days before the day of the meeting.

### **14 RIGHTS OF SCRUTINY COMMITTEE MEMBERS TO DOCUMENTS**

- (a) In addition to their rights as councillors, members of the Overview and Scrutiny Committees in fulfilling their functions, have the right to documents

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as provided for by the Access to Information Procedure Rules (the Regulations).

The Regulations include the following rights of Members of Overview and Scrutiny Committees (Upon Request):

- The Cabinet must make available any material relating to business in respect of past decisions (and within 10 days)
- Exempt information where this relates to an action or decision that the Member is scrutinising, or to any review in a relevant overview and scrutiny committee's work programme (Such Members are not entitled to any exempt material which contains advice provided by a political adviser or assistant.)
- If Cabinet refuses, it must set out reasons for doing so, in writing

- (b) Nothing in this paragraph prevents more detailed liaison between the Cabinet and any Committee as appropriate.

## 15 MEMBERS AND OFFICERS GIVING ACCOUNT

- (a) It shall be for each Corporate Director to determine which Officers attend to provide advice to Overview and Scrutiny, subject to each Committee being able to supplement this as thought necessary through (b), (c) and (d) below:
- (b) Any Overview and Scrutiny Committee may scrutinise and review decisions made or action taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the Overview and Scrutiny role, it may require any Cabinet Member, or any Senior Officer to attend before it to explain in relation to matters within their remit:
- (i) any particular decision or series of decisions (excluding decisions made by planning, licensing, audit or standards committee); and/or
  - (ii) the extent to which the actions taken implement Council policy.
- (c) Where any Cabinet Member or Senior Officer is required to attend a meeting of the relevant Overview and Scrutiny Committee, at least seven working days-notice of the meeting at which they are required to attend shall be given. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the relevant Committee. Where the account to be given to the Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (d) Where, in exceptional circumstances, the Cabinet Member or Senior Officer is unable to attend on the required date, the Chairman of the relevant Committee, shall, in consultation with the Member or officer, arrange a substitute or an alternative date for attendance.

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- (e) Participation by any Cabinet Member(s) in the general debate of the Overview and Scrutiny Committees will be at the discretion of the relevant Chairman (this rule does not apply when the Committee is considering a Call-In).

## 16 ATTENDANCE BY OTHERS

Each Overview and Scrutiny Committee may, in so far as it relates to matters within their terms of reference, invite people other than those referred to in paragraph 14 above to address them, discuss issues of local concern and / or answer questions. It may, for example, wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and may invite such people to attend. Attendance by those invited is entirely optional but encouraged in the spirit of partnership working and community engagement.

## 17 CALL-IN

When a decision is made by the Cabinet, or by an individual Cabinet Member, the decision is published normally within five working days of being made. The Chairman of the relevant Overview and Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision. Decisions will also be sent to all Members.

That notice will include the date on which it is published and specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the decision is called-in.

(a) The rules applying to call-in are:

- (i) All decisions taken at Cabinet meetings, or by individual Cabinet Members, may be called-in, subject to the exceptions outlined in Procedure Rule 17.
- (ii) Prior to holding a call-in, all Members of the Council are expected to attempt to resolve the matter through informal mediation, together with the relevant Cabinet Member and/or the Leader of the Council, if appropriate to do so.
- (iii) The Democratic Services Manager, will process call-in notices received from:
  - a. The Chairman of the relevant Overview and Scrutiny Committee;  
or
  - b. Three Non-Cabinet Members of the Council.

All valid call-in notices will be referred to the relevant Overview and Scrutiny Committee for determination and the decision-maker will be notified of the call-in.

- (iv) A notice of call-in must be made on the appropriate prescribed form or email (so long as the email addresses the relevant information

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required) and must be received within five working days of the date of publication of the decision. Use of the prescribed form is encouraged, and should be completed in full, with reference to the criteria for submitting call-in requests and stating the reasons why the issue needs to be scrutinised.

