



Date: 15 February 2022
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CONSTITUTIONAL REVIEW WORKING PARTY

23 FEBRUARY 2022

A meeting of the Constitutional Review Working Party will be held at **2.00 pm on Wednesday, 23 February 2022** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Independent Members: Peter Tucker (Chair);

Councillors: Ashbee, Hopkinson, Rusiecki and Hart

A G E N D A

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST** (Pages 3 - 4)

To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest advice attached to this Agenda. If a Member declares an interest, they should complete the [Declaration of Interest Form](#)

3. **MINUTES OF PREVIOUS MEETING** (Pages 5 - 6)

To approve the Minutes of the Constitutional Review Working Party meeting held on 11 November 2021, copy attached.

4. **REVISION TO DELEGATIONS** (Pages 7 - 8)

5. **AMENDMENTS TO THE LEADERS REPORT** (Pages 9 - 14)

6. **MEMBERS' QUESTIONS**

Report to follow.

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Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or
Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992



If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £25 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

What if I am unsure?

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

If you need to declare an interest then please complete the declaration of [interest form](#).

CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 11 November 2021 at 7.00 pm in Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Present: Mr Peter Tucker (Chair); Mr Lee Wellbrook, Councillors Hopkinson, Rusiecki and Hart.

1. APOLOGIES FOR ABSENCE

Apologies were received from Cllr Ashbee.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF PREVIOUS MEETING

Mr Tucker proposed, Cllr Hart seconded and the minutes of the meeting held on 15 June 2021 were APPROVED and signed as a correct record.

4. PLANNING PROTOCOL CHANGES

Iain Livingstone presented the report, explaining that:

- The recommendation was to make a change to the constitution affecting when certain applications would be put before the Planning Committee.
- This change was set out in order to resolve an ambiguity of wording that existed in the Constitution.
- This proposal followed a judicial review decision that resulted in a planning permission being quashed, due to what the Judge believed was the possible perception of bias in the particular wording.
- Estelle Culligan, Director of Law and Democracy, confirmed that the proposed new wording would not apply to land historically owned by TDC, only land owned at the point of the application.

During discussion the following points were made:

- The proposed change would include ownership of buildings as well as land.
- The proposed change would cover anything that requires consent under the Town and Country Planning Act 1990.

Cllr Hopkinson proposed, Cllr Rusiecki seconded and it was AGREED that members would make the following recommendation to the Standards Committee:

That members agree the specific amendment to the planning protocol to require all planning applications and applications under planning legislation to be reported to the Council's Planning Committee if Thanet District Council own the land to which the application relates, or if a company which the Council is a party to owns the land to which the application relates.

5. AMENDMENTS TO MANDATORY TRAINING

Estelle Culligan presented the report.

There were no questions or comments from members.

Cllr Hart proposed, Mr Lee Wellbrook seconded and it was AGREED that members would make the following recommendations to the Standards Committee:

To agree the amendments to Article 8, as proposed in the report.

Meeting concluded : 7.12 pm

REVISION TO DELEGATIONS

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| Constitutional Review Working Party | 23 February 2022 |
| Report Author | Director of Democracy and Law |
| Status | For recommendation |
| Classification: | Unrestricted |
| Ward: | All |

Executive Summary:

In line with the practice followed in other authorities, the Constitutional Review Working Party (CRWP) is being asked to recommend amending the scheme of delegations to authorise the Chief Executive to declare vacancies in office under Section 86 of the Local Government Act 1972.

This will avoid the artificial situation where Full Council is asked to consider and debate an administrative provision whereas the law requires that the matter be agreed.

Recommendation(s):

That CRWP recommends that Council amends its scheme of delegations by delegating to the Chief Executive (and in her absence the Director of Democracy and Law) the authority to declare vacancies in office under section 86 of the Local Government Act 1972.

Corporate Implications

Financial and Value for Money

There are no additional costs resulting from this recommendation.

Legal

A continued failure to declare a vacancy may lead to the publication of a report under section 5 of the Local Government and Housing Act 1989 and potential judicial review proceedings.

Corporate

The failure to declare vacancies forthwith has the effect of disenfranchising the electorate when elections are halted or delayed.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the

decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no equality implications in respect of this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- *Communities*

1.0 Introduction and Background

1.1 The law requires the Council to declare a vacancy in office forthwith, where a councillor ceases to be qualified as a member, becomes disqualified for being a member or ceases to be a member by reason of failure to attend meetings. This responsibility is currently reserved to Council in the scheme of delegations.

1.2 Seeking a Council decision to carry out this statutory requirement where there is no discretion can cause confusion and a delay in declaring a vacancy and can be seen as inefficient for the Council and unfair on the Councillor involved.

