



Date: **19 February 2024**
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CONSTITUTIONAL REVIEW WORKING PARTY

27 FEBRUARY 2024

A meeting of the Constitutional Review Working Party will be held at **7.00 pm on Tuesday, 27 February 2024** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Independent Members: Peter Tucker (Chair);

Councillors: Austin, Britcher, Everitt, W Scobie and Scott

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 - 8)
To approve the Minutes of the Constitutional Review Working Party meeting held on 9 November 2023, copy attached.
4. **CONTRACT PROCEDURE RULES**
Report to follow.
5. **COUNCILLOR/OFFICER PROTOCOL**
Report to follow.
6. **REVISED CONSTITUTIONAL CHANGE PROCESS** (Pages 9 - 12)

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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 9 November 2023 at 7.00 pm in Council Chamber, Cecil Street, Margate, Kent.

Present: Mr Peter Tucker (Chair); Councillors Austin, Britcher, Everitt and W Scobie

In Attendance: Mr Peter Lorenzo (Independent Member of the Standards Committee)

6. APOLOGIES FOR ABSENCE

There were no apologies made at the meeting.

7. DECLARATIONS OF INTEREST

There were no declarations of interest.

8. MINUTES OF PREVIOUS MEETING

The Chair proposed, Councillor Austin seconded and the Working Party agreed that the minutes of the meeting held on 28 February 2023 were a correct record.

9. KEY DECISION DEFINITION

Nick Hughes, Committee Services Manager and Deputy Monitoring Officer introduced the report and made the following comments:

- Officers had reviewed key decision thresholds in response to the recommendations from the Independent Monitoring Officer's report;
- The review took into consideration the need to get Members involved more in strategic decision making;
- The proposed changes included increasing level at which previously agreed purchases of property became new key decisions from £750k to £1 million;
- An example given was that if Cabinet approved a decision for the purchase of property worth £5 million; that would be considered as a key decision. When spending the money, no further decision was required, unless the price of the property was over £1 million;
- It was important to note that at TDC officers cannot take key decisions as the Council has decided that only Cabinet and individual Cabinet Members can make such decisions;
- Officers were proposing that the new key decision thresholds be recommended for approval by Full Council.

Members made comments and asked questions as follows:

- Benchmarking against other district councils in Kent showed that TDC was in the right place with regards to proposals being put forward as the key decision definitions and thresholds were largely similar;
- What materiality was considered in financial terms in relation to triviality?
- Who determined whether a decision was key or non-key?

Nick Hughes and Chris Blundell, Director of Corporate Resources and S151 Officer responded to Member questions as follows:

- The decision maker determined whether the decision they wanted to make was key or not using the thresholds as defined in the Council Constitution. They make such a determination with help from the service director or head of service;
- Financial materiality was £2.7 million and financial triviality was £135k;
- If the decision maker was unsure of the category of the decision, they would need to refer the matter to the Monitoring Officer for further help.

Councillor Everitt proposed, Councillor Will Scobie seconded and the Constitutional Review Working Party members unanimously agreed to recommend the revised definition of a key decision as per paragraph 2.3 of the working party report.

10. **REVIEW OF THE COUNCIL'S POLICY FRAMEWORK**

Nick Hughes introduced the report and made the following comments:

- The Independent Monitoring Officer's report also recommended a review of the Council's policy framework;
- This was to ensure that Members were involved in strategic decision making;
- Policy framework was a list of plans and policies a Council deemed so important that only Full Council could make decisions on those plans and policies;
- The list had been refreshed to remove some items like the Local Transport Plan as it was a KCC function;
- These proposals were reviewed by Cabinet. The Housing Investment Programme was removed and replaced by the Housing Assistance Policy, Housing, Homelessness & Rough Sleeping Strategy and HRA Business Plan;
- This was not an exhaustive list of policies and plans that went to Full Council;
- Some plans and policies were by law required to be issued and only Full Council was permitted to approve them.

Members made comments and asked questions as follows:

- One Member said that the Council should consider including climate change policy on the policy framework list;
- Another Member said that this was better dealt with by Cabinet;
- One Member asked why the Food Policy was removed from the list.

Nick Hughes and Chris Blundell responded to Member questions as follows:

- Adding the Climate Change Policy to the Policy Framework would effectively change the service area from being Cabinet function to a Council function;
- The Food Policy was ordinarily considered in a private session and was therefore better dealt with by the Overview and Scrutiny Panel and Cabinet rather than by Full Council.

Councillor Everitt proposed, Councillor Austin seconded and the Constitutional Review Working Party members unanimously agreed to recommend the proposed changes as they are to the Standards Committee.

11. **AMENDMENTS COUNCIL PROCEDURE RULES REGARDING FREQUENCY OF QUESTIONS**

Nick Hughes introduced the report and made the following comments:

- The Council constitution required reviewing and updating regarding the some of the conditions for asking a question at Full Council;

- If a Councillor asked a question, that same question cannot be asked by any other councillor within six months. However, a member of the public could still ask that same question within that same six months' period;
- The wording should be that if a question is asked by either a member of the public or a Councillor, that question cannot be asked within a period of six months of that question being asked;
- There was also a need to review the definition of what a validly received question meant and what is meant to happen to a similar question that was subsequently also validly submitted for the same meeting. Currently both questions would be accepted and could be asked at Full Council;
- This needed reviewing so that once a question was validly submitted and received, then no similar question could be validly submitted and received.

Members made comments and asked questions as follows:

- What dialogue should there be for appealing a decision to disallow a question for being similar to the one asked in the last six months?
- Did Officers communicate to the councillor whose question would have been rejected for being similar to a previously asked question?
- How were these changes being proposed brought to the Constitutional Review Working Party?
- One Member said that they had brought some observations regarding constitutional provisions but these had not been progressed further to the point of being brought before the Working Party for consideration;
- The Petitions Scheme did not allow for residents to bring issues to the Council more expeditiously;
- The Member further asked how the above issues could be brought to the Working Party.