- (v) Only Cabinet decisions (including decisions by individual Cabinet Members) are eligible for call-in. Individual decisions taken by non-Cabinet and committees (such as planning and licensing) cannot be the subject of call-in.
- (v) Any decision can only be called-in once.
- (b) Those seeking to call-in a decision shall be required to state their reasons, in accordance with the criteria set, in the call-in notice form based on one or more of the following seven assessment criteria. These seven criteria are as follows:
  - (i) The decision-maker has failed to consult relevant people, or bodies, in contravention of defined Council policies or procedures.
  - (ii) The decision is contrary to the Council's Budget or Policy framework.
  - (iii) The decision is inconsistent with a Council policy.
  - (iv) The decision-maker did not take into account relevant considerations or other material factors and therefore, the decision is unreasonable.
  - (v) The decision is contrary to a previously agreed decision made in Full Council, which has not been superseded by a subsequent decision.
  - (vi) The decision is inconsistent with a previous Overview and Scrutiny recommendation that has been accepted by the Cabinet or Council and that recommendation has not been superseded by a subsequent decision.
  - (vii) The decision was not taken in accordance with the principles set out in Article 13 (Decision-Making) of the Constitution.
- (c) The submission of a call-in notice shall have the effect of suspending the implementation of the decision pending consideration of the matter by the relevant Overview and Scrutiny Committee, who must meet to consider the matter within 15 working days from the day following receipt of the call-in notice.

If the relevant Committee does not meet within this period, the decision shall take effect on the expiry of the 15 working day period. The Chairman of the relevant Overview and Scrutiny Committee is under an obligation to ensure that the meeting is held within 15 days.

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- (d) At the meeting to consider the call-in notice, the Overview and Scrutiny Committee shall limit its consideration to the reasons stated in the call-in notice.
- i. The layout of the meeting will provide separate tables for both the Callers-In and the relevant Cabinet Member to sit at for the item of the Call In.
  - ii. Stage One of the meeting - the Councillor(s) requesting the call-in shall attend and explain their objections to the decision and the reasons for the call-in against the stated criteria;
  - iii. Stage Two - the decision-maker (relevant Cabinet Member) shall establish the reasons behind the decision and can determine whether it should be referred back to the decision-maker for reconsideration;
  - iv. Stage Three – Questions can be asked by:
    - a. The Callers-In;
    - b. The relevant Cabinet Member;
    - c. The Committee.

All questions will be at the discretion of the Chairman, taking account of relevance to the subject matter.

It should be noted that, although a decision may be deemed to meet the criteria for call-in, this does not automatically mean the matter should be referred back to the decision-maker. There may be compelling reasons for the decision being made and all evidence should be heard before determining what action should be taken.

- (f) Both the callers-in and the decision-maker are permitted to stay at the meeting whilst the Committee debates and decides which action to take, at the discretion of the relevant Chairman.
- (g) Participation in the general debate will not be permitted but the callers-in and relevant Cabinet Member may answer questions or points of clarification arising through the debate, at the discretion of the relevant Chairman.
- (h) On considering the matter, the Committee will decide whether or not to ask the decision-maker to reconsider its decision.
- (i) If, having had regard to the advice of the Monitoring Officer, which will be summarised within the Report, the Committee considers the decision is contrary to the Budget or Policy Framework; the Committee may refer the matter to the next practicable meeting of the Council, subject to the provisions of Council Procedure Rules.
- (j) If the relevant Overview and Scrutiny Committee decides to ask the decision-maker to reconsider their decision, the decision-maker shall be required to do so within 15 working days following the meeting of the relevant Overview and Scrutiny Committee.

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- (k) If the Overview and Scrutiny Committee decides that it does not wish to refer the matter back to the decision-maker or to Council, the decision shall be confirmed and take effect immediately following the meeting of the Committee.
- (l) If the matter is referred to Council, who do not object to the decision, the subject of call-in, no further action is necessary and the decision will be effective on the date of the Council meeting. If Council does object, it only has authority to make decisions where it is considered contrary to the Policy and Budget Framework. The Council must refer any decision relating to Cabinet Functions, to which it objects, back to the decision-maker, together with the Council's views on the decision. The decision-maker shall, within a further 15 working days, choose whether to amend the decision or not before reaching a final decision and implementing it.
- (m) **Decisions referred back to the Decision Maker**

The comments and views provided by Council or the relevant Overview and Scrutiny Committee when referring a decision back for reconsideration shall be final and no further representations shall be made to the decision-maker.

