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## OPTIONS FOR THE FUTURE OF OVERVIEW AND SCRUTINY IN THANET

To: **Constitutional Review Working Party – 7 March 2013**

Main Portfolio Area: **Democratic Services**

By: **Democratic Services and Scrutiny Manager**

Classification: **Unrestricted**

Ward: **N/A**

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**Summary:** **To consider options for the future of overview and scrutiny in Thanet and the recommendations submitted by the Overview and Scrutiny Panel**

### For Decision

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#### **1.0 Introduction and Background**

1.1 A review of the structure and operational role of overview and scrutiny within Thanet has been undertaken over the last year or so. This culminated in a report on the Overview and Scrutiny Panel's preferred option being considered at an extraordinary Overview and Scrutiny Panel meeting on 12 February 2013.

#### **2.0 The Current Situation**

2.1 The paper presented to the Overview and Scrutiny Panel on 12 February 2013 outlined four major options:

- (a) Not to change the structure of overview and scrutiny
- (b) To establish three standing sub-committees of the Overview and Scrutiny Panel but to cease separate work involving task and finish sub-groups
- (c) To establish three standing sub-committees of the Overview and Scrutiny Panel and to continue separate work involving task and finish sub-groups
- (d) To establish three scrutiny committees to replace the Overview and Scrutiny Panel and to continue separate work involving task and finish sub-groups

2.2 The report contained a good deal of detailed information relating to the implementation of these options, and for convenience, that report is attached at Annex 1, italicised throughout to differentiate it from this main report.

2.3 The Overview and Scrutiny Panel has made the following recommendations to the Constitutional Review Working Party:

- (a) To recommend to the Constitutional Review Working Party (then Standards Committee and Council) that the Overview & Scrutiny Panel be abolished and replaced by three Overview & Scrutiny Committees as is reflected in the officer report;
- (b) To recommend that Council approach the East Kent Joint Independent Remuneration Panel for advice regarding the amendment of the Special Responsibility Allowance Scheme to reflect the new scrutiny arrangements.

- 2.4 Officers have contacted Dover District Council, which manages the East Kent Joint Independent Remuneration Panel, seeking advice on the best way of discussing with the Panel options relating to the level of Special Responsibility Allowances under the proposed arrangements.
- 2.5 Annex 2 includes the current version of the Overview and Scrutiny Procedure Rules within the Council's constitution. This report attempts to address the key issues involved in any update of these (and other) constitutional rules to reflect the proposed model for scrutiny, but the procedure rules are attached for convenience of reference.
- 2.6 It is suggested that following the Working Party agreeing recommendations on the way forward, that a draft updated set of Overview and Scrutiny Procedure Rules be submitted to the Standards Committee when it considers the matter on 27 March 2013.
- 2.7 It is recognised that some updates are required to the reports presented to the overview and Scrutiny Panel; for example, to reflect recent changes in Cabinet portfolios.

### **3.0 Matters for Consideration by the Constitutional Review Working Party**

3.1 It is clearly open to the Working Party to take its own view on the various options that were presented to the Overview and Scrutiny Panel and to develop a set of proposals that may differ to those recommended by the Panel.

3.2 However, if the Working Party were to endorse those recommendations, it would be necessary to consider a number of detailed operational matters before any onward recommendations could be made to the Standards Committee. These are outlined below.

#### 3.3 Terms of reference of the new Scrutiny Committees

3.3.1 One item to consider is the exact grouping of functions covered by the terms of reference of the proposed new Scrutiny Committees. The Overview and Scrutiny Panel endorsed the model set out in the reports submitted to them (and attached at Annex 1), including the frequency of meetings aiming to be in advance of Cabinet meetings, in order that scrutiny views can be reported to Cabinet. However, it may be worth discussing these in more detail.

3.3.2 In particular, it is suggested that each set of terms of reference might be amended slightly so they can replace Article 6 in the Constitution, as set out in Annex 3 to this report, which also reflects the Overview and Scrutiny Panel's preference that three new Committees replace the main Panel.

