

Public Document Pack  
**Constitution of the Council**

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# Agenda Item 1



## **The Constitution**

### **Part 1**

### **Executive Summary**



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## **The Council's Constitution**

1. Hastings Borough Council agreed a revised Constitution at its meeting on 18<sup>th</sup> March 2020. The Constitution is kept up to date by regular review. This Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.
2. The Constitution is divided into 16 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

## **What is in the Constitution**

3. Article 1 of the Constitution set out its purpose. Articles 2 to 15 explain the rights of citizens and how the key parts of the Council operate. These are:
  - Councillors of the Council (Article 2)
  - Citizens and the Council (Article 3)
  - The Full Council (Article 4)
  - Chairing the Council (Article 5)
  - Scrutiny of Policies and Decisions (Overview and Scrutiny Committee) (Article 6)
  - The Cabinet (Article 7)
  - Regulatory and other Committees (Article 8)
  - The Standards Committee (Article 9)
  - Joint arrangements (Article 10)
  - Officers (Article 11)
  - Decision making (Article 12)
  - Finance, contracts and legal matters (Article 13)
  - Review and revision of the Constitution (Article 14)
  - Suspension, interpretation and publication of the Constitution (Article 15)

## **How the Council operates**

4. The Council is composed of 32 councillors, one half elected every other year from May 2004. Councillors are democratically accountable to residents of their ward. The

overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

5. Councillors have to agree to follow a Code of Conduct to ensure high standards in the way they undertake their duties. The Standards Committee advises them on the Code of Conduct.
6. All Councillors meet together as the Full Council. Meetings of the Full Council are normally open to the public.
7. The Council appoints the Leader of the Council, whilst the Leader of the Council appoints the Deputy Leader and other Cabinet members and allocates portfolios to Cabinet members.
8. Full Council is the main policy arena for the authority. Whilst the budget and many plans and strategies will be produced by the Cabinet, Full Council has complete freedom in deciding whether to accept or amend these proposals, or indeed replace them completely. The Full Council meeting is also the main setting for holding the Cabinet to account, providing an opportunity for members of the Cabinet to be questioned by Councillors or, indeed, members of the public.

## **How Decisions are made**

9. The Cabinet is the part of the Council which is responsible for most day-to-day decisions. The Cabinet is made up of the Leader of the Council, the Deputy Leader and between one and eight other Councillors as the Leader shall, from time to time, determine. When major decisions are to be discussed or made, these are published in the Cabinet's Forward Plan in so far as they can be anticipated. Cabinet meetings are generally open for the public to attend except where personal or confidential matters are being discussed. The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide, or in accordance with this Constitution.

## **Overview and Scrutiny**

10. There are as many Overview and Scrutiny Committees as the Council shall, from time to time determine, who complement the work of the Cabinet and the Council as a whole. The Overview and Scrutiny Committee allows citizens to have a greater say in Council matters by holding public inquiries into matters of local concern. These lead to reports and recommendations which advise the Cabinet and the Council as a whole on its policies, budget and service delivery. Overview and Scrutiny Committee also monitors the decisions of the Cabinet. It can 'call-in' a decision which has been made by the Cabinet but not yet implemented. This enables it to consider whether the decision is appropriate. It may recommend that the Cabinet reconsider the decision. It may also be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

## **The Council's Staff**

11. The Council has people working for it (called 'Officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely.

A Protocol (in Part 5 of this Constitution) governs the relationships between Officers and Councillors.

## **Citizens' Rights**

12. Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

13. Citizens have the right to:

- vote at local elections if they are registered;
- contact their local Councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- present a petition to the Council;
- attend meetings of the Council and its committees or boards except where confidential or exempt matters are being discussed;
- petition to request a referendum on a mayoral form of Cabinet;
- ask questions at ordinary meetings of the Council. A period of up to 30 minutes is allowed for questions to be put by members of the public who live or work in the Borough;
- contribute to investigations by the Overview and Scrutiny Committee if invited to do so;
- find out, from the Cabinet's Forward Plan, what major decisions are to be discussed by the Cabinet or decided by the Cabinet or a committee of the Cabinet, and when;
- attend meetings of the Cabinet where key decisions are being discussed or decided;
- see reports and background papers, and any record of decisions made by the Council and Cabinet;
- complain to the Council if they are dissatisfied with the action or lack of action taken by the Council on a matter which is the Council's responsibility in accordance with the Council's Complaints Procedure;
- complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- complain to the Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct, and
- inspect the Council's accounts and make their views known to the External Auditor.

14. The Council has a policy of open access to files and other records. The Council also holds as many meetings as possible in public, giving access to agenda, reports and many background documents. Whilst the Council adopts a strong policy of openness, there are safeguards to protect individuals' privacy and in relation to legal, commercial, financial or otherwise sensitive information and so some documents may not be publicly accessible.
15. The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact the Monitoring Officer, Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY.
16. All documents may be inspected on request at the Reception at the Council Offices, Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY during office opening hours 8.30am to 5.00pm Monday to Friday. Documents are also available to view on the Council's website: [www.hastings.gov.uk](http://www.hastings.gov.uk)



# Agenda Item 2



## The Constitution

### Part 2 Articles of the Constitution



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## **Article 1 – The Constitution**

### **Powers of the Council**

- 1.1 The Council will exercise all its powers and duties in accordance with the law and this Constitution.

### **The Constitution**

- 1.2 This Constitution, and all its appendices, is the Constitution of the Hastings Borough Council.

The purpose of the Constitution is to:

- a. enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- b. support the active involvement of citizens in the process of local authority decision-making;
- c. help Councillors represent their constituents more effectively;
- d. enable decisions to be taken efficiently and effectively;
- e. create a powerful and effective means of holding decision-makers to public account;
- f. ensure that no one will review or scrutinise a decision in which they were directly involved;
- g. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- h. provide a means of improving the delivery of services to the community.

### **Interpretation and Review of the Constitution**

- 1.3 The Council will be guided by the purposes stated above in all its decision making. The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

## **Article 2 – Members of the Council**

### **Composition and eligibility**

#### 2.1

- a. Composition. The Council comprises 32 members, otherwise called Councillors. Two Councillors are elected by the voters of each ward in accordance with an order made by the Local Government Boundary Commission for England.
- b. Eligibility. Only registered voters of the Borough or those living or working there will be eligible to hold the office of Councillor.

### **Election and terms of Councillors**

- 2.2 Half of all Hastings Councillors will be elected every other year from 2004. The terms of office of Councillors is four years starting on the fourth day after being elected and finishing on the fourth day after the date of the next regular election. If there is a requirement for an 'all out' election for example a boundary change, then of the two Councillors in each ward, the one that receives the highest number of votes will, be elected for a period of 4 years. The other Councillor in each ward will be elected for a period of 2 years to maintain the Council's 2 yearly electoral cycle.

### **Roles and functions of all Councillors**

#### 2.3

- a. Key roles. All Councillors will:
  - i. collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - ii. represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;
  - iii. deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - iv. balance different interests identified within the ward and represent the ward as a whole;
  - v. be involved in decision-making;
  - vi. be available to represent the Council on other bodies; and
  - vii. maintain the highest standards of conduct and ethics.
- b. Rights and duties
  - i. Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
  - ii. Councillors will not make public, information which is confidential or exempt or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.
  - iii. For these purposes, "confidential" and "exempt" information are defined in the Access to

Information Rules in Part 4 of this Constitution.

## **Conduct**

- 2.4 Councillors will at all times observe the Councillors' Code of Conduct and the Protocols set out in Part 5 of this Constitution.

## **Allowances**

- 2.5 Councillors will be entitled to receive allowances in accordance with the Councillors' Allowances Scheme set out in Part 6 of this Constitution.