The decision-maker will send a report to the relevant Overview and Scrutiny Committee, once a decision has been reconsidered, and that report should include the reason why the decision-maker has either reconfirmed the original decision or why the decision has changed.

## 18. EXCEPTIONS TO CALL-IN

The call-in procedure set out above shall not apply in respect of Cabinet decisions regarding the following:

- (i) Urgent Decisions

A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public interests. The record of the decision, and notice by which it is made public, shall state whether in the opinion of the decision-making person, or body, the decision is an urgent one and why, and therefore not subject to call-in.

The Chairman of the relevant Overview and Scrutiny Committee must agree that the proposed decision is reasonable in all its circumstances and that it should be treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the Head of Paid Service or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

Decisions taken as a matter of urgency must be reported by the Leader to the next practicable ordinary meeting of the Council, together with the reasons for urgency.

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(ii) Other Exceptions:

- a. 'Provisional' or 'in principle' decisions where the issue is to be referred to an Overview and Scrutiny Committee for comment.
- b. Recommendations from Cabinet to Council.
- c. Decisions by the Cabinet where the issue has been referred to them by the Council or an Overview and Scrutiny committee for their view or comment shall not be subject to call-in.
- d. Where full Council has delegated to the Cabinet the ability to approve additional information in respect of the Corporate Plan to ensure that statutory publishing deadlines are met, such decisions shall be construed as urgent for the purposes of Rule 16(h) above. In such circumstances the Chairman of relevant Committee, or other Chairman or Vice Chairman so authorised by Rule 16(h) to act in his absence, will only be required to agree that the proposed decision is reasonable in all the circumstances.

- (iii) The operation of the provisions relating to call-in and urgency shall be monitored in accordance with Article 15 of this constitution and a report submitted to Council with proposals for review if necessary.

## **A.3 - Appendix C**

### **ACCESS TO INFORMATION PROCEDURE RULES**

#### **1 SCOPE**

These rules apply to all meetings of the Council, its committees, overview and scrutiny committees, sub-committees and public meetings of the Cabinet (together called meetings).

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

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

#### **3 RIGHTS TO ATTEND MEETINGS**

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

#### **4 NOTICES OF MEETING**

The Council will give at least five clear working days' notice of any meeting by making the agenda and reports publically available at the Town Hall, Station Road, Clacton-on-Sea, (the 'designated office') and on the Council's website.

#### **5 ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda, reports and background papers open to the public, available for inspection at the designated office on request, at least five clear working days before the meeting. Where a report is added to the agenda after the summons has been sent out, the Democratic Services Manager shall make each such report, together with any background papers, available to the public as soon as the report is completed and sent to councillors.

#### **6 SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda;
- (c) if the Democratic Services Manager thinks fit, any other documents supplied to councillors in connection with an item; and
- (d) The Forward Plan

to any person on payment of a charge for postage and any other costs.

## **7 ACCESS TO MINUTES ETC AFTER THE MEETING**

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

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

## **8 BACKGROUND PAPERS**

### **8.1 List of Background Papers**

Authors of reports will set out in every report a list of those documents (called background papers) relating to the subject matter of the report, which in their opinion:

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

But do not include published works or those which disclose exempt or confidential information, as defined in Rule 10, and in respect of Cabinet reports, the advice of a political advisor.

### **8.2 Public Inspection of Background Papers**

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

**8.2.1** Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection at the Council's main offices (i.e. the Town Hall, Station Road, Clacton-on-Sea) and on the Council's website.

**8.2.2** The Council may now charge "a reasonable fee" for access to background papers to be inspected at the Council's offices.