3.3.3 Another point that may be worth considering at this stage is how the "lead" Scrutiny Committee is determined if an issue emerges that seems to overlap Committee responsibilities. It may suffice to suggest that this can be resolved through discussion with the Chairmen of the relevant Scrutiny Committees. That approach might be more effective than suggesting that joint-meetings take place, because officers have some experience of joint Scrutiny Committees being difficult to manage effectively in other Councils.

3.3.4 The Working Party needs to consider how many Councillors would serve on each of these new Scrutiny Committees. Within the Council's Constitution, quorum for the Overview and Scrutiny Panel is 50% of its membership (Council Procedure Rule 10.0), and the quorum of Working Parties (task-finish groups) is 50% or a minimum of 2, whichever is higher (Overview and Scrutiny Procedure Rule 5.0). The Working Party

might wish to recommend arrangements for new Committees and any sub-committees they establish.

- 3.3.5 In suggesting a size for the new Scrutiny Committees, a balance is needed. There needs to be sufficient membership to allow the Committees to establish task and finish sub-groups that can involve several members of the Committee. On the other hand, the size should not be so large that it becomes difficult to appoint Councillors to the three Committees.

### 3.4 Policy consultation

- 3.4.1 It is presumed in the model preferred by the Overview and Scrutiny Panel that all forthcoming executive decisions of the Cabinet are routed via a scheduled meeting of the relevant Scrutiny Committee prior to the Cabinet meeting. Indeed, were that not done, it is questionable whether the new Scrutiny Committees could develop a meaningful work programme capable of being resourced. To put this the other way around, resourcing the work of these Scrutiny Committees becomes somewhat easier if they are to consider reports that officers are already drafting for subsequent submission to Cabinet (and possibly to Council).

- 3.4.2 Although not strictly necessary, the Working Party may wish to consider whether anything should be added to the Cabinet Procedure Rules within the Council's constitution, to reflect this anticipated relationship between the Cabinet and the Scrutiny Committees.

### 3.5 Task-finish groups

- 3.5.1 The Overview and Scrutiny Panel felt that the new Scrutiny Committees should continue to have the ability to establish time limited task and finish sub-groups to review policy matters that are not necessarily the subject of forthcoming executive decisions.

- 3.5.2 If there is considered to be merit in each of the Scrutiny Committees establishing these in similar ways, the Working Party may wish to suggest the method for doing so, which could eventually be built into the Overview and Scrutiny Procedure Rules within the Constitution.

- 3.5.3 Suggestions could be made, for example, regarding the range of sizes of such sub-groups, whether political proportionality should apply to them, whether members must be drawn from the relevant Scrutiny Committee, or from any Scrutiny Committee or any Councillor (but not members of the executive, of course).

### 3.6 Call-in

- 3.6.1 Whereas the report presented to the Overview and Scrutiny Panel suggested a number of options for handling call-ins, if the main Panel is not to be established in 2013/14, it is suggested that each Scrutiny Committee would need to deal with call-ins relating to its own terms of reference.

- 3.6.2 At present, an executive decision taken but not yet implemented can be called in by the Chairman of the Overview and Scrutiny Panel or any five Members of the Panel, so long as the five members are not from the same political Group.

- 3.6.3 To some degree, the call-in requirements of the new Scrutiny Committees may need to reflect their size. By way of example, the current Overview and Scrutiny Panel has 16 Councillors serving on it, so the number required for call-in is around one third of the membership. A similar proportion might be applied to the new Scrutiny Committees.

- 3.6.4 But the Working Party needs to consider whether, under the three-committee model, each Chairman should have the right to call-in a forthcoming executive decision relating to the

terms of reference of their individual Committee. If three individual Councillors have a right to call in executive decisions, there is a risk that if this right were to be exercised frequently, there could be a sudden increase in the volume of call-ins under the new arrangements.