## Article 3 – Citizens and The Council

### Citizens' rights

- 3.1 Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:
- a. Voting and petitions. Citizens on the electoral roll for the Borough have the right to vote in elections and to petition a request for a referendum for an elected mayor form of Constitution.
  - b. Information. Citizens have the right to:
    - i. attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
    - ii. attend meetings of the Cabinet when key decisions are being considered;
    - iii. find out from the Forward Plan what key decisions will be taken by the Cabinet and when;
    - iv. see reports and background papers, and any records of decisions made by the Council and the Cabinet; and
    - v. inspect the Council's accounts and make their views known to the External Auditor.
  - c. Participation. Citizens have the right to participate in the Council's question time and may contribute to investigations by the Overview and Scrutiny Committee if invited to.
  - d. Complaints. Citizens have the right to complain to:
    - i. the Council itself under its complaints procedure;
    - ii. the Ombudsman after using the Council's own complaints procedure;
    - iii. the Monitoring Officer about a breach of the Councillors' Code of Conduct.
- 3.2 Citizen's responsibilities
- Citizens must not be violent, abusive or threatening to Councillors or Officers.

## Article 4 – The Full Council

### Meanings

#### 4.1

- a. Policy Framework. The policy framework means the following plans and strategies:-
  - i. The Corporate Plan;
  - ii. Crime and Disorder Reduction Strategy;
  - iii. Plans and strategies which together comprise the Local Plan
  - iv. Plan and strategies which together comprise the Housing Strategy
  - v. The Pay Policy

Such other plans and strategies as the Council shall, from time to time, determine that shall form part of the policy framework.

- b. Budget. The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the control of its investments.

### Functions of the Full Council

#### 4.2 Only the Council will exercise the following functions:

- a. adopting and changing the Constitution, with the exception of minor amendments, including legislative updates, which will be delegated to the Chief Legal Officer;
- b. approving and adopting the policy framework and the budget
- c. subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to or not wholly in accordance with, the budget;
- d. appointing the Leader of the Council;
- e. agreeing and/or amending the terms of reference for Committees of Council, deciding on their composition and making appointments to them;
- f. adopting or amending the Councillors' Code of Conduct;
- g. agreeing the mechanism for appointments to outside bodies;
- h. adopting an allowances scheme under Article 2.5;
- i. changing the name of the Borough, conferring the title of Honorary Alderman or Freedom of the Borough;
- j. confirming the appointment and dismissal of the Head of Paid Service, and the dismissal of the Monitoring Officer and Section 151 Officer having taken account of:
  - i. any advice, views or the recommendations of the Employment Committee;
  - ii. the conclusions of any investigation into the proposed dismissal; and



- iii. any representations from the relevant Officer.
- k. making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or bills;
- l. all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet; and
- m. all other matters which, by law, must be reserved to Council.

## **Council Meetings**

4.3 There are four types of Council meeting:

- a. the annual meeting;
- b. ordinary meetings;
- c. special meetings such as that to set the annual budget;
- d. extraordinary meetings.

They will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

## **Responsibility for functions**

4.4 The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

## **Article 5 – Chairing the Council**

### **Role and function of the Mayor**

- 5.1 The Mayor and Deputy Mayor will be elected by the Council annually from amongst the Councillors. The Mayor and in their absence, the Deputy Mayor will have the following responsibilities:
- a. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
  - b. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
  - c. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Councillors who are not on the Cabinet are able to hold it to account;
  - d. to promote the Borough and public involvement in the Council's activities;
  - e. in order to promote the Borough, to attend such civic and ceremonial functions as the Council and he/she determines.

## Article 6 – Overview and Scrutiny Committee

### Terms of reference

- 6.1 At the Annual Meeting the Council shall appoint such Overview and Scrutiny Committee as it sees fit. It will discharge the functions conferred by Section 21 of the Local Government Act 2000.

### General role

- 6.2 Within the terms of reference, the Overview and Scrutiny Committee will:
- a. review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
  - b. make reports and/or recommendations to the Full Council and/or the Cabinet in connection with the discharge of any functions;
  - c. consider any matter affecting the area or its inhabitants;
  - d. exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet; and
  - e. exercise such other functions as shall be allocated to it from time to time by statute or subordinate legislation.

### Specific functions

- 6.3 Policy development and review

The Overview and Scrutiny Committee may:

- i. assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
  - ii. conduct research, community and other consultation in the analysis of policy issues and possible options;
  - iii. advise the Cabinet on mechanisms to encourage and enhance community participation in the development of policy options;
  - iv. question members of the Cabinet and Chief Officers about their views on issues and proposals affecting the area; and
  - v. liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- b. Scrutiny

The Overview and Scrutiny Committee may:

- i. review and scrutinise the decisions made by and the performance of the Cabinet and Council Officers both in relation to individual decisions;
- ii. review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- iii. question members of the Cabinet and Chief Officers about their decisions and

performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;

- iv. make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process;
  - v. review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and local people about their activities and performance; and
  - vi. question and gather evidence from any person (with their consent).
- c. Finance

The Cabinet is required to meet reasonable requests for funding from the Overview and Scrutiny Committee. Funding should be used for specific activities in support of the functions outlined in the Terms of Reference under 6.1. If the Cabinet refuses funding then the Overview and Scrutiny Committee can ask the Full Council to determine whether or not the funding should be granted.

d. Officers

Officer support for Scrutiny Project Groups and other Officer support for the overview and scrutiny function will be arranged by the Continuous Improvement and Democratic Services Manager.

- e. Annual report: The Overview and Scrutiny Committee may report annually to Full Council on its workings and may make recommendations for consideration of their future work programmes and amended working methods, if appropriate.

## **Proceedings of Overview and Scrutiny Committee**

- 6.4 The Overview and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

## Article 7 – The Cabinet

### Role

- 7.1 The Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### Form and composition

- 7.2 The Cabinet will consist of the Council Leader (who shall be the Chair of the Cabinet), the Deputy Leader, and at least one, but not more than eight, Councillors appointed annually to the Cabinet by the Leader.

The Local Government Act 2000 provides that the political balance rules do not necessarily apply to a Cabinet or Committees of a Cabinet.

### Leader and Deputy Leader

- 7.3 The Leader will be a Councillor elected to the position of Leader by the Council at the annual meeting or if there is a vacancy in the position of Leader of the Council, the Council shall, at its next meeting, elect a Leader of the Council. The Leader will hold office:
- a. For a term of office which starts on the day of their election as Leader, and ends on the day of the post-election annual meeting which follows their election as Leader; or until
    - i. he or she resigns from the office; or
    - ii. he or she is no longer a Councillor; or
    - iii. he or she is removed from office by resolution of the Council; or
    - iv. he or she is otherwise disqualified by law.
  - b. The Leader shall appoint one of the members of the Cabinet to be the Council's Deputy Leader at the post-election annual meeting. The Deputy Leader shall hold office until:
    - i. the end of the term of the Leader; or
    - ii. the Leader removes the Deputy Leader from office giving written notice of the removal to the Chief Legal Officer; or
    - iii. he or she resigns from office; or
    - iv. he or she is no longer a Councillor; or
    - v. he or she is removed from office by resolution of the Council; or
    - vi. he or she is otherwise disqualified by law.
  - c. If for any reason there shall be a vacancy in the position of Deputy Leader, the Leader shall appoint another Deputy Leader from among the members of the Cabinet.
  - d. If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in their place.
  - e. If for any reason the Leader is unable to act or the office of Leader is vacant, and the Deputy Leader is unable to act or the office of Deputy Leader is vacant the remaining

members of the Cabinet must either act collectively in the Leader's place or they must arrange for a Cabinet member to act in the place of Leader.

### **Other Cabinet Members**

- 7.4 Other Cabinet members will be Councillors who shall hold office until:
- a. they resign from office; or
  - b. they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
  - c. they are no longer Councillors; or
  - d. they are removed from office by the Leader, who must give written notice of the removal to the Chief Legal Officer
  - e. they are otherwise disqualified by law.

### **Proceedings of the Cabinet**

- 7.5 Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4 of this Constitution.

### **Responsibility for functions**

- 7.6 The Leader will maintain the list in Part 3 of this Constitution setting out which individual members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the exercise of particular Cabinet functions.

### **Decision Making**

- 7.7 Decisions made in Cabinet are made collectively on a vote of a simple majority.

## **Article 8 – Regulatory and other Committees**

### **Regulatory and other Committees**

8.1 The Council will appoint the Committees set out in Part 3 of this Constitution under the heading Responsibility for Council Functions to discharge the functions described.