## **9 SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept and be available to the public at the Town Hall, Station Road, Clacton-on-Sea.

## **10 EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

### **10.1 Confidential Information – Requirement to Exclude Public**



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

## 10.2 Meaning of Confidential Information

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

Confidential information shall include financial information and supporting documentation relating to a company or individual that is provided to the Council for the purposes of an Open Book Financial Appraisal and shall only be available to those who have been authorised to see it by the person submitting it.

## 10.3 Exempt Information – Discretion to Exclude Public

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

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

## 10.4 Meaning of Exempt Information

Exempt information means any information falling within the following 7 categories (subject to any condition):

Category	Condition
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).	Information 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 to 1978; (e) The Building Societies Act 1986; or (f) The Charities Act 1993.

Category	Condition
<p>4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	
<p>5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6 Information which reveals that the authority proposes:-</p> <p>(a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) To make an order or direction under any enactment.</p>	
<p>7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
<p>7A Information which is subject to any obligation of confidentiality.</p>	<p>7A-7C apply only to a meeting of the Standards Committee or a Sub-Committee of the Standards Committee</p>
<p>7B Information which relates in any way to matters concerning national security.</p>	

## ACCESS TO INFORMATION PROCEDURE RULES

Category	Condition
7C The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.	

Information falling within any of categories 1 to 7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

Information which:

- (a) falls within any of categories 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of the condition relating to category 3 or the above paragraph,

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.

## 11 EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the Democratic Services Manager thinks fit, the Council may exclude access by the public to reports which, in his opinion, relate to items during which, in accordance with Rule 10, 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 likely to be concerned.

## 12 APPLICATION OF RULES TO THE CABINET

Rules 13 to 24 apply to the Cabinet. If the Cabinet meets to take a key decision then it must also comply with Rules 1 to 11 unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A "key decision" is defined in Article 13.03 of this Constitution.

If the Cabinet meets to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, then it must also comply with Rules 1 to 11 unless Rule 15 or Rule 16 apply. A key decision is as defined in Article 13.03 of this Constitution. This requirement does not include meetings whose sole purpose is for officers to brief members.

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**13 PROCEDURE BEFORE TAKING KEY DECISIONS**

The following details must be published at least 28 clear days before a **key** decision is to be taken:

- (a) that a key decision is to be made, and details of the matter;
- (b) the decision-maker's name and title, or, if a body, its name and full membership;
- (c) the date on which, or period during which, the decision is to be made;
- (d) the documents to be submitted to the decision-maker for consideration and details of how to receive copies; and
- (e) A note that other documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.

**14 THE FORWARD PLAN****14.1 Period of Forward Plan**

The Council shall maintain a Forward Plan to include any key and other decisions to be taken over the next two months. It will be prepared on a monthly basis and subsequent Forward Plans will cover a period beginning with the first day of the second month covered in the preceding plan.

**14.2 Contents of Forward Plan**

Each forward plan will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Cabinet, individual members of the Cabinet or officers in the course of the discharge of an Cabinet function during the period covered by the Forward Plan. It will also contain matters which are not the subject of a key decision, where these are known.

It will describe the following particulars insofar as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision-taker is an individual, his or her name and title, if any, and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken; and

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ACCESS TO INFORMATION PROCEDURE RULES

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- (d) a list of the documents submitted to the decision-taker for consideration in relation to the matter.

**14.3 The Forward Plan**

The Forward Plan will be published approximately 14 days before the start of the period covered. The Democratic Services Manager will publish, once a year, a notice in at least one newspaper circulating in the area, stating:

- (i) that key, and other decisions are to be taken on behalf of the Council;
- (ii) that a Forward Plan containing details of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (iii) that the Forward Plan will contain details of the key, and other decisions likely to be made for the two month period following its publication;
- (iv) that where key decisions are to be made and/or meetings of the Cabinet are to be held in private, (1) a notice giving 28 days of this shall be published to allow for any representations, and (2) a further notice giving 5 days of this shall be published to include any representations received, together with the reasons given, in relation to private considerations, as to why the matter is being considered in private;
- (v) that each Forward Plan will be available for inspection at reasonable hours, free of charge, at the Council's Offices;
- (vi) that each Forward Plan will contain a list of the documents submitted to the decision-takers for consideration in relation to the key, and other decisions on the Forward Plan;
- (vii) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available;
- (viii) that other documents may be submitted to decision-takers;
- (ix) the procedure for requesting details of documents (if any) as they become available; and
- (x) the approximate (week-ending) dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council's Offices.