- 3.6.5 The Working Party may wish to also consider whether any combination of Members exercising the right of call-in needs to be from more than one political Group. This is a well-established principle within Thanet's constitution, but is certainly not a universal requirement within other Councils.

### 3.7 Petitions

- 3.7.1 Under the current petitions scheme, referral to the Overview and Scrutiny Panel can take place in one of two ways:

(a) If a petition has over 650 signatories but less than 1,000, or has over 1,000 but requests that an officer gives evidence at an Overview and Scrutiny Panel meeting, it must be submitted to Council at least 25 working days in advance of a meeting of the Overview and Scrutiny Panel in order for it to be considered at that meeting

(b) If a petitioner feels that the Council has not dealt with a petition properly, the petition organiser has a right to request that the Overview and Scrutiny Panel reviews the steps that the Council has taken in response to the petition.

- 3.7.2 If the model proposed by the Overview and Scrutiny Panel were to be adopted, there would be no single committee to deal with the above. One option is to suggest that any such referrals above would be submitted to the new Scrutiny Committee with the terms of reference most closely matching the subject matter of the petition.

- 3.7.3 It may be necessary to create procedures to consult relevant Chairmen when the subject matter appears to overlap the terms of reference, to determine which Scrutiny Committee will receive the referral.

- 3.7.4 On the other hand, given such a profound change in the structure of overview and scrutiny, the Working Party may wish to reconsider the current referral procedures as outlined in paragraph 3.7.1 above. Those provisions were based upon the statutory regime introduced in the Local Democracy, Economic Development and Construction Act 2009. However, those statutory arrangements were repealed by the Localism Act 2011. Although the Council agreed in April 2012 to retain the scheme the Council had implemented under those arrangements largely without amendment, it is possible to review referral arrangements to overview and scrutiny in light of the proposed changes in the structure of that function.

### 3.8 Chairmanship and Vice-Chairmanship

- 3.8.1 At present, Council agrees the Chairman of the Overview and Scrutiny Panel according to the following rules (Council Procedure Rule 6.3):

"The Chairman and Vice-Chairman of any [scrutiny] panel shall not both be from the same political group. The ruling group will nominate the Chairman of the Policy Development Panel and the Vice-Chairmen of two other Panels of their choice and the largest opposition group should nominate the Chairmen of the Executive Scrutiny Panel and the Finance, Best Value & Performance Review Panel and the Vice-Chairman of the remaining Panel. In the event of two or more opposition groups having the same number of members the matter shall be decided by a majority of the opposition Members in Council and in the event of default by the Council itself."

- 3.8.2 This provision is clearly out of date in that it refers to previous Scrutiny Committee names. However, it could be adapted to suit the proposed scrutiny arrangements quite easily and with minimal change, as follows:

“The Chairman and Vice-Chairman of any Scrutiny Committee [scrutiny] panel shall not both be from the same political gGroup. The ruling Ggroup forming the Council's administration will nominate the Chairman of the xxxxx Scrutiny Committee Policy Development Panel and the Vice-Chairmen of the two other Scrutiny Committees Panels of their choice and the largest political opposition gGroup not forming the Council's administration will should nominate the Chairmen of the two other Scrutiny Committees Executive Scrutiny Panel and the Finance, Best Value & Performance Review Panel and the Vice-Chairman of the xxxxx Scrutiny Committee remaining Panel. In the event of two or more opposition gGroups having the same number of members, the matter shall be decided by a majority of the opposition Members in Council, and in the event of that not yielding a decision, default by the whole Council-itself.”

3.8.3 Clearly, however, in updating this provision, it would be possible to make further changes to it. Thus the Working Party may wish to make further recommendations to the Standards Committee.

### 3.9 Special Responsibility Allowances (SRAs)

3.9.1 As stated above, and in response to the recommendations of the Overview and Scrutiny Panel, officers are seeking advice from the East Kent Joint Independent Remuneration Panel in order to establish how to review the implications of these proposals.

