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Date: 19 April 2012
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CONSTITUTIONAL REVIEW WORKING PARTY

26 APRIL 2012

A meeting of the Constitutional Review Working Party will be held at **9.30 am on Thursday, 26 April 2012** in the Austen Room, Council Offices, Cecil Street, Margate, Kent.

Membership:

Independent Members: Mr R Hills (Chairman) and Mr B Hinchley (Vice-Chairman);

Councillors: Hayton, Nicholson, Watkins and Wright

A G E N D A

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST**

To receive any declarations of interest. Members are advised to consider the extract from the Standard Board Code of Conduct for Members, which forms part of the Declaration of Interest Form at the back of this Agenda. If a Member declares an interest, they should complete that Form and hand it to the Officer clerking the meeting.

3. **MINUTES OF PREVIOUS MEETING** (Pages 1 - 4)

To approve the Minutes of the Constitutional Review Working Party meeting held on 15 February 2012, copy attached.

4. **FUTURE CODE OF CONDUCT COMPLAINTS SYSTEM**

Report to follow

5. **GOVERNANCE & AUDIT COMMITTEE - TERMS OF REFERENCE** (Pages 5 - 10)

6. **REVIEW OF THE CONSTITUTIONAL PROCESSES APPLYING TO URGENT DECISIONS** (Pages 11 - 34)

7. **LEADER'S REPORT** (Pages 35 - 38)

Declaration of Interest form - back of agenda

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CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 15 February 2012 at 9.30 am in Austen Room, Council Offices, Cecil Street, Margate, Kent.

Present: Mr Robin Hills (Chairman); Councillors Mr B Hinchley (Independent Member), K Gregory, Nicholson, Watkins and Wright

16. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Hayton; Councillor K Gregory was present as his substitute.

17. DECLARATIONS OF INTEREST

There were no declarations of interest.

18. MINUTES OF PREVIOUS MEETING

The minutes of the meeting 20 October 2011 were agreed and signed by the Chairman.

19. REVIEW OF CONTRACT STANDING ORDERS AND PURCHASING GUIDE

Karen Paton, Procurement and Contracts Manager outlined her report explaining that the Contract Standing Orders needed to be realigned in the wake of the corporate restructure. She added that the audit of Contract Standing Orders had resulted in a substantial level of assurance and that a cross party recommendation from Members had asked for Cabinet and Shadow Cabinet Members to be present at tender openings.

Members asked why if Cabinet and Shadow Cabinet Members or their substitutes weren't available, it was proposed to carry on with a tender opening without any Member present. Ms Paton explained that tendering often followed a tight timescale and that carrying on with an opening if the invited Members couldn't make it was not meant as a way of excluding Members. She confirmed that she would have no issue with having a pool of substitute Members that could be contacted if either the Cabinet Member or Shadow Cabinet couldn't attend an opening.

Ms Paton then explained that in response to suggestions from Members the Contract Procedure rules had been amended to include clauses in the first two stages that allowed, only if everything else was equal, for consideration to be given to Thanet based firms.

In response to a query from Members, Harvey Patterson, Corporate and Regulatory Services Manager explained that the Council did not operate a preferred list of suppliers; in addition he clarified that a Thanet firm would only be awarded a contract if it was the best quote.

Members also queried why the Council often said how much it had to spend on a project before tendering and that it gave firms the opportunity to artificially inflate prices to the level of funds the Council had to spend.

Mr Patterson confirmed that at no point within the tendering process would potential tenderers ever get to know how much the Council had to spend on a project.

Ms Paton then added that the Contract Procedure Rules needed to be amended allow for Officers to undertake a tender process where there was only one possible tenderer without having to apply for an exemption, which was a time consuming and unnecessary step. She added in response to a question from Members that currently exemptions from Contract Procedure Rules were reported annually to a Full Council meeting.

Councillor K Gregory proposed and Councillor Watkins seconded and Members agreed that:

The recommendation as set out at 6.1 of the report be forwarded to the Standards Committee after being amended to read:

The Constitutional Review Working Party approve and recommend to the Standards Committee and Full Council the amendments to the Contract Standing Orders and Purchasing Guide listed below and the associated amendment to the Constitution as required.

- i). Amendments made to bring the documents in line with the new Council structure.
- ii). Addition to wording of Clause 11.5 and Appendix 1 of the CSOs of 'the appropriate Shadow Portfolio Holder or another Shadow cabinet member' and to Clause 11.5 of 'In circumstances where both Portfolio/Cabinet member and/or, both Shadow Portfolio/Cabinet members are unable to attend, opening of tenders can and should be undertaken in presence of officers and at least one substitute Member to ensure procurement programme is maintained'
- iii). Addition to wording of Clause 7.4 of the CSOs of 'Consideration to be given to suitably qualified Thanet Supplier/s, if available'
- iv). Addition of Clause 2.3.6 'When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods, services or works may be provided only by a particular service provider' to the CSOs.

20. MOTIONS ON NOTICE

Harvey Patterson, Corporate and Regulatory Services Manager outlined his report, explaining that before the May 2011 election motions on notice were rarely used and achieved relatively little as they were defeated by the large majority of the ruling party, however since the election and the hung nature of the Council they had been used far more often. They were now being used as a way of fast tracking manifesto commitments into policy. Council had a due process to follow when creating policy and there shouldn't be any shortcuts.

Council also had a commitment when making policy to consider the potential financial and legal implications of any decision and motions on notice circumvented this stage and opened the Council up to possible Judicial Review. Trying to use Motions on Notice in order to create or amend policy framework items also side stepped the due process and opened up the Council to the possibility of Judicial Review as well.