2.0 The Proposed Way Forward

2.1 In order to avoid any potential confusion, it is recommended that the responsibility for declaring vacancies in office under section 86 of the Local Government Act 1972 is delegated to the Chief Executive and in her absence, the Director of Democracy and Law. This then avoids the Council going through the fallacy of a debate when the law requires the Council to make an administrative decision with no choice or discretion.

Contact Officer: Estelle Culligan, Director of Law & Democracy

Reporting to: Madeline Homer, Chief Executive

Corporate Consultation

Finance: Matthew Sanham Financial Services Manager

Legal: Estelle Culligan, Director of Law & Democracy

AMENDMENTS TO THE LEADERS REPORT

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|--------------------------------------------|-------------------------------------|
| Constitutional Review Working Party | Wednesday 23 February 2022 |
| Report Author | Director of Law and Democracy |
| Portfolio Holder | Cllr Ashbee, Leader of the Council. |
| Status | For Recommendation |

Executive Summary:

The Leader of the Council has asked Democratic Services to propose a number of amendments to the Council Procedure Rules regarding elements of the Leader's Report.

It is proposed that opposition group leaders should submit questions on the Leaders Report to the Leader in advance of the meeting in order for the Leader to be able to provide more comprehensive answers. To accommodate this process, minor alterations would be required to the timescales of production and distribution of the Leader's report.

Recommendation(s):

That CRWP recommends that Council make the amendments to Council Procedure Rule 2.4 regarding the Leader's Report as outlined in Annex 1 to the report.

Corporate Implications

Financial and Value for Money

There are no additional costs resulting from this recommendation.

Legal

Any procedural changes such as this to the Constitution must be approved by CRWP, before being considered by Standards Committee and finally approved by Council.

Corporate

Commenting and asking questions on the Leader's speech is an important part of the Council's democratic process and an important way for group leaders to hold the Executive to account.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity

between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and people who do not share it
- To foster good relations between people who share a protected characteristic and people who do not share it.

There are no equality implications in respect of this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- Communities

1.0 Introduction and Background

- 1.1 The Leader of the Council has asked Democratic Services to propose a number of amendments to the Council Procedure Rules regarding elements of the Leaders Report.
- 1.2 It is proposed that opposition group leaders should submit questions on the Leaders Report to the Leader in advance of the meeting in order for the Leader to be able to provide more comprehensive answers at meetings of Council.
- 1.3 To accommodate this process, minor alterations to the timescales of the production and distribution of the Leader's report would be necessary to manage the process and make it fair.

2.0 Proposed changes to the Constitution.

- 2.1 In order to accommodate the request from the Leader it is proposed to make the following changes to the Leader's report process:
 1. The Leader of the Council will make available in writing the content of their oral report to opposition group leaders no later than one week prior to the meeting.
 2. The Leader of any other political group must then provide the Leader and Chairman with any questions that they intend to ask as part of their response to the Leader's speech by close of business on the Tuesday prior to the meeting.
 3. Any questions on the Leader's speech that were not submitted in advance by political group leaders would be ruled as inadmissible by the Chairman.

- 2.2 These amendments are reflected in a revised version of paragraph 2.4 of the Council Procedure Rules attached at Annex 1 of the report.

3.0 Next Steps

- 3.1 If agreed by the Constitutional Review Working Party, the amendments would be recommended to Standards Committee for consideration and onward submission to Full Council for final approval.
- 3.2 If agreed by Council the amendments will be added to the Council's Constitution and would become effective from the date of Council's decision.

Contact Officer: Estelle Culligan, Director Law and Democracy
Reporting to: Madeline Homer, Chief Executive

Annex List

Annex 1 Proposed amendments to paragraph 2.4 of the Council Procedure Rules

Background Papers

None

Corporate Consultation

Finance: Matthew Sanham Financial Services Manager

Legal: N/A

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2.4 Leaders Report

The Leader of the Council will make available in writing the content of their oral report to opposition group leaders no later ~~than the Saturday before the meeting~~ **than one week prior to the meeting**. The speech will not exceed ten minutes on key issues arising since the last meeting of Council.

The Leaders of any other political group may comment on the Leader's report. The comments of the Leaders of the 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. **The Leader of any other political group must then provide the Leader and Chairman with any questions that they intend to ask as part of their response to the Leader's speech by close of business on the Tuesday prior to the meeting.**

The Leader has a right of reply to each Group Leader limited to two minutes, in hierarchical order, to any comments made on their report.

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.

Any questions that were not submitted in advance by political group leaders would be ruled as inadmissible by the Chairman if they were raised as part of their leaders speech.

No motions may be moved nor resolutions passed under this item

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