3.9.2 At present the following SRAs apply:

- (a) Chairman of the Overview and Scrutiny Panel: £7,990 (equivalent to Cabinet portfolio holder)
- (b) Vice-Chairman of the Overview and Scrutiny Panel: £3,216 (equivalent to the Chairman of Licensing Committee)
- (c) No SRAs apply to the task-finish sub-groups established by the Panel.

3.9.3 The above yields a total SRA relating to overview and scrutiny of £11,206. If the objective were to establish new arrangements with a roughly equivalent total cost, the following could be adopted:

- (a) Chairman of an Overview and Scrutiny Committee: £3,216 (equivalent to the Chairman of Licensing Committee) x 3
- (b) Vice-Chairman of an Overview and Scrutiny Panel: £805 (equivalent to the Vice-Chairman of Licensing Committee) x 3
- (c) No SRAs apply to the task-finish sub-groups established by the Panel.

3.9.4 The above would yield a total SRA relating to overview and scrutiny of £12,063, an increase of £857, which would need to be budgeted for. The Working Party may wish to recommend alternative proposals to the Standards Committee.

### 3.10 Annual report of Overview and Scrutiny

3.10.1 Article 6.04 of the Constitution currently states that:

“The Overview and Scrutiny Committee may report annually to full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.”

3.10.2 The Working Party may wish to consider whether that provision should be replaced with the following, or an alternative:

“The Overview and Scrutiny Committees may report annually to full Council on its-their workings and make recommendations for future work programmes and amended working

methods if appropriate. [Such a report is to be agreed between the Chairmen of the Overview and Scrutiny Committees and may be presented to Council by the Chairman of the xxxx Scrutiny Committee.](#)”

### 3.11 Councillor Call for Action

3.11.1 These provisions within the Constitution outline the circumstances under which any Member of the Council can refer any local government matter, or a crime and disorder matter, to the Overview and Scrutiny Panel.

3.11.2 Being developed within an era when the Council had only one Overview and Scrutiny Panel, the protocol will require minor amendments to reflect the existence of three Scrutiny Committees, should the recommendations from the Panel be approved.

3.11.3 Such amendments will largely be limited to:

- (a) Recognising that any such referral would need to be made to the Scrutiny Committee having terms of reference that relate to the matter being referred, and,
- (b) Identifying the scrutiny Committee that would receive referrals relating to crime and disorder matters (also covered in Annex 3)

### 3.12 Special urgency – access to information

3.12.1 Clauses 17 and 18 of the Access to Information Rules in the Constitution outline the procedure where a forthcoming executive decision ought to have been included in a published Forward Plan and Exempt Cabinet Reports List, but has not been so included and the executive decision must be taken as a matter of urgency.

3.12.2 Clause 17 states that such a decision may only be made where:

- (a) The proper officer has informed the Chairman of the relevant Overview and Scrutiny Committee, or, if there is no such person, each member of the Overview and Scrutiny Committee by notice in writing, of the matter about which the decision is to be made: and,
- (b) The proper officer has made available at Thanet Gateway Plus, Cecil Street, Margate for inspection by the public and published on its website, a copy of the notice given pursuant to the above paragraph; and,
- (c) After five clear working days have elapsed following the day on which the proper notice made available the notice referred to in the above paragraph.

3.12.3 Clause 18 states that where the above rules cannot be complied with, the decision can only be made where the decision-maker has obtained agreement from:

- (a) The Chairman of the Overview and Scrutiny Committee; or,
- (b) If there is no such person, or if the Chairman of the Overview and Scrutiny Committee is unable to act, the Chairman of Council; or,
- (c) Where there is no Chairman of either the relevant Overview and Scrutiny Committee or Council, the Vice-Chairman of Council,

...that the making of the decision is urgent and cannot reasonably be deferred.