He added that the he was often in an impossible position as Motions on Notice were an overtly political tool, yet he was the Monitoring Officer and was obliged to stay independent. He had been criticised by some for assisting Councillors by saying why a Motion on Notice was invalid, but was also not in a position to tell Councillors to go and get their own legal advice.

Members made the point that the report looked like it was an attempt to remove the privilege of making Motions on Notice. Members also made the point that attempting to amend procedure rule 16.3 to exclude the proposer from making a speech when

presenting a Motion on Notice was unfair. A Member from the largest other political group to the one proposing the Motion should be allowed to make a response when it is moved and before it is either debated or referred to Cabinet or other appropriate Committee.

Members also made the point that Council should be allowed to discuss Motions on Notice that may amend policy or be about policy framework items, even if they could only recommend them to Cabinet.

It was proposed by Councillor Nicholson and seconded by Councillor Gregory that:

i) Council Procedure Rule 16.3 be amended to read:

“The Member whose name appears first on the Notice will move the motion during his or her speech and call for a seconder. If seconded, a member from the other main political group will be entitled to a reply, the motion shall then stand referred without further discussion to the Cabinet or appropriate Committee for determination or report unless the Council decides to debate the motion in accordance with Rule 19.”

ii) Council Procedure Rule 16.4(a) - to include the following paragraphs

“(iii) Where a motion on notice would, if adopted, constitute the exercise of an executive function, that motion must be referred to the Cabinet (or relevant Cabinet portfolio holder as appropriate) for decision.

(iv) The Chairman shall rule out of order any motion on notice that relates to the adoption of, or amendment to, a policy falling within the Council’s adopted Policy Framework if that policy or amendment (as the case may be) has not first been proposed by the Cabinet and considered by the Overview and Scrutiny Panel.

(v) The Chairman shall rule out of order any motion on notice that proposes the adoption of, or amendment to, any policy outside the adopted Policy Framework which by law or this Constitution is the sole responsibility of the Cabinet.

(vi) Any motion on notice that proposes the adoption of a policy or the taking of a decision where Council has not received a report from the officers setting out the technical legal and financial implications of adopting the policy or taking the decision in question *shall only be debated. The only action that may be taken is to refer the motion to Cabinet for consideration.*

iii) Rejecting Motions on notice – to include the following paragraph:

“The Chairman of Council may rule out of order Motions on Notice that in his opinion:

- i) are defamatory in nature,
- ii) are frivolous in nature, or
- iii) contain offensive language.”

iv) That Council Procedure Rule 20.2 should not be amended.

v) That the Corporate and Regulatory Services Manager be given delegated authority to amend the Council’s constitution to reflect the changes made in the resolution.

21. **IMPLICATIONS OF THE LOCALISM ACT 2011 ON THE COUNCIL'S PETITIONS SCHEME**

Glenn Back Democratic Services and Scrutiny Manager outlined the report. He explained that the report covered each of the elements of previous legislation that the Localism Act proposed to repeal.

Members explained that the proposed appeals process, whereby the corporate complaints process would be used instead of the Overview and Scrutiny Panel was not supported and that the function should remain with the Overview and Scrutiny Panel.

Members also added that the right to call an officer to account should be retained, however the wording should be amended so that the public have a right to call an "appropriate officer" to account instead of a named officer

In addition Members indicated that if petitions were rejected then currently there was no way that Councillors would know about those reasons for rejections. Members suggested that when a petition was rejected, the reasons for rejecting the petition should be reported to the Overview and Scrutiny Panel.

Proposed by Councillor Gregory and seconded by Councillor Nicholson and agreed that:

- a) Recommendation 3 be removed from the report.
- b) Recommendation 7a) be amended to read: "a) the existing scheme of thresholds that automatically determine whether a petition is sent to Council to be sent to Cabinet, the Overview and Scrutiny Panel or to Council for debate and the ability to create a petition to ask an appropriate officer to give evidence be retained.
- c) Recommendation 9 be amended to add a paragraph that reads: "c) That when a petition is rejected, the grounds for rejecting that petition are reported to the next available Overview and Scrutiny Panel meeting."
- d) The recommendations as outlined at 8.1 of the report as amended above are forwarded for consideration by the Standards Committee.

Meeting concluded : 10.45 am

GOVERNANCE AND AUDIT COMMITTEE – REVIEW OF TERMS OF REFERENCE

To: **CONSTITUTIONAL REVIEW WORKING PARTY – 26 APRIL 2012**

Main Portfolio Area: **BUSINESS SERVICES**

By: **BUSINESS SUPPORT AND COMPLIANCE MANAGER**

Classification: **Unrestricted**

Summary: **To bring before Constitutional Review Working Party the Terms of Reference for the Governance and Audit Committee which have undergone their regular review.**

1.0 Introduction and Background

1.1 The formation of a Governance and Audit Committee was agreed by Cabinet on the 23 March 2006 and adopted by Council on the 11 May 2006, and then re-constituted by Council in May 2007, May 2008, May 2009, May 2010 and May 2011.

2.0 The Current Situation

2.1 The Council needs to demonstrate that it is effectively delivering the core functions of an Audit Committee, as identified in the Chartered Institute of Public Finance and Accountancy (CIPFA) guidance.

2.2 The current Terms of Reference are in line with the CIPFA guidance document but need to be reviewed regularly to ensure that they are fit for purpose. This process has been undertaken and attached at Annex I are the revised Terms of Reference, with track changes to show Members where the changes have taken place.

2.3 The reviewed Terms of Reference went to Governance and Audit Committee on the 20 March 2012 and the changes were agreed.

3.0 Options

3.1 The Working Party recommend to the Standards Committee that the revised Terms of Reference be approved and referred to Council for ratification.