### **Composition of the Planning Committee, Environment and Safety Committee and Licensing Committee.**

8.2

- a. A member of the Cabinet with portfolio will not be able to serve on the Licensing Committee, Environment and Safety Committee, Planning Committee or any other regulatory Committee.
- b. No member of these Committees shall take part in any debate or vote on any matter in relation to which the member has predetermined their decision on the matter.
- c. Members whose professional or personal interests might create regular conflict of interest in matters coming before the Planning Committee should not be appointed to the Planning Committee. A member who is about to act in a professional or private capacity in any matter in which the Council has an interest should give notice of such intention to the Monitoring Officer.
- d. The Planning Protocol contained in Part 5 of the Constitution applies to Planning Committee Members.
- e. For all Regulatory Committees, in cases where the Chair or Vice Chair is not available to Chair the meeting (or part of), the Legal Officer advising the Committee will ask for a nomination for Chair for the duration of the meeting (or part of). The nomination must be of a permanent member of that Committee and not a substitute. The nomination must be seconded and a majority vote taken by those Councillors sitting on that Committee.

## **Article 9 – The Standards Committee**

### **Standards Committee**

9.1 The Council will establish a Standards Committee.

### **Composition**

9.2 Membership.

- a. The Standards Committee will be composed of five members of the Council. At least one Independent Person will be invited to attend. The Political Balance Rules do not strictly apply to the Standards Committee, but will be applied to the Councillor membership of the Committee. No more than one Councillor member of the Standards Committee may be a member of the Cabinet and that member may not be the Leader of the Council.
- b. The appointment of Independent Person(s) must be approved by a majority of the members of the Council.
- c. A meeting of the Standards Committee will not be quorate unless at least three members are present for its duration.
- d. Members of the Standards Committee may on written application to the Monitoring Officer (or Deputy Monitoring Officer) at least three working days prior to the meeting of the Standards Committee appoint substitutes for that meeting, only if in the opinion of the Monitoring Officer (or Deputy Monitoring Officer) in consultation with the Chair or Vice Chair of the Standards Committee, sitting Councillors have a conflict of interest in any matter to be considered by the Standards Committee at that meeting.

- 9.3 Independent Persons. The Council must appoint at least one Independent Person to carry out the following advisory functions:
- a. to give the Standards Committee their view on any allegations it has decided to investigate, before a decision is reached;
  - b. to give the Standards Committee their view on any sanctions to be imposed, before a decision on sanctions is reached;
  - c. to provide support as necessary to the Councillor against whom a standards complaint is made.

### **Role and function**

9.4 The Standards Committee will have the following roles and functions:-

- a. promoting and maintaining high standards of conduct by Councillors and co-opted members;
- b. assisting Councillors and co-opted members to observe the Councillors' Code of Conduct;
- c. advising the Council on the adoption or revision of the Councillors' Code of Conduct.
- d. monitoring the operation of the Councillors' Code of Conduct;
- e. granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Councillors' Code of Conduct (this function is also available to the Monitoring Officer);
- f. hearing and determining standards complaints made against Councillors in accordance with Council procedure and imposing or recommending sanctions where appropriate;



## **Article 10 – Joint Arrangements**

### **Arrangements to promote well being**

- 10.1 The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:
- a. enter into arrangements or agreements with any person or body;
  - b. co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
  - c. exercise on behalf of that person or body any functions of that person or body.

### **Joint arrangements**

10.2

- a. The Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not Cabinet functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- b. The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Cabinet functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- c. Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members may, but need not, reflect the political composition of the local authority as a whole.
- d. The Cabinet may appoint members to a joint committee from outside the Cabinet if the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the joint committee any Councillor who is a Councillor for a ward which is wholly or partly contained within the area;  
  
The political balance requirements may, but need not, apply to such appointments.
- e. Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

### **Access to information**

10.3

- a. The Access to Information Rules in Part 4 of this Constitution apply.
- b. If all the members of a joint committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.
- c. If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

## **Delegation to and from other local authorities**

10.4

- a. The Council may delegate its functions to another local authority
- b. The Cabinet may delegate Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances.
- c. The decision whether or not to accept such a delegation from another local authority shall be reserved to the Full Council.

## **Contracting out**

10.5 The Council and / or the Cabinet may contract out their respective functions to another body or organisation where such functions

- i. which may be exercised by an Officer and
- ii. which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or
- iii. under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles,  
provided there is no delegation of the Council's discretionary decision-making.

## **Article 11 – Officers**

### **Management Structure**

#### 11.1

- a. General. The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions. Appointment of staff cannot be the responsibility of the Cabinet. Appointment of staff below the level of Chief Executive must be the responsibility of the Head of Paid Service or their nominee.
- b. Chief Officers. The Council (by a committee or sub-committee) will engage persons for such posts, as it may from time to time decide, collectively described as “Chief Officers” in this Constitution.
- c. The Council will designate the following posts as:-
  - i. Chief Executive – Head of Paid Service
  - ii. Chief Legal Officer – Monitoring Officer
  - iii. Chief Finance Officer – Chief Finance Officer (Section 151)

Such posts will have the functions described in Article 11.2 - 11.4 below.

- d. Structure. The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out at Part 7 of this Constitution. Changes made to this Structure do not constitute amendments to this Constitution.

### **Functions of the Head of Paid Service**

#### 11.2

- a. Discharge of functions by the Council. The Head of Paid Service will, from time to time, report to Full Council on the manner in which the discharge of the Council’s functions is co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.
- b. Restrictions on functions. The Head of Paid Service may not be the Monitoring Officer but, if a qualified accountant, may hold the post of Chief Finance Officer.

### **Functions of the Monitoring Officer**

#### 11.3

- a. Maintaining the Constitution. The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Councillors, staff and the public.
- b. Ensuring lawfulness and fairness of decision making. After consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the Full Council, or to the Cabinet in relation to Cabinet functions, if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c. Supporting the Standards Committee. The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee

- d. Conducting investigations. The Monitoring Officer will conduct investigations or arrange for investigations into complaints alleging breach of the Code of Conduct and make reports or recommendations in respect of them to the Standards Committee in accordance with procedures adopted by the Council.
- e. Proper Officer for access to information. The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.
- f. The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.
- g. Providing advice. The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- h. Restrictions on posts. The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

## **Functions of the Chief Finance Officer**

### 11.4

- a. Ensuring lawfulness and financial prudence of decision making. After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council, or to the Cabinet in relation to a Cabinet function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- b. Administration of financial affairs. The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- c. Contributing to corporate management. The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- d. Providing advice. The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.
- e. Give financial information. The Chief Finance Officer may provide financial information to the media, members of the public and the community.

## **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

- 11.5 The Council will provide the Monitoring Officer and Chief Finance Officer with such Officers, accommodation and other resources as are in the opinion of these Officers sufficient to allow their duties to be performed.

## **Conduct**

- 11.6 Officers will comply with the Officer's Code of Conduct and the Protocol on Officer/Councillor Relations set out in Part 5 of this Constitution.

## **Employment**

- 11.7 The recruitment, selection and dismissal of Officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

## **Article 12 – Decision Making**

### **Responsibility for decision making**

- 12.1 The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Parts 3 and 8 of this Constitution.

### **Principles of decision making**

- 12.2 All decisions of the Council will be made in accordance with the following principles:
- a. proportionality (i.e. the action must be proportionate to the desired outcome);
  - b. due consultation and the taking of professional advice from Officers;
  - c. respect for human rights (see below for further details);
  - d. a presumption in favour of openness;
  - e. clarity of aims and desired outcomes; and
  - f. reasonable and based only upon relevant information.

An explanation of what options were considered and the reasons for the decision will be included as part of the record of any decision.

### **Types of decision**

12.3

- a. Decisions reserved to Full Council.

Decisions relating to the functions listed in Article 4.2 will be made by the Full Council and not delegated.

- b. Key decisions

- i. A key decision means a Cabinet decision which is likely to involve expenditure or savings in excess of £250,000 or which is likely to have a significant effect on communities living or working in an area comprising two or more wards.
- ii. A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

### **Decision making by the Full Council**

- 12.4 Subject to Article 12.8, The Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### **Decision making by the Cabinet**

- 12.5 Subject to Article 12.8, The Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

## **Decision making by the Overview and Scrutiny Committee**

12.6 The Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

## **Decision making by other Committees and Sub-Committees**

12.7 Subject to Article 12.8, Other Committees and Sub-Committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

## **Decision making by Council bodies acting as tribunals**

12.8 The Council, a Councillor or an Officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights and the Human Rights Act 1998.