Nick Hughes responded to Member questions as follows:

- Democratic Services did the basic check to ensure the question was in compliance to set rules before forwarding it to the Monitoring Officer for final sign-off;
- If even during basic checks Democratic Services were not too sure, they would forward the question to the Monitoring Officer and if still unsure the question would then be referred to the CEx;
- If inclined to reject the question the CEx would then ask the Council Chair for a second opinion;
- Democratic Services did not give the wording of the previous question to the councillor whose question would have been rejected;
- Democratic Services usually faced the challenge of receiving Member questions right towards the deadline;
- Democratic Services picked up issues in the constitution that require reviewing;
- Members could also suggest issues for review and although there was no written down protocol for submitting such issues, Members could flag up these issues to the Monitoring Officer.

Councillor Everitt proposed, Councillor Will Scobie seconded and the Constitutional Review Working Party members unanimously agreed to forward recommendations to the Standards Committee as per the recommendations section of the working party report which are detailed below:

1. To amend Part 4, Rules of Procedure, paragraph 13.5 of the Council's constitution to read:

“The Chief Executive will reject a question if it:

is substantially the same as a question which has been **validly received** or put at a meeting of the Council in the past six months **by either a Councillor or a member of the public;**

2. To amend Part 4, Rules of Procedure, paragraph 14.6 of the Council's constitution to read:

"A question shall not be:

substantially the same as a question which has been **validly received or** put at a meeting of the Council in the past six months **by either a Councillor or a member of the public."**

Meeting concluded: 7.30 pm

REVISED CONSTITUTIONAL CHANGE PROCESS

Constitutional Review Working Party	27 February 2023
Report Author	Committee Service Manager
Portfolio Holder	Councillor Yates, Portfolio Holder for Corporate Services
Status	For Recommendation
Classification:	Unrestricted

Executive Summary:

This report asks the Constitutional Review Working Party to consider recommending that the Council's current constitutional change process is changed from a three stage process (CRWP>Standards>Council) to a two stage process (CRWP>Council)

Recommendation(s):

Members are asked to make a recommendation to the Standards Committee amending the Council's constitutional change process from a three stage process (CRWP>Standards>Council) to a two stage process (CRWP>Council)

Corporate Implications

Financial and Value for Money

There are no financial implications to the report.

Legal

The Local Government Act 2000 requires the Council to periodically review and update its written Constitution.

Risk Management

There are no risks associated with this report.

Corporate

It is important for the Council to regularly review elements of its constitution to ensure that it remains up to date.

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.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- To work efficiently for you

1.0 Introduction and Background

1.1 Whilst not detailed within the Council's constitution, the process of amending the Council's constitution has been driven by custom and practise for many years. The process being:

1. Proposed changes being subject to consideration via a report at the Constitutional Review Working Party and the CRWP making recommendations to the Standards Committee.
2. The Standards Committee then considers any recommendations from CRWP via a report and then in turn makes recommendations to Full Council.
3. Full Council considers the recommendations from the Standards Committee and then if they are approved they are then implemented from the date of the meeting.

1.2 The report seeks to amend this somewhat lengthy three stage process to a two stage process.

2.0 The Current Situation

2.1 The current process is outlined above in paragraph 1.1. The current process is lengthy and on average takes a great deal of planning to factor in CRWP meetings around Standards Meetings that then lead into Full Council meetings. This can often lead to lead in times for reports that can be as much as two months. There are a large number of changes to the Council's constitution that are due to be considered

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over the coming year as a result of the review asked for by the Independent Monitoring Officer and a refined process will aid us moving forward.

- 2.2 When compared with other Kent Council's only Swale and partially Tunbridge Wells (major re-writes only) have a three stage process like TDC's. The vast majority of them only have a two stage process - that being consideration of changes at some form of constitutional change group and then referral on to Full Council.

Council	Number of stages
Thanet	3
Dover	2
Maidstone	2
Swale	3
Ashford	2
Canterbury	TBC
Dartford	TBC
Gravesham	1/2
Sevenoaks	2
F&H DC	2
Tonbridge	2
Tunbridge Wells	2/3

- 2.3 The proposal put before Councillors is that potential constitutional changes are considered by the Constitutional Review Working Party which would then make recommendations straight to Full Council, who would approve them.
- 2.4 This change would allow for a streamlined process allowing Democratic Services to organise CRWP meetings nearer to Full Council meetings, thereby freeing up officer and Member time by not having additional meetings or overly lengthy lead in times.
- 2.5 It is also important to remember that the CRWP is a fully constituted Committee of Council, in the same way as the Standards Committee, or even Planning or Licensing are. It holds the same weight as the Standards Committee and should not be seen as a sub-group of the Standards Committee or as a lesser Committee.

3.0 Options

- 3.1 Members could agree one of the following options:

- a) The proposal put before Councillors is that potential constitutional changes are considered only by the Constitutional Review Working Party which would then make recommendations straight to Full Council, who would approve them.
- b) To keep the current constitutional change process as it is.

4.0 Next Steps

- 4.1 Once a proposal has been agreed by the Constitutional Review Working Party, it would be recommended to Standards for consideration and onward submission to Full Council.
- 4.2 If agreed by Council the changes to the constitutional change process would become effective from the date of the Full Council decision.

Contact Officer: Nick Hughes, Committee Services Manager
Reporting to: Ingrid Brown, Head of Legal and Democracy & Monitoring Officer

Annex List

None

Background Papers

None

Corporate Consultation

Finance: Matthew Sanham (Head of Finance and Procurement)

Legal: Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)