3.2 The Working Party not accept the revised Terms of Reference. This is not recommended as the Governance and Audit Committee Terms of Reference would not reflect the processes that the Governance and Audit Committee need to undertake.

4.0 Corporate Implications

4.1 Financial Implications

4.1.1 There are no financial implications arising directly from this report.

4.2 Legal

4.2.1 There are no legal implications arising directly from this report.

4.3 Corporate

4.3.1 The Council decided to place additional emphasis on governance by the establishment of this committee. These reviewed Terms of Reference are a key part of providing assurance that the authority is effectively delivering the core functions of an audit committee.

4.4 Equity and Equality

4.4.1 None

5.0 Recommendation

5.1 **The Working Party recommend to the Standards Committee that the revised Terms of Reference be approved and referred to Council for ratification.**

6.0 Decision Making Process

6.1 The recommendation will be considered by the Standards Committee at its meeting to be held on 9 May followed by Council on 17 May 2012.

Contact Officer:	Nikki Morris, Business Support and Compliance Manager, DDI 01843 577625
Reporting to:	Barry Mileham, Business Improvement and Information Manager, DDI 01843 577620
Service Manager:	Sarah Carroll, Business Services Manager. DDI 01843 577188

Annex List

Annex 1	Terms of Reference – Version 6
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Background Papers

Title	Details of where to access copy
Governance and Audit Committee Terms of Reference – previous versions	With the Business Support and Compliance Manager

Corporate Consultation Undertaken

Finance	Sarah Martin
Legal	Gary Cordes

Governance and Audit Committee

Terms of Reference

Revised March 2012
Version 6



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DRAFT

The quorum for the Committee is 50% as agreed by the Constitutional Review Working Party, Standards and Council.

Terms of Reference

Audit Activity

- To consider the annual report and opinion of the East Kent Audit Partnership, and a summary of audit activity (actual and proposed) and the level of assurance it can give over the council's governance arrangements;
- To approve (but not direct) internal audit's strategy, plan and monitor performance;
- To consider summaries of specific internal audit reports;
- To consider reports dealing with the management and performance of the providers of internal audit services;
- To consider a report from internal audit on agreed recommendations not implemented within a reasonable timescale;
- To consider the external auditor's annual letter, relevant reports and the report to those charged with governance;
- To consider specific reports as agreed with the external auditor;
- To consider the annual programme of work and associated fees for the external auditors and provide challenge as appropriate
- To commission work from internal and external audit as agreed by the Committee.

Regulatory Framework

- To review any governance / financial issue referred to it by the Chief Executive or a Director, or any council body;
- To monitor the effective development and operation of risk management and governance in the council;
- To oversee the application of the council's governance arrangements for partnership activities where the council is the accountable body and/or employer;
- To approve the council's policies on [Anti-Bribery](#), [Whistleblowing](#), [Anti-fraud and Corruption and the External Funding Protocol](#);
- [To recommend to Cabinet the council's policy in Equalities \(PSED\)](#);
- To approve the authority's Annual Governance Statement ;
- To consider the council's compliance with its approved Treasury Management Strategy
- To consider the council's arrangements for governance and agreeing necessary actions to ensure compliance with best practice;
- To consider the council's arrangements for ensuring adequate data quality;
- To consider the council's compliance with its own and other published standards and controls.

Deleted: and

Accounts

- To approve the annual Statement of Accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statement or from the audit that need to be brought to the attention of the council;
- To consider the external auditor's report on issues from the audit of the accounts and recommend approval to those charged with governance.

Document History

Version	Date	Agreed by	Minute ref
V1	27 Sep 2007	Governance and Audit Committee	R113
	6 Dec 2007	Standards Committee	R173
	18 Dec 2007	Council	59
V2	10 April 2008	Constitutional Working Party	CRWP10
	22 April 2008	Standards	R314
	8 May 2008	Council	17
V3	5 March 2009	Standards Committee	R55
	17 March 2009	Governance & Audit Committee	6.
	14 May 2009	Constitutional Review Working Party	13.
	21 May 2009	Annual Council	42.
V4	23 February 2010	Governance Group	Gov07
	16 March 2010	Governance and Audit Committee	64.
	1 April 2010	Constitutional Review Working Party	28.
	13 April 2010	Standards Committee	109.
	13 May 2010	Council	164.
V5	15 March 2011	Governance and Audit Committee	135.
	23 March 2011	Constitutional Review Working Party	60.
	5 April 2011	Standards Committee	169.
	21 April 2011	Council	275.
V6		Governance and Audit Committee Constitutional Review Working Party Standards Committee Council	

REVIEW OF CONSTITUTIONAL PROCESSES APPLYING TO URGENT DECISIONS

To: **Constitutional Review Working Party**

By: **Democratic Services & Scrutiny Manager**

Classification: **Unrestricted**

Summary: To consider recommendations by the Overview & Scrutiny Panel.

For Decision

1.0 Introduction and Background

- 1.1 Following a request by Council on 13 October 2011, the Overview & Scrutiny Panel considered, at its meeting on 22 March 2012, the constitutional processes that apply to urgent decisions by the Cabinet Leader, Cabinet Portfolio Holders and Cabinet collectively.
- 1.2 The report by the Corporate & Regulatory Services Manager to that meeting of the Panel is attached at Annex 1, with the remit of the Panel's review set out at paragraph 1.1 of the report.
- 1.3 Following consideration of the Corporate & Regulatory Services Manager's report, the Panel agreed to recommend:
 - 1.3.1 That after an urgent decision has been made, the Ward Members of the affected Ward are notified;
 - 1.3.2 That Cabinet Member decisions and key decisions by Council officers are recorded and distributed to Members along with the advice from officers leading to the decision.