3.12.4 The above rules would need some degree of amendment to reflect a three Scrutiny Committee model, but it may also be prudent to reflect the fact that there would be three Vice-Chairmen under the proposed model.

3.12.5 Thus the above rules could be changed as follows:

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| (a) The proper officer has informed the Chairman of the relevant Overview and Scrutiny Committee, or, if there is no such person, <a href="#">the Vice-Chairman of the relevant</a> |
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<p><a href="#">Overview and Scrutiny Committee, or if there is no such person</a>, each member of the <a href="#">relevant</a> Overview and Scrutiny Committee by notice in writing, of the matter about which the decision is to be made: and,</p> <p>(b) The proper officer has made available at Thanet Gateway Plus, Cecil Street, Margate for inspection by the public and published on its website, a copy of the notice given pursuant to the above paragraph; and,</p> <p>(c) After five clear working days have elapsed following the day on which the proper notice made available the notice referred to in the above paragraph.</p>
<p>Where the above cannot be complied with, the decision can only be made where the decision-maker has obtained agreement from:</p> <p>(a) The Chairman of the <a href="#">relevant</a> Overview and Scrutiny Committee; or,</p> <p><a href="#">(b)</a> If there is no such person, <a href="#">the Vice-Chairman of the relevant Overview and Scrutiny Committee</a>,</p> <p><del>(b)(c)</del> or if the Chairman <a href="#">and Vice-Chairman</a> of the <a href="#">relevant</a> Overview and Scrutiny Committee <del>is</del>are unable to act, the Chairman of Council; or,</p> <p><del>(c)(d)</del> Where there is no Chairman <a href="#">or Vice-Chairman</a> of <del>either</del> the relevant Overview and Scrutiny Committee <a href="#">and no Chairman of</a> <del>or</del> Council, the Vice-Chairman of Council,</p> <p>...that the making of the decision is urgent and cannot reasonably be deferred.</p>

3.12.6 In the above cases, “relevant” is taken to mean the Committee with the terms of reference most closely matching the subject matter of the proposed decision.

3.12.7 The Working Party may wish to make alternative proposals.

#### **4.0 Corporate Implications**

##### **4.1 Financial and VAT**

4.1.1 There are potentially three broad sets of financial implications that would arise from the implementation of these proposals.

4.1.2 Firstly, there would be implications for the Democratic Services Team in supporting the new arrangements. The report to the Overview and Scrutiny Panel on 12 February estimated the need for additional resources in Democratic Services to support the model that was recommended by the Panel. It is suggested that if the model outlined in this report were adopted, an extra 0.5 FTE would be required. The costs of other options are outlined within the report to that meeting that is included in Annex 1.

4.1.3 Second, there could be resource implications generated by the work undertaken by the new Scrutiny Committees; that is to say, servicing the policy consultation reports presented to them and any task-finish sub-groups that continue to be established.

4.1.4 As suggested above, however, these implications will be reduced significantly if the main focus of the new Scrutiny Committees is to consider early version of reports that are already being developed for subsequent reporting to the executive.

4.1.5 On the other hand, if the existence of three Scrutiny Committees leads to an increase in the number of task-finish groups, further resources may be needed to support this, both within and outside of Democratic Services.

4.1.6 The third type of resource implication relates to Members’ Allowances as outlined above. The model set out in paragraph 3.9.3 would require additional budget provision of £857.

4.1.7 There is currently no budget provision to cover the above costs, nor is it possible to identify savings within the Democratic Services budget to cover the cost increases. If this

model were to be recommended to the Standards Committee, the source of funding to cover these costs would need to be identified.

## **4.2 Legal**

- 4.2.1 The council's constitution would need to be amended to reflect new scrutiny arrangements, within Article 6, the Council Procedure Rules, the Overview Procedure Rules, the Petitions Scheme and the Protocol on the Councillor Call for Action.
- 4.2.2 All of the proposals within this report are consistent with local government law relating to overview and scrutiny.