Exempt information need not be included in a Forward Plan and confidential information cannot be included.

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**15 GENERAL EXCEPTION**

If the timetable referred to in Rule 13 above is impracticable, a key decision can still be taken if:

- (a) the Proper Officer has **informed** the Chairman of the relevant Overview and Scrutiny Committee, in writing, of the details of the decision to be made (or, if the Chairman is unable to act, each member of the relevant Committee);
- (b) notice is given of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days' notice; and
- (c) at least five clear working days have elapsed between notice being given and the decision being taken.

**16 SPECIAL URGENCY**

If the general exception rule is impracticable, the key decision can still be taken if the decision-maker has **received the permission** of the Chairman of the relevant Overview and Scrutiny Committee, or if he or she is unable to act, the Chairman or Vice-Chairman of the **Council** and has published a notice stating that a decision is urgent and the reasons why it cannot reasonably be deferred.

**17 REPORT TO COUNCIL****17.1 When an Overview and Scrutiny Committee Can Require a Report**

If an Overview and Scrutiny Committee thinks that a key decision has been taken which was not:

- (a) included in the forward plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement under Rule 16;

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Democratic Services Manager, who shall require such a report on behalf of the Committee when so requested by the Chairman. Alternatively, the requirement may be made by resolution passed at a meeting of an Overview and Scrutiny Committee.

**17.2 Rights of Overview and Scrutiny Members**

Upon request from a member of an overview and scrutiny committee, the Cabinet **must** make available any material concerning business relating to past decisions.

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## ACCESS TO INFORMATION PROCEDURE RULES

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This must be provided as soon as reasonably practicable and no later than 10 clear days after the request is made.

Exempt information does not need to be provided unless it relates to an action or decision that the member is scrutinising, or to any review in a relevant overview and scrutiny committee's work programme. Overview and Scrutiny members are not entitled to any exempt material which contains advice provided by a political adviser or assistant.

If the Cabinet determines that material will not be provided, it must set out, in writing, its reasons for that decision.

### 17.3 Cabinet's Report to Council

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

### 17.4 Reports on Special Urgency Decisions

The Leader will submit a report to the next practicable ordinary meeting of Council on the Cabinet decisions taken in the circumstances set out in Rule 16 since the previous such report. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## 18 RECORD OF DECISIONS

Records of **any** Cabinet decisions, including those taken by officers, must state:

- (a) the decision taken and the date it was made;
- (b) the reasons;
- (c) details of options considered and rejected and the reasons why they were rejected; and
- (d) declarations of interest and details of any dispensations granted in respect of interests.

But not details of any consultation. .

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**19 CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

Cabinet meetings relating to matters that are not key decisions will be held in public unless the Cabinet determines otherwise.

**20 NOTICE OF PRIVATE MEETING OF THE CABINET**

Members of the Cabinet will be entitled to receive three clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

**21 ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET**

All Members of the Cabinet will be served notice of, and are entitled to attend, all private meetings of the Cabinet or committees of the Cabinet.

The Chief Executive and any member of Management Team are entitled to attend any meetings of the Cabinet. The Monitoring Officer and Chief Financial Officer are entitled to attend when presenting a report to fulfil the requirements of their statutory duties.

In addition, where the Cabinet is to consider any financial matter where there is a fundamental disagreement by the Chief Financial Officer on the advice being reported by Management Team, the Chief Financial Officer will have the right to report direct to the Cabinet. The Cabinet may not meet unless the Monitoring Officer has been given reasonable notice that the meeting is to take place.