2.0 Current Situation

- 2.1 The Constitutional Review Working Party is now asked to consider the recommendations set out at paragraphs 1.3.1 & 1.3.2 above.
- 2.2 As indicated at paragraph 3.1 of Annex 1, the constitutional procedures applicable to urgent decisions are contained in the following four rules:
 - 2.2.1 Rule 16, Access to Information Procedure Rules – General Exception (Extract at Annex 2 to this report)
 - 2.2.2 Rule 17, Access to Information Procedure Rules – Special Urgency (See Annex 3)
 - 2.2.3 Rule 4, Budget and Policy Framework Procedure Rules – Urgent Decisions outside the Budget and Policy Framework (See Annex 4)
 - 2.2.4 Rule 15 (L), Overview & Scrutiny Procedure Rules – Call-in and Urgency (See Annex 5)

- 2.3 The procedures relating to records of decisions are set out in Access to Information Procedure Rules 19.0 & 20.3 (Extract of Rules 19 & 20 attached at Annex 6) and Overview and Scrutiny Procedure Rule 15 (b) & (c) – Call-In (Annex 7)
- 2.4 It should be noted by the Working Party that it is currently the practice that a record of any decision taken by Cabinet or an individual Cabinet Member is produced and then published on the internet as soon as possible after the taking of that decision, with all Members being notified of the decision automatically by email, upon publication.
- 2.5 Details of published decisions can be found on the Council’s website at:
<http://tdc-mg-dmz.thanet.gov.uk/mgDelegatedDecisions.aspx?bcr=1>.
- 2.6 It has come to the attention of Democratic Services that not all individual Cabinet Member decisions are supported by a full report; the constitution however does not explicitly require this to be the case as shown in Access to Information Rule 20.1 (Annex 6). In the interests of good governance, the Working Party may wish to recommend that this Rule be amended to read:
- 2.6.1 “When an individual Cabinet Member is taking a key decision they must make that decision considering a report from the relevant officer and that decision must not be made until 5 days after the receipt of that report.”
- 2.6.2 “When an officer is taking a key decision they must make that decision considering a report and that decision must not be made until 5 days after the receipt of that report.”
- 2.7 Note that the above also corrects the time period to the current “5 clear days” required under Access to Information rules.
- 2.8 If the above were adopted by Council, Democratic Services would publish both decisions and reports in the usual way, including sending emails to Members notifying them of publication, provided such officer reports are supplied to the Democratic Services team.
- 3.0 Corporate Implications**
- 3.1 Financial and VAT**
- 3.1.1 There are no direct financial implications arising from this report.
- 3.2 Legal**
- 3.2.1 Any changes made to procedure rules will require the Council’s constitution to be amended.
- 3.3 Corporate**
- 3.3.1 The Council’s constitution sets out the basic rules governing the Council’s business.
- 3.4 Equity and Equalities**
- 3.4.1 None specific
- 4.0 Recommendation(s)**
- 4.1 That the Working Party considers any changes necessary to the constitutional procedure rules.
- 5.0 Decision Making Process**
- 5.1 Any recommendations by the Working Party will be referred to the Standards Committee, whose agreed recommendations will then be referred to full Council.

Future Meetings:

Standards Committee	9 May 2012
Council	12 July 2012

Contact Officer:	Glenn Back, Democratic Services & Scrutiny Manager, Ext 7187
Reporting to:	Harvey Patterson, Corporate & Regulatory Services Manager and Monitoring Officer, Ext 7005

Annex List

Annex 1	Report by Corporate & Regulatory Services Manager to the meeting of Overview & Scrutiny Panel, held on 22 March 2012-04-13
Annex 2	Access to Information Procedure Rule 16 – General Exception
Annex 3	Access to Information Procedure Rule 17 – Special Urgency
Annex 4	Budget and policy Framework Procedure Rule 4 – Urgent Decisions outside the Budget or Policy Framework
Annex 5	Overview & Scrutiny Procedure Rule 15 (L) – Call-in and urgency
Annex 6	Access to Information Procedure Rules 19 & 20 – Record of decisions
Annex 7	Overview and Scrutiny Procedure Rule 15(b)

Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	N/A
Legal	Harvey Patterson, Corporate & Regulatory Services Manager & Monitoring Officer, Ext 7005
Communications	Hayley Eversfield, Corporate Communications Officer, Ext 7169

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URGENT DECISION MAKING BY THE CABINET

To: **Overview & Scrutiny Panel – 22 March 2012**

By: **Corporate & Regulatory Services Manager**

Classification: **Unrestricted**

Summary: **To inform the Overview & Scrutiny Panel of the Constitutional processes that apply to the taking urgent decisions by the Cabinet Leader, Cabinet Portfolio holders and the Cabinet collectively.**

For Noting

1.0 Introduction and Background

1.1 At the meeting of Council held on the 13 October 2011 Council received a report on the taking of an urgent decision by the relevant Cabinet portfolio holder in relation to the purchase of the Hotel Leslie in Cliftonville. Council noted the report but resolved to request the Overview & Scrutiny Committee to review the processes for the taking of decision by individual Cabinet Members such review to include but not be limited to:

- what consultation, if any, should take place;
- what limit, if any, should be placed on the monetary value of decisions;
- what criteria, if any, should be used when deciding if a decision is urgent; and
- at what stage should the Cabinet Member be advised that an urgent decision may be needed

1.2 The Overview & Scrutiny Panel added this request to its work plan on 25 October 2011 and requested a scoping report from the officers (Minute 209/2011 refers)

2.0 Cabinet Decision Making - Executive Functions

2.1 Part 3 of the Local Government and Public involvement in Health Act 2007 reduced the governance arrangement for principal Council in England to two models - a 'Mayor and Cabinet Executive' or a 'Leader and Cabinet Executive'. As a result Council resolved at the meeting held on the 16 December 2010 to adopt the Leader and Cabinet Executive model with effect from the date of the Annual Meeting in 2011. (Minute No. 242/2010 refers). Although the new Leader and Cabinet Executive model closely reflected the then existing political governance arrangements, there were four significant differences:

- the Leader would be elected by Council for a whole electoral cycle - subject to removal by Council;
- the Deputy Leader would in future be appointed by the Leader for a whole electoral cycle;
- the Leader would determine not only the number of Cabinet Members comprised in the Cabinet (within the prescribed maxima of eight) but also the allocation of executive functions between them (the portfolios); and

- All **executive functions** would be exercisable by **the Leader** and therefore the Leader would determine whether an executive function would be discharged by the Cabinet acting collectively or be delegated to an individual Cabinet portfolio holder or to an officer.