## **Decision making by Ward Councillors**

12.9 The Council and Cabinet are able to delegate authority to individual Ward Councillors to make decisions in relation to matters affecting their ward. Where delegation has been given, the Ward Councillor is required to produce a record of decisions, which are accessible by the public for six years. The Ward Councillor is required to act in accordance with a protocol agreed by the Council or Cabinet when exercising the power.

## **Call-over**

12.10 The Council, Cabinet and Committees may operate a call-over process to determine which matters on the agenda are to be discussed and those that are to be agreed without discussion. The Chair of the meeting may undertake the call-over and all matters which are not called are the subject of a motion from the Chair to agree all matters not called.

## **Article 13 – Finance, Contracts and Legal Matters**

### **Financial management**

- 13.1 The management of the Council's financial affairs will be conducted in accordance with the Financial Rules set out in Part 9 of this Constitution.

### **Contracts**

- 13.2 Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 9 of this Constitution.

### **Legal proceedings**

- 13.3 The Chief Legal Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Chief Legal Officer considers that such action is necessary to protect the Council's interests.

### **Authentication of documents**

- 13.4 Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Chief Legal Officer or other person authorised by the Chief Legal Officer unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

### **Common Seal of the Council**

- 13.5 The Common Seal of the Council will be kept in a safe place in the custody of the Chief Legal Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Chief Legal Officer should be sealed. The affixing of the Common Seal will be attested by the Chief Legal Officer or some other person authorised in that regard by the Chief Legal Officer.

### **Common Seal of Hastings Housing Company**

- 13.6 The Common Seal of the Hastings Housing Company will be kept in a safe place in the custody of the Chief Legal Officer. A decision of the Hastings Housing Company, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Chief Legal Officer should be sealed. The affixing of the Common Seal will be attested by the Chief Legal Officer or some other person authorised in that regard by the Chief Legal Officer.



## **Article 14 – Review and Revision of the Constitution**

### **Duty to monitor and review the Constitution**

- 14.1 The Council's Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

### **Protocol for monitoring and review of Constitution by the Monitoring Officer**

- 14.2 A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:
- a. observe meetings of different parts of the Councillor and Officer structure;
  - b. undertake an audit trail of a sample of decisions;
  - c. record and analyse issues raised with him/her by Councillors, Officers, the public and other relevant stakeholders; and
  - d. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### **Changes to the Constitution**

- 14.3 Changes to the Constitution will be approved by the Full Council. However, minor changes, not affecting the substance of the Constitution, such as correction of typographical errors, updating of legislation, changes in job titles or the management structure, may be made by the Monitoring Officer in consultation with the Leader of the Council and the Chair of Working Arrangements Group.

## **Article 15 – Suspension, Interpretation and Publication of the Constitution**

### **Suspension of the Constitution**

15.1

- a. Limit to suspension. The Articles of this Constitution may not be suspended.
- b. Procedure to suspend Standing Orders. The procedure to suspend Standing Orders is set out in Part 4 of this Constitution. The extent and duration of suspensions will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

### **Interpretation**

15.2 The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### **Publication**

15.3

- a. The Monitoring Officer will make available a copy of this Constitution to each Councillor of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the Councillor first being elected to the Council
- b. The Monitoring Officer will ensure that copies are available for inspection on request at the Council offices, and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- c. The Monitoring Officer will ensure that the Constitution is made readily available within the area and is updated as necessary. The Constitution can be found on the Council's Website at [www.hastings.gov.uk](http://www.hastings.gov.uk).

## **Schedule 1: Description of Executive Arrangements**

The following parts of this Constitution constitute the Executive arrangements:

1. Article 6 (Overview and Scrutiny Committee) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;
3. Article 10 (Joint Arrangements);
4. Article 12 (Decision Making) and the Access to Information Procedure Rules;
5. Part 3 (Responsibility for Functions).

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# Agenda Item 3



**Hastings Borough Council**

**Constitution of the Council**

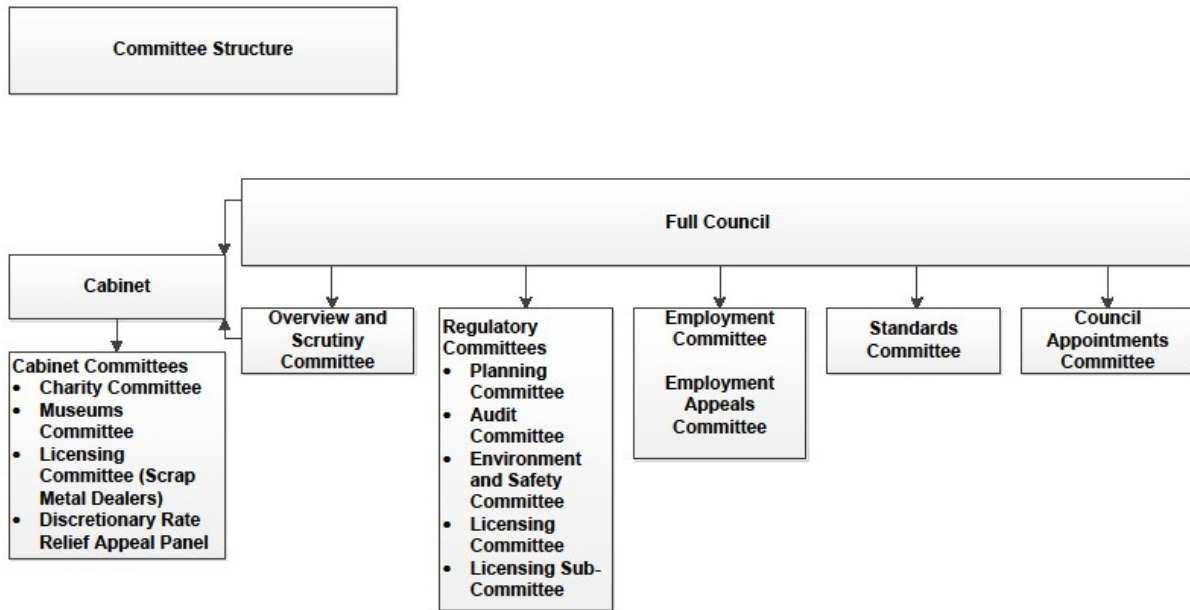
**Part 3**

**Responsibility for Functions**

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# Flowchart of Council Committee Structure



## Responsibility for Local Choice Functions

The Council will have the following Committees with terms of reference as described.

## Responsibility for Council Functions

Table of Committees and their Functions

Committee	Functions
Planning Committee (a committee of the Council)	<p>Planning and conservation</p> <p>Functions relating to town and country planning and development management as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (the Functions Regulations) as amended</p>
Licensing Committee (a committee of the Council)	<p>All matters delegated to the Council's Licensing Committee by virtue of Section 7(1) Licensing Act 2003 ("the Act") or by virtue of any amending or consolidating legislation and any regulations made under the Act or such amending or consolidating legislation</p> <p>Any other functions referred to the Licensing Committee under Section 7(3) and (5)(b) of the Act</p> <p>All matters delegated to the Licensing Committee by virtue of Section 154 Gambling Act 2005</p>
Licensing Committee (Scrap Metal Dealers)(a committee of the Cabinet)	<p>Functions relating to the licensing of Scrap Metal Dealers as set out in the Scrap Metal Dealers Act 2013 or by virtue of any amending or consolidating legislation and any regulations made under the Act or such amending or consolidating legislation</p>
Environment and Safety Committee (a committee of the Council)	<p>Functions relating to licensing and registration as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 as amended, other than as are referred to the Council's Licensing Committee by Section 7(1) Licensing Act 2003 ("the Act")</p> <p>Any licensing function referred to the Committee under Section 7(5)(a) of the Act</p> <p>Functions relating to health and safety under any "relevant statutory provision" within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer</p>
Standards Committee (a committee of the Council)	<p>Main Functions:-</p> <p>To promote and maintain high standards of conduct for Councillors</p> <p>To help Councillors to follow the Code of Conduct</p>