Determination of the attendance of other Members of the Council at private meetings of the Cabinet will rest with the Cabinet.

**22 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET****22.1 Reports Intended to be Taken Into Account**

Subject to Rule 16, where an individual member of the Cabinet receives a report which he intends to take into account in making any key decision, then he will not make the decision until at least 5 clear working days after receipt of that report.

**22.2 Provision of Copies of Reports to Overview and Scrutiny Committees**

On giving of such a report to an individual decision maker, the Democratic Services Manager will give a copy of it to the Chairman of the relevant Overview and Scrutiny Committee as soon as reasonably practicable and make it, together with any background papers, publicly available at the same time.



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**22.3 Record of Individual Decision**

As soon as reasonably practicable after an Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he will prepare a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

**23 OVERVIEW AND SCRUTINY COMMITTEES - ACCESS TO DOCUMENTS****23.1 Rights to Copies**

Subject to Rule 23.2 below, the Overview and Scrutiny Committees will be entitled to copies of any document which is in the possession or control of the Cabinet, which is relevant to their terms of reference and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet or
- (b) any decision taken by an individual member of the Cabinet.

**23.2 Limit on Rights**

The Overview and Scrutiny Committees will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise;
- (c) the advice of a political adviser; or
- (d) prior access to, or foresight of papers in relation to private decisions of the Cabinet before the decision is made.

**24 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS****24.1 Material Relating to Previous Business**

All Members will be entitled to inspect any document that is in the possession, or under the control of the Cabinet, and contains material relating to any business previously transacted at a private meeting, unless it contains exempt or confidential information, or the advice of a political adviser.

ACCESS TO INFORMATION PROCEDURE RULES

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**24.2 Material Relating to Key Decisions**

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control of the Cabinet, which relates to any key decision unless paragraph 24.1 above applies.

**24.3 Nature of Rights**

These rights of a Member are additional to any other right they may have.

## **A.3 - Appendix D**

### **Amended Property Delegations**

#### **Responsibilities of the Cabinet (P 3.14)**

- 17 Consideration and approval of terms of property dealing (except those delegated to the Regeneration and Asset Management Portfolio Holder or to Officers), as defined in the Property Dealing Policy, including any proposed disposal of land under the provisions of the General Disposal Consent (England and Wales) 2003, or of the Housing Act 1985, or Section 25 of the Local Government Act 1988 and approval of any proposed application to the Secretary of State under Section 123 of the Local Government Act 1972 for disposal at less than best consideration reasonably obtainable.

#### **RESPONSIBILITIES OF PORTFOLIO HOLDERS (3.16)**

##### **SERVICE RELATED RESPONSIBILITIES**

- 8 The control, management and maintenance of all land holdings allocated to the Portfolio Holder by the Regeneration and Asset Management Portfolio Holder. This includes the granting, variation or termination of any leases, licences, or rights of way or other legal interests in property (limited to a maximum duration of 12 months) approved by the Corporate Director (Corporate Services), provided that the best consideration reasonably obtainable is obtained.

#### **RESPONSIBILITIES OF PORTFOLIO HOLDER (P 3.36)**

- 15 Power to authorise and approve the acquisition or grant of and terms for:
- 1) Any lease (where security of tenure is not excluded) of freehold land or premises owned by the Council and power to authorise any amendment of the provisions of any such lease.
  - 2) Any permanent Rights of way, Easements or other rights affecting freehold land or premises owned by the Council
  - 3) Any acquisition or disposal of freehold land or premises owned by the Council where the consideration is £50,000 or less.

#### **DELEGATED TO OFFICERS**

<p>10 To carry out the role of Corporate Property Officer in accordance with the Council's Asset Management Plan and to authorise and approve the acquisition or grant of and terms for:</p> <ol style="list-style-type: none"><li>1. A licence or access agreement for more than 12 months or any tenancy at will</li><li>2. Tenancies for less than seven years excluding security of tenure</li><li>3. Renewal, assignment or surrender of any tenancy</li></ol>	<p>Corporate Director (Corporate Services)</p>
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