This was styled the 'Strong Leader' model.

- 2.2. As to what of the Council's many statutory functions would constitute an executive function, reference must be made to Section 13(2) of the Local Government Act 2000 which provided that any function of the Council which is not otherwise prescribed in Regulations is to be the responsibility of the executive. In other words, unless a statutory instrument provides that the whole or part of a function may not be the responsibility of the Cabinet, it will automatically be a Cabinet responsibility. In this regard Parliament has to date enacted eight separate sets of Regulations beginning with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, which between them prescribe functions in one of four ways:
- (i) Functions which **may not** be the responsibility of the Cabinet;
 - (ii) Functions which **may be** the responsibility of **either** the Cabinet or the Council;
 - (iii) Functions which **are** the responsibility of **both** the Cabinet (as to part) and the Council (as to the remainder); and
 - (iv) By necessary inference, any function not falling within any of the three previous categories is automatically the responsibility of the Cabinet.
- 2.3 To example the first approach, the Cabinet may not make individual regulatory decisions, hence the need for a Planning Committee and a Licensing Board nor can the Cabinet take the decision to employ staff or determine their pay and other conditions of employment - hence the delegation of the power to employ and remunerate staff below the level of Chief Officer to the Chief Executive (provided the post is within the approved budget) and the establishment of the General Purposes Committee to, amongst other things, approve the employment and remuneration of Chief Officers other the Chief Executive. (The employment and remuneration of the Chief Executive is a decision reserved to full Council).
- 2.4 As to the functions which may be the responsibility of either the Cabinet or the Council - the so called 'local choice functions' - those that were relevant to a District Council, e.g. responsibility for statutory nuisance or the power to serve requisitions for information, were duly allocated to the Cabinet.
- 2.5 Turning to the functions which are the responsibility of both the Cabinet and the Council - the so called 'shared functions' where the Cabinet and the Council have distinct but complimentary roles in the discharge of a function, this provides the legal basis for the Council's Policy Framework, i.e. those plans and strategies that it is the responsibility of the Cabinet to develop, for the Overview & Scrutiny Panel to review and for full Council to finally approve and adopt. The Budget is similarly treated with the Cabinet having responsibility for the development of a draft budget, the Overview & Scrutiny Panel (through a Budget Working Party) reviewing it and full Council approving it as a preliminary to Council Tax setting. Members should be aware that the plans and strategies that make up the Policy Framework are largely mandated by regulations although the Council does have the power to designate any other plan or strategy as a Policy framework document. In other words, full Council has the power to prescribe any plan or strategy as a Policy Framework document thus making initial approval or subsequent modification of the policy in question the responsibility of full Council.
- 2.6 If the most important feature of the Budget and Policy Framework is that full Council approves it, the other important feature is that the adopted Framework can act as a

constraint on Cabinet decision making; that is to say that a decision that would otherwise be a decision for the Cabinet to take (whether by the Leader, relevant Portfolio holder or the Cabinet collectively) would have to be referred to Council for final approval if the decision would be 'contrary to or not in accordance with' the Budget or the Policy Framework.

- 2.7 The relevance of all this to an understanding of what constitutes an urgent decision and what the constitutional processes that support urgent decision making are or should be is that it highlights the fact that the 'Strong Leader' model adopted by TDC in 2011 allocates the discharge of most of the Council's functions to the Cabinet Leader and as a matter of law enables all Cabinet functions to be discharged by the Leader personally unless the Leader delegates the discharge of any of those functions to a Cabinet Portfolio holder or to an officer.
- 2.8 Consequently, the fact that an important Cabinet decision may have been taken by the Leader or a Cabinet Portfolio holder in person and not by the Cabinet at a pre-scheduled Cabinet meeting should not be interpreted to signify that that the decision in question was an urgent one because, as shall become apparent, urgent decisions are those that entitle the decision maker to avail themselves of a particular constitutional rule that enables the normal decision making process to be accelerated or a constitutional constraint applying to that class of decision, disapplied.
- 2.9 To give an example, the decision in relation to the purchase of the Hotel Leslie was not taken by Councillor Wells (as the then relevant portfolio holder) personally because it was urgent - even if it had not been urgent he could have and may well have made the same decision in the same way. The decision was urgent because the Council had the opportunity to acquire a strategic site before any one else could do so but could only achieve this if the decision was excluded from the constitutional constraint of Call-in which required decisions not to be implemented for five working days from the date of publication of the decision - during which time the decision could be 'called-in' by the Overview & Scrutiny Chairman or by any five members of the Committee (provided at least one of them was in a different party group from the other four). Moreover, if the decision was called-in, implementation could be further delayed for up to six weeks pending the conclusion of the Call-in process. However, Councillor Wells was entitled to rely on an urgency rule in the Overview & Scrutiny Procedure Rules and seek the consent of the Chairman of the Council to exclude the decision from Call-in, thus enabling the decision to be implemented immediately and contracts exchanged for the acquisition of the site.