	<p>Specific Functions:-</p> <p>a) To give the Council advice on adopting the Local Code. To monitor the effectiveness of the Code</p> <p>b) To train Councillors on the Code, or arrange for such training. To assess and review complaints about Councillors</p> <p>c) To conduct determinations' hearings</p> <p>d) To grant dispensations to Councillors with prejudicial/pecuniary interests</p> <p>e) To grant exemptions for politically restricted posts.</p>
<p>Employment Appeals Committee (a Committee of the Council)</p>	<p>To consider appeals from the Chief Officers against decisions made by the Employment Committee concerning their terms and conditions of employment</p> <p>To consider appeals against dismissal brought by the Chief Officers.</p>
<p>Employment Committee (a Committee of the Council)</p>	<p>To appoint the Head of Paid Service (subject to the confirmation of full Council) and Chief Officers and to determine all matters concerning the terms and conditions of employment of these officers, including dismissal, subject to the Officer Employment Rules</p> <p>To determine such matters concerning the terms and conditions of employment of all other staff as are referred to the Committee by the Head of Paid Service, on the advice of the Monitoring Officer.</p> <p>To ensure that any disciplinary action against Statutory Officers cannot be taken until comments, views or recommendations are received from at least two independent persons who would be invited to join the committee.</p>
<p>Council Appointments Committee (a Committee of the Council)</p>	<p>To nominate Councillors, other than Cabinet members, for appointments to outside bodies where there is no representative role on behalf of or accountability to the Cabinet (these latter appointments to be dealt with by the Cabinet)</p>
<p>Audit Committee (a committee of the Council)</p>	<p>The Audit Committee shall:</p> <p>General:</p> <p>a) Have the power to conduct or authorise investigations into any matters within the Committee's scope of responsibilities. The Committee shall have unrestricted access to the Chief Executive and relevant information. The Committee may retain independent counsel, accountants or others to assist it in the conduct of any investigation.</p> <p>b) Arrange to meet four times per year, or more frequently if circumstances require it.</p> <p>c) Report Committee actions to the Cabinet with recommendations, as the Committee may deem appropriate.</p>

- d) Review annually and make recommendations to Council to update the Audit Committee's terms of reference.
- e) In compliance with the recommendations of external bodies, the Chair of the Audit Committee will meet privately with the Chief Auditor, at least annually, to confirm that significant internal control issues, risk exposures, and Corporate Governance issues have been considered by the Audit Committee.
- f) Provide for inclusion in the Statement of Assurance on Corporate Governance and Internal Control whether the Audit Committee has:-
  - i. Review and discussed the financial statements
  - ii. Discussed with the external auditors any matters under SAS610
  - iii. Received disclosures from the external auditors regarding the auditors' independence and discussed with the auditors their independence.

Internal Controls and Risk Assessment:

- g) Review, evaluate and approve:-
  - i. The effectiveness of the Council's process for assessing significant risk exposures and the measures management has taken to mitigate such risks to an acceptable level, including the risks of fraud and corruption, with regular progress reports to the Audit Committee and an annual report to Council.
  - ii. The adequacy and appropriateness of internal audit provision.
  - iii. The effectiveness of, or weaknesses in, the Council's internal controls including the adequacy of information systems, efficiency in the use of resources, and security of assets.
  - iv. Any related significant findings and recommendations of the external auditors and the internal auditors together with management's responses including the timetable for implementation of recommendations to correct weaknesses in the internal controls.
- h) Instruct the external auditors to communicate directly to the Audit Committee any serious difficulties or disputes with management.

Internal Audit:

- i) Evaluate the internal audit process for establishing internal audit plans and the focus on risk.
- j) Evaluate the audit cope and role of internal audit.
- k) Consider and review:-
  - i. Significant findings and management's response including the timetable for implementation to correct significant

	<p>weaknesses.</p> <ul style="list-style-type: none"> <li>ii. Any difficulties encountered in the course of their audit such as restrictions on the scope of their work or access to information.</li> <li>iii. Any changes required in the planned scope of their audit plan.</li> <li>iv. Any difficulties encountered in the course of their audit such as restrictions on the scope of their work or access to information. Any changes required in the planned scope of their audit plan.</li> <li>v. The internal audit budget.</li> </ul> <p>Compliance with Laws and Regulations:</p> <ul style="list-style-type: none"> <li>l) Ascertain whether the Council has an effective process for determining risks and exposure from asserted and unasserted litigation and claims from non-compliance with laws and regulations.</li> <li>m) Review with the Chief Legal Officer and others any legal, tax, or regulatory matters that may have a material impact on Council operations and the financial statements.</li> <li>n) Discuss with management, the internal auditors and the Council's external auditor the status and adequacy of management information systems including the significant risks and major controls over such risks.</li> </ul> <p>Financial Reporting:</p> <ul style="list-style-type: none"> <li>o) Review with management and the external auditors and approve the Council's financial statements prior to publication.</li> <li>p) Advise management based upon its review and discussion whether anything has come to the Audit Committee's attention that causes it to believe that the audited financial statements included in the Council's financial statements contain an untrue statement of material fact or omit to state a necessary material fact.</li> <li>q) Review with management and the external auditors and approve at the completion of the annual examination:- <ul style="list-style-type: none"> <li>i. The Council's annual financial statements and related footnotes.</li> <li>ii. The external auditors' audit of the financial statements and their report.</li> <li>iii. Any significant changes required in the external auditor's audit plan.</li> <li>iv. Any difficulties or disputes with management encountered during the audit.</li> <li>v. The Council's accounting principles.</li> <li>vi. Other matters related to conduct, which should be communicated to the Committee under generally accepted</li> </ul> </li> </ul>
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	<p>auditing standards.</p> <p>External Auditor:</p> <p>r) Recommend to the Cabinet any change of the external audit provider, approve the fees of the external auditors and review and approve the discharge of the external auditors.</p> <p>s) Review the scope and approach of the annual audit with the external auditors.</p> <p>t) Seek assurance of the external auditors' compliance with the Codes of Conduct of the auditing body.</p> <p>u) Review and monitor, as appropriate, with the external auditors the results of Standards Committee recommendations for the purpose of ensuring the adequacy of Corporate Governance and internal control systems.</p> <p>v) Receive all reports of the external auditor and monitor progress in the implementation of recommendations against the agreed timetable.</p>
Museums Committee (a committee of the Cabinet)	To advise the Cabinet on matters relating to the collections of the Hastings and St. Leonards Museums.
Charity Committee	<p>All member decisions relating to charities administered by the Council, in particular the Hastings and St Leonards Foreshore Charitable Trust (the Foreshore Trust).</p> <p>It is intended that Cabinet delegates its functions to the Charity Committee to make trustee decisions and to avoid any breach of trust or perception or apprehension of breach of trust by reason of a conflict of interest between the Charity and the Council and its executive.</p> <p>The Committee has special responsibility in particular under the Charity Commission Scheme Number 981/1011 to have regard to the recommendations of the Protector, the Coastal Advisory Group and the Grant Advisory Group in relation to specified matters concerning the Foreshore Trust.</p>
Working Arrangements Group (a working group with no decision making powers)	<p>This working group is responsible for considering all matters relating to the internal arrangements of the Council, e.g. Constitution.</p> <p>It reports to Cabinet or Council, as appropriate.</p>
Independent Remuneration Panel	There will be an independent remuneration panel established from time to time under the Local Government Act 2000 to advise Council in relation to the Scheme of Councillors' Allowances.

## Schedule 1

### Functions not to be the Responsibility of the Cabinet

#### A. Functions relating to town and country planning and development control

Function	Provision of Act or Statutory Instrument
1. Powers and duties relating to local development documents which are development plan documents.	Sections 20 to 23 and 25, 26 and 28 of the Planning and Compulsory Purchase Act 2004 (c. 5).
2. Power to agree to establish a joint committee to be, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004, a local planning authority.	Section 29 of the Planning and Compulsory Purchase Act 2004.
3. Power to agree to confer additional functions on a joint committee.	Section 30 of the Planning and Compulsory Purchase Act 2004.
4. Power to request the dissolution of a joint committee.	Section 31 of the Planning and Compulsory Purchase Act 2004.
5. Power to determine application for planning permission.	Sections 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990 (c. 8).
6. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990.
7. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990.
8. Power to decline to determine application for planning permission.	Section 70A of the Town and Country Planning Act 1990.
9. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) and directions made thereunder.
10. Power to determine application for planning permission made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (S.I. 1992/1492).
11. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).
12. Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.
13. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990.
14. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.
15. Power to grant consent for the display of advertisements	Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I. 1992/666).

16. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990.
17. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.
18. Power to serve a planning contravention notice, breach of condition notice or stop notice.	Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990.
19. Power to issued a temporary Stop Notice.	Section 171E of the Town and Country Planning Act 1990.
20. Power to issue an enforcement notice.	Section 172 of the Town and Country Planning Act 1990.
21. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990.
22. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990.
23. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991 (c. 34), paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c. 25) and paragraph 6(5) of Schedule 14 to that Act.
24. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.
25. Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17, 27(2) and 33(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 (c. 9).
26. Power to determine applications for conservation area consent.	Section 16(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990, as applied by section 74(3) of that Act.
27. Duties relating to applications for listed building consent and conservation area consent.	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 22 of the Department of the Environment Circular 14/97.
28. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
29. Power to issue enforcement notice in relation to demolition of unlisted building in conservation area.	Section 38 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
30. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
31. Power to apply for an injunction in relation to a listed building	Section 44A of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
32. Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.

**B. Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)**

Function.	Provision of Act or Statutory Instrument.
1. Power to issue licences authorising the use of land as a caravan site ("site licences").	Section 3(3) of the Caravan Sites and Control of Development Act 1960.
2. Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936.
3. Power to license hackney carriages and private hire vehicles.	a. as to hackney carriages, the Town Police Clauses Act 1847, as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985; and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
4. Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
5. Power to license operators of hackney carriages and private hire vehicles.	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
6. Power to register pool promoters.	Schedule 2 to the Betting, Gaming and Lotteries Act 1963.
7. Power to grant track betting licences.	Schedule 3 to the Betting, Gaming and Lotteries Act 1963.
8. Power to license inter-track betting schemes.	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963.
9. Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968.
10. Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976.
11. Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976.
12. Power to issue cinema and cinema club licences.	Licensing Act 2003
13. Power to issue theatre licences.	Licensing Act 2003
14. Power to license sex shops and sex cinemas.	The Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
15. Functions relating to licensing.	Licensing Act 2003 and any regulations or orders made under that Act.
16. Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises.	Section 304 of the Gambling Act 2005
17. Power to institute criminal proceedings for offences under section 342 of the Gambling Act 2005.	Section 342 of the Gambling Act 2005
18. Power to exchange information.	Section 350 of the Gambling Act 2005

19. Functions relating to the determination of fees for premises.	The Gambling (Premises License Fees) (England and Wales) Regulations 2007
20. Power to resolve not to issue a casino premises licence.	Section 166 of the Gambling Act 2005.
21. Power to license performances of hypnotism.	The Hypnotism Act 1952.
22. Power to issue entertainments licences.	Section 12 of the Children and Young Persons Act 1933, section 79 of the Licensing Act 1964, sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions) Act 1982.
23. Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982.
24. Power to license pleasure boats and pleasure vessels.	Section 94 of the Public Health Acts Amendment Act 1907.
25. Power to register door staff.	Local Government (Miscellaneous Provisions) Act 1982.
26. Power to license market and street trading.	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982.
27. Power to license night cafes and take-away food shops.	Section 2 of the Late Night Refreshment Houses Act 1969.
28. Duty to keep list of persons entitled to sell non-medicinal poisons.	Sections 3(1)(b)(ii), 5, 6 and 11 of the Poisons Act 1972.
29. Power to license dealers in game and the killing and selling of game.	Sections 5, 6, 17, 18 and 21 to 23 of the Game Act 1831 (c. 32); sections 2 to 16 of the Game Licensing Act 1860, section 4 of the Customs and Inland Revenue Act 1883, sections 12(3) and 27 of the Local Government Act 1874, and section 213 of the Local Government Act 1972.
30. Power of register and license premises for the preparation of food.	Section 19 of the Food Safety Act 1990.
31. Power to license scrap yards.	Section 1 of the Scrap Metal Dealers Act 2013.
32. Power to issue, amend or replace safety certificates (whether general or special) for sports grounds.	The Safety of Sports Grounds Act 1975.
33. Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.	Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27).
34. Power to issue fire certificates.	Section 5 of the Fire Precautions Act 1971.
35. Power to license premises for the breeding of dogs	and section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999.
36. Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	The Animal Welfare (Licensing of Activities involving Animals) (England) Regulations 2018; the Riding Establishments Act 1970; section 1 of the Breeding of Dogs Act 1973, and sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999.
33. Power to register animal trainers and	Section 1 of the Performing Animals



exhibitors.	(Regulation) Act 1925.
34. Power to license zoos.	Section 1 of the Zoo Licensing Act 1981.
35. Power to license dangerous wild animals.	Section 1 of the Dangerous Wild Animals Act 1976.
36. Power to license knackers' yards.	Section 4 of the Slaughterhouses Act 1974. See also the Animal By-Products Order 1999 (S.I. 1999/646).
37. Power to license the employment of children.	Part II of the Children and Young Persons Act 1933, byelaws made under that Part, and Part II of the Children and Young Persons Act 1963.
38. Power to license persons to collect for charitable and other causes.	Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939.
39. Power to grant consent for the operation of a loudspeaker.	Schedule 2 to the Noise and Statutory Nuisance Act 1993.
40. Power to approve meat product premises.	Regulations 4 and 5 of the Meat Products (Hygiene) Regulations 1994 (S.I. 1994/3082).
41. Power to approve premises for the production of minced meat or meat preparations.	Regulation 4 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (S.I. 1995/3205).
42. Power to approve dairy establishments.	Regulations 6 and 7 of the Dairy Products (Hygiene) Regs. 1995 (S.I. 1995/1086).
43. Power to approve egg product establishments.	Regulation 5 of the Egg Products Regulations 1993 (S.I. 1993/1520).
44. Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.	Schedule 1A to the Food Safety (General Food Hygiene) Regulations 1995 (S.I. 1995/1763).
45. Power to approve fish products premises.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (S.I. 1998/994).
46. Power to approve dispatch or purification centres.	Regulation 11 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
47. Power to register fishing vessels on board which shrimps or molluscs are cooked.	Regulation 21 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
48. Power to approve factory vessels and fishery product establishments.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
49. Power to register auction and wholesale markets.	Regulation 26 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
50. Duty to keep register of food business premises.	Regulation 5 of the Food Premises (Registration) Regulations 1991 (S.I. 1991/2828).
51. Power to register food business premises.	Regulation 9 of the Food Premises

	(Registration) Regulations 1991.
52. Power to register motor salvage operators.	Part I Vehicles (Crime) Act 2001.

### C. Functions relating to health and safety at work

Function	Provision of Act or Statutory Instrument
Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.	Part I of the Health and Safety at Work etc. Act 1974.

### D. Functions relating to elections

Function	Provision of Act or Statutory Instrument
1. Duty to appoint an electoral registration officer.	Section 8(2) of the Representation of the People Act 1983.
2. Power to assign officers in relation to requisitions of the registration officer.	Section 52(4) of the Representation of the People Act 1983.
3. Duty to appoint returning officer for local government elections.	Section 35 of the Representation of the People Act 1983.
4. Duty to provide assistance at European Parliamentary elections.	Paragraph 4(3) and (4) of Schedule 1 to the European Parliamentary Elections Act 1978.
5. Duty to divide constituency into polling districts.	Section 18 of the Representation of the People Act 1983.
6. Power to divide electoral divisions into polling districts at local government elections.	Section 31 of the Representation of the People Act 1983.
7. Powers in respect of holding of elections.	Section 39(4) of the Representation of the People Act 1983.
8. Power to pay expenses properly incurred by electoral registration officers.	Section 54 of the Representation of the People Act 1983.
9. Power to fill vacancies in the event of insufficient nominations.	Section 21 of the Representation of the People Act 1985.
10. Duty to declare vacancy in office in certain cases.	Section 86 of the Local Government Act 1972.
11. Duty to give public notice of a casual vacancy.	Section 87 of the Local Government Act 1972.
12. Power to determine fees and conditions for supply of copies of, or extracts from, elections documents.	Rule 48(3) of the Local Elections (Principal Areas) Rules 1986 (S.I. 1986/2214) and rule 48(3) of the Local Elections (Parishes and Communities) Rules 1986 (S.I. 1986/2215).
13. Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	Section 10 of the Representation of the People Act 2000.