## **4.3 Corporate**

- 4.3.1 It is hoped that reviewing scrutiny arrangements would enhance the effectiveness of the contributions overview and scrutiny make to policy development and in turn will improve the quality of decisions taken by the Council.

## **4.4 Equity and Equalities**

- 4.4.1 None Apparent

## **5.0 Recommendations**

- 5.1 The Working Party's recommendations are requested on the following matters:
  - (a) The preferred constitutional option for the future of overview and scrutiny in Thanet; in other words, whether the recommendation from the Overview and Scrutiny Panel for a three-committee model replacing the main Overview and Scrutiny Panel is endorsed.
  - (b) The terms of reference of the proposed Scrutiny Committees, including the executive functions covered by each (as amended in Annex 3)
  - (c) The method for determining the "lead" Scrutiny Committee when a report or issue appears to overlap committee responsibilities (consultation between the Chairmen)
  - (d) The number of Councillors to sit on each Scrutiny Committee and the quorum for those committees (and the quorum for task-finish sub-groups)
  - (e) Whether any changes to the Cabinet Procedure Rules should be considered, in order to embed pre-decision consultation with the new Scrutiny Committees
  - (f) Whether any overall rules should be established for the size or membership of task-finish sub-groups (or whether that should be at the discretion of each Scrutiny Committee)
  - (g) How call-in will operate, including the number and political composition of Members required to call-in an executive decision and whether the Chairman of each Committee should also have the power of call-in
  - (h) Whether the only change to the Council's petitions scheme should be that a petition is referred to the Scrutiny Committee with the terms of reference most closely matching the subject matter of the petition or procedural complaint, and that Scrutiny Committee Chairmen are consulted where a petition or procedural complaint appears to overlap committee responsibilities. Alternatively, whether any wider changes should be made to the petitions scheme.
  - (i) Whether the Council Procedure Rules should be amended as set out in paragraph 3.8.2 in determining the Chairmen and Vice-Chairmen of the Scrutiny Committees (a minor alteration to the current constitutional provision), or an alternative arrangement should be proposed.
  - (j) Whether the Special Responsibility Allowances set out in paragraph 3.9.3 should be recommended to Council, or alternatives should be proposed.
  - (k) Whether Article 6 of the Constitution should be amended as set out in paragraph 3.10.2 (annual report of overview and scrutiny), to identify which Chairman would present the report to Council.

- (l) Whether it is sufficient to only change the Protocol on the Councillor Call for Action in respect of the matters set out in paragraph 3.11.3 (to reflect the proposed existence of multiple scrutiny committees)
- (m) Whether to support the suggested changes to the Access to Information - Special Urgency procedures outlined in paragraph 3.12.5 (to include reference to the relevant scrutiny committee and the option to refer to a Vice-Chairman of such a committee), or to suggest alternative arrangements.

## 6.0 Decision Making Process

6.1 Any recommendations by the Working Party that would alter the Council's constitution will be considered by the Standards Committee, which will, in turn, make recommendations to Council on 18 April 2013. Any revised arrangements for overview and scrutiny would be adopted at the Annual Meeting of Council on 16 May 2013.

Future meetings that will consider this issue:

Meeting: Standards Committee	Date: 27 March 2013
Meeting: Council	Date: 18 April 2013
Meeting: Council - Annual	Date: 16 May 2013

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

### ***Annex List***

Annex 1	Options report presented to the extraordinary meeting of the Overview and Scrutiny Panel on 12 February 2013.
Annex 2	Overview and Scrutiny Procedure Rules in the Council's constitution
Annex 3	Suggested changes to the terms of reference of individual Scrutiny Committees (replacement Article 6 in the constitution)

### ***Background Papers***

Title	Details of where to access copy
None	

### ***Corporate Consultation Undertaken***

Finance	Sarah Martin, Financial Services Manager
Legal	Harvey Patterson, Corporate & Regulatory Services Manager and Monitoring Officer