3.0 Urgent Decisions and the Constitution.

- 3.1 In fact the Constitution contains only four urgency procedures in relation to Cabinet decisions as follows:-
- Rule 16 Access to Information Procedure Rules - General Exception;
 - Rule 17 Access to Information Procedure Rules - Special Urgency;
 - Rule 4 Budget and Policy Framework Procedure Rules - Urgent Decisions Outside the Budget and Policy Framework; and
 - Rule 15 (I) Overview & Scrutiny Procedure Rules - Call-in and Urgency

Rules 16 and 17 Access to Information Procedure Rules (AIPR)

- 3.2 These two rules should be considered together because it is only if the requirements of Rule 16 (General Exception) cannot be satisfied that it is necessary to consider the additional requirements of Rule 17 (Special Urgency). Moreover the rules only apply if the decision maker, whether it be the Leader, a Cabinet Portfolio holder, the Cabinet acting collectively or an officer, is intending to make a **key decision** which does **not** appear on the current published edition of the Cabinet Forward Plan. In this regard, Article 13.03 (b)

of the Constitution provides the definition of a key decision as an executive decision which is likely to:

- (i) result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
- (ii) be significant in terms of its effects on communities living or working in an area of the district comprising one or more wards

3.3 Rule 14 AIPR provides as a general limitation that no decision maker can make a key decision unless it appears on the current published edition of the Forward Plan and at least three days have elapsed since publication before the decision in question will be made. However, Rule 14 AIPR is subject to Rules 16 and 17. Rule 16 provides as follows:-

'16.0 General Exception

'If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- (a) *the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;*
- (b) *the proper officer has informed the Chairman of a relevant Overview and Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;*
- (c) *the proper officer has made copies of that notice available to the public at the offices of the Council; and*
- (d) *at least 3 clear days have elapsed since the proper officer complied with (b) and (c).*

Where such a decision is taken collectively, it must be taken in public.'

3.4 Consequently, if a decision maker intends to take a key decision that does not appear on the Forward Plan, he or she can still do so provided it **is impractical to defer** the decision until the Forward Plan is next published, the Chairman of Scrutiny is notified and the notification is placed on deposit at the Gateway for public inspection at least three days before the decision is made. If the requirements of Rule 16 cannot be complied with Rule 17 provides as follows:-

'17.0 Special Urgency

If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of a relevant Overview and Scrutiny Committee, or if the Chairman of each relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice Chairman will suffice.'

3.5 Consequently, if a decision maker wants to make a key decision as a matter of urgency about a matter not appearing on the Forward Plan, he or she will require the express agreement of the Chairman of the Overview & Scrutiny Panel that it is impractical to defer the decision. Rule 18.3 AIPR also provides that urgent decisions have to be reported to Full Council every three months

Rule 4 Budget & Policy Framework Procedure Rules (BPFPR)

- 3.6 It was noted at paragraph 2.6 above that the final discharge of an executive function will nevertheless be reserved to Council if it is outside or contrary to the Budget or Policy Framework. However, Rule 4 of the BPFPR provides that an executive decision which is contrary to the Council's Policy Framework or not wholly in accordance with the budget approved by Council may still be taken by the Cabinet Leader, relevant Cabinet Portfolio holder, the Cabinet collectively or an officer, provided the decision is **a matter of urgency**. Rule 4(a)(i) prescribes that a decision will only be a matter of urgency if:
- (i) It is not practical to convene a quorate extraordinary meeting of full Council;
 - (ii) The Chairman of the Overview & Scrutiny Panel (or in his absence the Chairman of the Council) must agree that the decision is a matter of urgency.
- 3.7 The reasons why it is not practical to convene a quorate meeting and the Scrutiny Chairman's consent must be noted on the record of the decision. In practice the former requirement will be relatively easy to satisfy because if a decision is genuinely urgent it will hardly ever be practical to convene a quorate meeting of full Council a given that this would normally take seven to ten working days to arrange and publicise. In addition the decision maker must provide a full report to the next available Council meeting explaining the decision, the reasons for it and why it was treated as a matter of urgency,

Rule 15 (I) Overview & Scrutiny Procedure Rules (OSPR)

- 3.8 Members will be familiar with this rule as it enables executive decisions to be exempted from Call-in on grounds of urgency. Rule 15(I) OSPR provides that the call in procedure will not apply where a decision being taken by the Cabinet is urgent and that a decision will be considered urgent if any delay likely to caused by the Call-in process **would seriously prejudice the Council's or the public's interests**. In addition the Chairman of the Council (or in his absence the Vice -Chairman) must agree that the decision should be treated as a matter or urgency. Decisions exempted for Call-In must be reported to the next available meeting of Council together with the reasons for urgency.
- 3.9 Finally, it should be noted that the urgency rules may frequently interact. For example if it is impractical to defer the taking of a key decision not on the Forward Plan, logically, it should also be excluded from Call-in.
- 4.0 **Issues Raised by the Panel concerning Urgent Decision taken by individual Cabinet Portfolio Holders**
- 4.1 In the light of the constitutional rules explained above I will provide a brief commentary on the particular issues that Council asked the Overview & Scrutiny Panel to consider.

What consultation, if any, should take place?

- 4.2 It is clear that consultation is already a central requirement of the urgency rules, necessarily with the Cabinet Leader or relevant Portfolio-holder and then with the Chairman of the Overview & Scrutiny Panel or the Chairman of the Council (or possibly both if more than one urgency rule is in play). In the case of the purchase of Hotel Leslie, the complaint was made at full Council that the ward member should have been consulted as part of the decision making process and the Panel may or may not support that view in that particular case. However, in the view of the Monitoring Officer care should be taken before prescribing ward member consultation as a pre-requisite to the taking of any urgent decisions as it will not be appropriate in every case. Indeed if the decision had the capacity to affect the well-being or financial position of the ward member

or his or her family, friends and close associates, it would be inappropriate to consult the ward member.