## E. Functions relating to name and status of areas and individuals

Function	Provision of Act or Statutory Instrument
1. Power to change the name of the Borough.	Section 74 of the Local Government Act 1972.
2. Power to confer title of honorary alderman or to admit to be an honorary freeman.	Section 249 of the Local Government Act 1972.

## F. Functions relating to power to make, amend, revoke, re-enact or enforce byelaws

Function	Provision of Act or Statutory Instrument
Power to make, amend, revoke or re-enact byelaws	Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978.

## G. Functions relating to power to promote or oppose local or personal Bills

Function	Provision of Act or Statutory Instrument
Power to promote or oppose local or personal Bills	Section 239 of the Local Government Act 1972.

## H. Miscellaneous functions

### Part I: Functions relating to public rights of way

#### Table of Part I: Functions relating to public rights of way

Function	Provision of Act or Statutory Instrument
1. Power to create footpath or bridleway by agreement.	Section 25 of the Highways Act 1980 (c. 66).
2. Power to create footpaths and bridleways.	Section 26 of the Highways Act 1980.
3. Power to stop up footpaths and bridleways.	Section 118 of the Highways Act 1980.
4. Power to determine application for public path extinguishment order.	Sections 118ZA and 118C(2) of the Highways Act 1980.
5. Power to make a rail crossing extinguishment order.	Section 118A of the Highways Act 1980.
6. Power to divert footpaths and bridleways.	Section 119 of the Highways Act 1980.

7. Power to make a public path diversion order.	Sections 119ZA and 119C(4) of the Highways Act 1980.
8. Power to make a rail crossing diversion order.	Section 119A of the Highways Act 1980.
9. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	Section 121B of the Highways Act 1980.
10. Power to decline to determine certain applications.	Section 121C of the Highways Act 1980.
11. Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980.
12. Power to extinguish certain public rights of way.	Section 32 of the Acquisition of Land Act 1981 (c. 67).
13. Power to extinguish public right of way over land acquired for clearance.	Section 294 of the Housing Act 1985 (c. 68).
14. Power to authorise stopping-up or diversion of footpath or bridleway.	Section 257 of the Town and Country Planning Act 1990.
15. Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.

## Part II: Other miscellaneous functions

### Table of Part II: Other miscellaneous functions

Function	Provision of Act or Statutory Instrument
16. Functions relating to sea fisheries.	Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966 (c. 38).
17. Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972 (c. 70).
18. Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).	Section 112 of the Local Government Act 1972.
19. Power to make standing orders as to contracts.	Section 135 of the Local Government Act 1972.
20. Duty to make arrangements for proper administration of financial affairs etc.	Section 151 of the Local Government Act 1972.
21. Power to appoint officers for particular purposes (appointment of "proper officers").	Section 270(3) of the Local Government Act 1972.
22. Power to make limestone pavement order.	Section 34(2) of the Wildlife and Countryside Act 1981 (c. 69).
23. Power to make closing order with respect to take-away food shops.	Section 4 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30).
24. Duty to designate officer as the head of the authority's paid service, and to provide staff, etc.	Section 4(1) of the Local Government and Housing Act 1989 (c. 42).
25. Duty to designate officer as the monitoring officer, and to provide staff, etc.	Section 5(1) of the Local Government and Housing Act 1989.

26. Duty to provide staff etc. to person nominated by monitoring officer.	Section 82A(4) Local Government Act 2000.
27. Powers relating to overview and scrutiny committees (voting rights of co-opted members)	Paragraphs 12 and 14 of Schedule 1 to the Local Government Act 2000.
28. Duty to approve authority's statement of accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be).	The Accounts and Audit Regulations 2003
29. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160).
30. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 (S.I. 1999/1892).
31. Powers relating to complaints about high hedges.	Part 8 Anti-Social Behaviour Act 2003.
32. Power to make payments or provide other benefits in cases of maladministration etc.	Section 92 of the Local Government Act 2000.
33. Power to make an order identifying a place as a designated public place for the Function	Section 13(2) Criminal Justice and Police Act 2001.
purposes of police powers in relation to alcohol.	Provision of Act or Statutory Instrument

## Schedule 1a

### Additional Functions not to be the Responsibility of the Cabinet

1. The function of:
  - a. imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted –
    - i. in the exercise of a function specified in column 1 of Schedule 1; or
    - ii. otherwise than by the Cabinet, in the exercise of any function under a local Act; and
  - b. determining any other terms to which any such approval, consent, licence, permission or registration is subject
2. The function of determining whether, and in what manner, to enforce:
  - a. any failure to comply with an approval, consent, licence, permission or registration granted as mentioned in paragraph 1a. above;
  - b. any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject; or
  - c. any other contravention in relation to a matter with regard to which the function of determining an application for approval, consent, licence, permission or registration would not be the responsibility of the Cabinet
3. The function of:
  - a. amending, modifying or varying any such approval, consent, licence, permission or registration as is mentioned in paragraph (1) above, or any condition, limitation or term to which it is subject; or
  - b. revoking any such approval, consent, licence, permission or registration
4. The function of making any scheme authorised or required by regulations under section 18 (schemes for basic, attendance and special responsibility allowances for local authority Councillors) of the Local Government and Housing Act 1989, or of amending, revoking or replacing any such scheme. This function must be exercised by the Council.
5. The function of determining:
  - a. the amount of any allowance payable under –
    - i. subsection (5) of section 3 (Chair's expenses) of the Local Government Act 1972;
    - ii. subsection (4) of section 5 (vice-Chair's expenses) of that Act;
    - iii. subsection (4) of section 173 (financial loss allowance) of that Act;
    - iv. section 175 (allowances for attending conferences and meetings) of that Act;
  - b. the rates at which payments are to be made under section 174 (travelling and subsistence allowances) of that Act;
  - c. the amount of any allowance payable pursuant to a scheme under section 18 of the Local Government and Housing Act 1989, or the rates at which payments by way of any such
  - d. whether a charge should be made for any approval, consent, licence, permit or registration the issue of which is not the responsibility of the Cabinet; and

- e. where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge

Functions a, b and c must be exercised by the Council.

- 6. Subject to any provision of regulations under section 20 (joint exercise of functions) of the Local Government Act 2000, the function of:
  - a. making arrangements for the discharge of functions by a committee or Officer under section 101(5) of the 1972 Act; and
  - b. making appointments under section 102 (appointment of committees) of the 1972 Act.
- 7. Any function of a local authority that may be discharged only by an authority, by virtue of any enactment passed or made before the making of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended), unless otherwise provided by those regulations.



## Schedule 2

### Functions which may be (but need not be) the Responsibility of the Cabinet (Local Choice Functions)

#### Table of Functions which may be (but need not be) the Responsibility of the Cabinet (Local Choice Functions)

Function	Recommended Responsible body
1. Any function under a local Act other than a function specified or referred to in Schedule 1 or Schedule 1A above.	Cabinet
2. The determination of an appeal against any decision made by or on behalf of the authority	Cabinet or Council as appropriate
3. The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998.	Council
4. The conducting of best value reviews and making decisions arising therefrom in accordance with the provisions of any order for the time being having effect under section 5 (best value reviews) of the Local Government Act 1999.	Council on the advice of Cabinet and Overview and Scrutiny Committees
5. Any function relating to contaminated land under Part 11A of the Environmental Protection Act 1990 and subordinate legislation under that Part.	Cabinet
6. The discharge of any function relating to the control of pollution or the management of air quality under the Pollution Prevention and Control Act 1999, Part IV of the Environment Act 1995, Part I of the Environmental Protection Act 1990 and the Clean Air Act 1993.	Cabinet
7. The service of an abatement notice in respect of a statutory nuisance under section 80 of the Environmental Protection Act 1990.	Cabinet
8. The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area under section 8 of that Act.	Cabinet
9. The inspection of the authority's area to detect any statutory nuisance under section 79 of the Environmental Protection Act 1990.	Cabinet
10. The investigation of any complaint as to the existence of a statutory nuisance under section 79 of the Environmental Protection Act 1990.	Cabinet
11. The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.	Cabinet
12. The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Cabinet
13. The making of agreements for the execution of highways works under section 278 of the Highways Act 1980.	Cabinet
14. The appointment of any individual:	Cabinet