What limit, if any, should be placed on the monetary value of urgent decisions taken by individual Cabinet Members?

- 4.3 In the opinion of the Monitoring Officer it would be inappropriate to impose a monetary limit on the use of the urgency rules by the Leader, relevant Cabinet Portfolio holders or officers if this would result in harm to the Council's interests or the public interest. What matters is that the Panel is satisfied that the tests set by the current rules are being properly applied, that the exempting Chairmen receive a full explanation from the officers justifying any request for an urgency consent, that this explanation is properly recorded on the face of the decision and that the use of the procedure is promptly reported and explained to full Council.

What criteria, if any, should be used when deciding if a decision is urgent;?

- 4.4 In the opinion of the Monitoring Officer, the current criteria for determining whether or not a decision is urgent are relevant and appropriate.

At what stage should the Cabinet Member be advised that an urgent decision may be needed?

- 4.5 The answer must be as soon as it becomes apparent or ought to have become apparent to the officers that the normal decision making processes could not be complied with without causing harm to the Council's interests or the public interest. The concern must be that decisions do not become urgent simply because of poor planning and programming by officers. However, there is no evidence that this is the happening in practice as the fact of a Cabinet Members making individual executive decisions is not of itself evidence that the decision in question was urgent or that an officer had missed the closing date for adding an item business to a Cabinet Agenda,

5.0 Corporate Implications

5.1 Financial and VAT

There are no direct financial implications arising from this report.

5.2 Legal

As set out in the report.

5.3 Corporate

None specific

5.4 Equity and Equalities

None specific

6.0 Recommendation(s)

- 6.1 That the report be received and noted
- 6.2 That members consider whether any further scrutiny is required in order to formulate conclusions and recommendations on this matter.

7.0 Decision Making Process

7.1 Any recommendations by the Panel will be reported to the Constitutional Review Working Party, Cabinet or Council as appropriate.

Contact Officer:	Harvey Patterson, Corporate & Regulatory Services Manager
Reporting to:	Sue McGonigal, Chief Executive

Annex List

None

Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	N/A
Legal	N/A

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ACCESS TO INFORMATION PROCEDURE RULE 16

General Exception

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 17 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;
- (b) the proper officer has informed the Chairman of a relevant Overview and Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;
- (c) the proper officer has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 3 clear days have elapsed since the proper officer complied with (b) and (c).

Where such a decision is taken collectively, it must be taken in public.

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ACCESS TO INFORMATION PROCEDURE RULE 17

Special Urgency

If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of a relevant Overview and Scrutiny Committee, or if the Chairman of each relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice Chairman will suffice.

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BUDGET AND POLICY FRAMEWORK PROCEDURE RULE NO. 4

Urgent Decisions Outside the Budget or Policy Framework

- (a) The Cabinet, a Committee of the Cabinet, an individual member of the Cabinet or officers, area Committees or joint arrangements discharging Executive functions may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:
 - (i) if it is not practical to convene a quorate meeting of the full Council; and
 - (ii) if the Chairman of a relevant Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

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

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

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OVERVIEW AND SCRUTINY PROCEDURE RULE 15 (L)

Call-in and urgency

- (l) The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's 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 therefore not subject to call-in. The Chairman of the Council must agree both that the decision proposed is reasonable in all the circumstances and to it being 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.

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ACCESS TO INFORMATION PROCEDURE RULES 19 & 20

19.0 Record of Decisions

After any meeting of the Cabinet or any of its Committees, whether held in public or private, the proper officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

Decisions by Individual Members of the Cabinet

20.1 Reports intended to be taken into account

Where an individual member of the Cabinet receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least 3 clear days after receipt of that report.

20.2 Provision of copies of reports to Overview and Scrutiny Committees

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chairman of every relevant Overview and Scrutiny Committee or Sub-Committee as soon as reasonably practicable, and make it publicly available at the same time, unless it contains confidential or exempt information.

20.3 Record of individual decision

As soon as reasonably practicable after a Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer to 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 (inspection of documents after meetings) 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.

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OVERVIEW AND SCRUTINY PROCEDURE RULES 15 (b) & (c)

15.0 Call-In

- (b) When a decision is made by the Cabinet, an individual member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, or an area Committee or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made. The Chairman of the relevant Overview and Scrutiny Panel will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.

- (c) That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless the relevant Overview and Scrutiny Panel objects to it and calls it in.

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LEADER'S REPORT

To: **Constitutional Review Working Party – 26 April 2012**

By: **Democratic Services and Scrutiny Manager**

Classification: **Unrestricted**

Ward: **All Wards**

Summary: **To consider whether the time allowed for the Leader's right of reply should be extended**

For Decision

1.0 Introduction and background

1.1 Council Procedure Rule 2.2 (as revised by Council on 13 October 2011) states:

“The Leader of the Council may make an oral report, not exceeding ten minutes, on key issues arising since the last meeting of Council.

“The Leaders of the Opposition and any other Political Group may comment on the Leader's Report. The comments of the Leaders of the Opposition and other Political Groups shall be limited each to five minutes.

“The Leader has a right of reply, limited to two minutes, to any comments made on his/her report.

“Other Members may make comments and ask questions on the Leader's Report, subject to the discretion of the Chairman, and the total time (including time slots as mentioned above) being limited to 30 minutes.

“The Leader of the Council, the Leader of the Opposition and the Leader of any other Political Group may appoint substitutes to speak on their behalf.

“No motions may be moved nor resolutions passed under this item.”

2.0 The Current Position

2.1 At the meeting of Council held on 23 February 2012, the Chairman exercised the discretion to allow other Members to speak, and a significant number of questions were asked of the Leader of the Council. It became apparent that the two minutes allowed for him to respond was insufficient time for the Leader of the Council to answer such a large number of questions.

2.2 Members of the Working Party may wish to consider whether the time allowed for the right of reply by the Leader of the Council should be extended, and, if so, by how much time. Note that the overall time permitted for discussion of the Leader's report would also need to be increased to accommodate this.

- 2.3 It should be noted that the Council now has an additional political Group, meaning that the time taken by these Groups to comment upon the Leader's report will increase by five minutes. The Working Party is therefore invited to consider whether the overall time permitted for this agenda item should be increased by five minutes.
- 2.4 Finally, as the Council is now a "hung Council", the Working Party may wish to consider whether the second paragraph of Council Procedure Rule 2.2 should be amended as follows:

"The Leaders of ~~the Opposition and~~ any other Political Group may comment on the Leader's Report. The comments of the Leaders of the ~~Opposition and~~ other Political Groups shall be limited each to five minutes. The other Group Leaders will comment in an order determined by the number of Councillors within those Political Groups, with the largest Group commenting first, and so on."

and the penultimate paragraph, amended to read:

"The Leader of the Council, ~~the Leader of the Opposition~~ and the Leader of any other Political Group may appoint substitutes to speak on their behalf."

3.0 Corporate Implications

3.1 Financial and VAT

- 3.1.1 There are no financial or VAT implications

3.2 Legal

- 3.2.1 If changes are made to the existing Leader's report arrangements, the Council's constitution will need to be amended.

3.3 Corporate

- 3.3.1 The Council's constitution sets out the basic rules governing the Council's business.

3.4 Equity and Equalities

- 3.4.1 There are no equalities implications.

4.0 Recommendation

- 4.1 That the Working Party considers any changes to Council Procedure Rule 2.2 that it wishes to recommend to the Standards Committee.

5.0 Decision Making Process

- 5.1 If the Working Party is minded to make a recommendation on changing the constitution regarding the Leader's report, the recommendation will then go to the Standards Committee, and any recommendations agreed by the Standards Committee will be reported to Council.

Future Meetings: Standards Committee Council	Date: 9 May 2012 Date: 12 July 2012
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Contact Officer:	Glenn Back, Democratic Services and Scrutiny Manager , Ext 7187
Reporting to:	Harvey Patterson, Corporate and Regulatory Services Manager, Ext 7005

Annex List

None	
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Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	N/A
Legal	Harvey Patterson, Corporate and Regulatory Services Manager. Ext 7005
Communications	Hannah Thorpe, Corporate Communications officer, Ext 7120

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THANET DISTRICT COUNCIL DECLARATION OF INTEREST FORM

Do I have a personal interest?

You have a **personal interest** in any business of your authority where it relates to or is likely to affect:

- a) An interest you must **register**.
- b) An interest that is not on your register, but where the well-being or financial position or you, members of your family (spouse; partner; parents; in laws; step/children; nieces and nephews), or people with whom you have a close association (friends; colleagues; business associates and social contacts that can be friendly and unfriendly) is likely to be affected by the business of your authority more than it would affect the majority of:
 - Inhabitants of the ward or electoral division affected by the decision (in the case of the authorities with electoral divisions or wards.)
 - Inhabitants of the authority's area (in all other cases)

These two categories of personal interests are explained in this section. If you declare a personal interest you can remain in the meeting, speak and vote on the matter, unless your personal interest is also a prejudicial interest.

Effect of having a personal interest in a matter

You must declare that you have a personal interest, **and the nature of that interest**, before the matter is discussed or as soon as it becomes apparent to you except in limited circumstances. Even if your interest is on the register of interests, you must declare it in the meetings where matters relating to that interest are discussed, unless an exemption applies.

When an exemption may be applied

An exemption applies where your interest arises solely from your Membership of, or position of control or management on:

1. Any other body to which you were appointed or nominated by the authority.
2. Any other body exercising functions of a public nature (e.g. another local authority)

Is my personal interest also a prejudicial interest?

Your personal interest will also be a **prejudicial interest** in a matter if all of the following conditions are met:

- a) The matter does not fall within one of the **exempt categories** of decisions
- b) The matter affects **your financial interests** or relates to a **licensing or regulatory matter**.
- c) A member of public, who knows the relevant facts, would **reasonably think your personal interest is so significant** that it is likely to prejudice your judgement of the public interest.

What action do I take if I have a prejudicial interest?

- a) If you have a **prejudicial interest** in a matter being discussed at a meeting, you must declare that you have a prejudicial interest as the nature of that interest becomes apparent to you.
- b) You should then leave the room, **unless members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If that is case, you can also attend the meeting for that purpose.
- c) However, you must immediately leave the room once you have finished or when the meeting decides that you have finished (if that is earlier). You cannot remain in the public gallery to observe the vote on the matter.

d) In addition you must not seek to **improperly influence** a decision in which you have a prejudicial interest.

This rule is similar to your general obligation not to use your position as a Member improperly to your or someone else's advantage or disadvantage.

What if I am unsure?

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Democratic Services Manager well in advance of the meeting.

DECLARATION OF PERSONAL AND, PERSONAL AND PREJUDICIAL INTERESTS

MEETING

DATE..... **AGENDA ITEM**

IS YOUR INTEREST:

PERSONAL

PERSONAL AND PREJUDICIAL

NATURE OF INTEREST:

.....
.....
.....

NAME (PRINT):

SIGNATURE:

Please detach and hand this form to the Committee Clerk when you are asked to declare any interests.