Function	Recommended Responsible body
<ul style="list-style-type: none"> <li>a. to any office other than an office in which he is employed by the authority;</li> <li>b. to any body other than – <ul style="list-style-type: none"> <li>i. the authority;</li> <li>ii. a joint committee of two or more authorities; or</li> </ul> </li> <li>c. to any committee or sub-committee of such a body, and the revocation of any such appointment.</li> </ul>	
15. The functions in relation to the management of the Hastings and St. Leonards Museums	Cabinet
16. The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.	Cabinet
17. The determination of appeals against any decisions made by the Head of Finance in consultation with the Leader of the Council in respect of applications for discretionary non-domestic rate relief – Cabinet	Cabinet

### Schedule 3

#### Functions which by Regulation are not to be the Sole Responsibility of the Cabinet

#### Table of Functions which by Regulation are not to be the Sole Responsibility of the Cabinet

Plans and strategies	Reference
Local Performance Plan	Section 6(1) of the Local Government Act 1999.
Community Strategy	Section 4 of the Local Government Act 2000.
Crime and Disorder Reduction Strategy	Sections 5 and 6 of the Crime and Disorder Act 1998.
Plans and alterations which together comprise the Development Plan, including the approval, for the purposes of consultation in accordance with regulation 10 or 22 Town and Country Planning (Development Plans)(England) Regulations 1999, of draft proposals relating to alterations or replacement of the Development Plan.	Section 54 of the Town and Country Planning Act 1990.
Development Plan documents The approval, for the purpose of its submission to the Secretary of State for independent examination of a development plan document, and	Section 15 Planning and Compulsory Purchase Act 2004. Section 20 Planning and Compulsory Purchase Act 2004

## **Schedule 4**

### **Circumstances In which Functions are not to be the Responsibility of the Cabinet (Subject to Urgency Exceptions)\***

1. The Cabinet cannot determine any matter relating to the budget or concerned with capital expenditure which is:-
  - a. Contrary to the authority's approved budget
  - b. Contrary to any agreed plan or strategy for borrowing, investments or capital expenditure
  - c. Not authorised by financial regulations, standing orders or any other approved rules or procedures
2. The Cabinet cannot take any decision relating to an approved plan or strategy in a way contrary to the approved plan or strategy.

Paragraph 2 above applies equally to any individual or body to whom any of the powers of the Cabinet have been delegated.

Paragraphs 1 and 2 above shall not apply in circumstances that can reasonably be considered urgent.

\* Urgency requires a statement signed by the Chair of Overview and Scrutiny Committee or in their absence the Mayor or, in their absence, the Deputy Mayor.

# Agenda Item 4



## **The Constitution**

### **Part 4 Rules of Procedure**

## The Constitution, Part 4 - Rules of Procedure

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# 1. Annual Meeting of the Council

## Timing and business

In a year when there is an ordinary election of Councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the Annual Meeting will normally take place in May.

The Annual Meeting will:

- i. elect a person to preside if the Mayor and Deputy Mayor are not present;
- ii. elect the Mayor of Council;
- iii. elect the Deputy Mayor of Council;
- iv. approve the minutes of the last meeting;
- v. receive any announcements from the Mayor;
- vi. elect the Leader where a vacancy has occurred ;
- vii. receive the Leader's report on the appointment of the Deputy Leader of the Council and the number of and the names of the members of Cabinet;
- ix. receive the Leader's report on the Cabinet portfolios and their allocation to members of the Cabinet;
- x. appoint an Overview and Scrutiny Committee, a Standards Committee, a Licensing Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3, Table 1 of this Constitution);
- xi. appoint to those Committees in accordance with the political balance rules where applicable except where the appointment is exercisable only by the Cabinet;
- xii. to consider the following motion to be proposed by the Leader of the Council and seconded by the Deputy Leader:-  

"That the Council agrees the programme for the ensuing municipal year as proposed by the Leader of the Council" to which no amendment may be moved."

## 2. Ordinary Meetings

Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's Annual Meeting. Ordinary meetings will:

- i. elect a person to preside if the Mayor and Deputy Mayor are not present;
- ii. approve the minutes of the last meeting;
- iii. receive any declarations of interest from Councillors;
- iv. receive any announcements from the Mayor and/or Leader;
- v. receive questions from, and provide answers to, the public;

- vi. deal with any business from the last Council meeting;
- vii. consider motions;
- viii. consider any changes to the membership of Committees;
- ix. receive reports from the Cabinet and the Council's Committees and receive questions and answers on any of those reports;
- x. receive reports about and receive questions and answers on the business of joint arrangements and external organisations; and
- xi. consider any other business specified in the summons to the meeting including consideration of proposals from the Cabinet in relation to the Council's budget and policy framework and reports of the Overview and Scrutiny Committee for debate; and

### **3. Extraordinary and Special Meetings**

#### **Calling extraordinary meetings**

- 3.1 Those listed below may request the Chief Legal Officer to call Council meetings in addition to ordinary meetings:
- i. the Council by resolution;
  - ii. the Mayor of the Council;
  - iii. the Monitoring Officer; and

any five members of the Council if they have signed a requisition presented to the Mayor and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

#### **Special Meetings**

- 3.2 Special meetings are set in the programme for meetings at the commencement of the municipal year.
- 3.3 The only business which may be considered at an extraordinary or special meeting is the business for which the meeting was called or set as the case may be.
- 3.4 Immediately after any vote is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

### **4. Appointment of Substitute Members of Committees and Sub-Committees**

- 4.1 There shall be no substitution of members of the Licensing Committee or the Cabinet. Members of the Cabinet may not be substitutes on Overview and Scrutiny Committee. The Leader may not substitute on Standards Committee.

- 4.2 The political groups may appoint substitute members in accordance with this Rule on Committees and Sub-Committees. Only Councillors who have undergone related training may be substituted to Standards Committee, Planning Committee and Environment and Safety Committee. Only members of Cabinet may be substituted to Charity Committee.
- 4.3 Substitute members will have all the powers and duties of any ordinary member of the Committee.
- 4.4 Substitute members may attend meetings in that capacity only:
- i. to take the place of the ordinary member for whom they are the designated substitute;
  - ii. where the ordinary member will be absent for the whole of the meeting or, in the case of the Charity Committee, for such item or items as shall be notified to the Chief Legal Officer under iii. below; and
  - iii. after notifying the Chief Legal Officer no later than the commencement of the relevant meeting in the form supplied.

## **5. Time and Place of Meetings**

The time and place of meetings will be determined by the Chief Legal Officer and notified in the summons. All Council meetings unless otherwise determined shall be held in Muriel Matters House, Breeds Place, Hastings.

## **6. Notice of and Summons to Meetings**

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

## **7. Chair of Meeting**

The ruling of the Mayor as to the construction or application of any of these rules, or as to any proceedings of the Council, shall be final. Subject to the requirement that the election of Mayor is to be the first item for discussion at Annual Council the Mayor shall have power to adjust the order of items on the agenda where he or she considers that it would be in the interests of the proper conduct of the meeting.

The Mayor may adjourn a meeting of the Council for such period as he or she considers appropriate. In the event of an adjournment, the Mayor may, at the time of the adjournment or subsequently, fix a date and time for the meeting to resume. If no date and time is fixed the outstanding business shall be dealt with at the next ordinary meeting of the Council.

The person presiding at the meeting may exercise any power or duty of the Mayor. Where these rules apply to Committee and Sub-Committee meetings, references to the Mayor also include the Chair of Committees and Sub-Committees.

In the absence of the Mayor and Deputy Mayor, the Chief Legal Officer shall call on any Councillor present at a Council meeting to move that a Councillor can chair the meeting. If discussion arises, the Chief Legal Officer shall exercise the powers of the person presiding to regulate that discussion, and to maintain order at the meeting. This rule shall apply to Committees and Sub-Committees in the same way except that members of Cabinet are not excluded by virtue of this Rule alone.

## **8. Quorum**

The quorum of a meeting will be one quarter of the whole number of members. During any meeting if the Mayor or Chair counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Mayor or Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

The quorum for Committees is one quarter of the membership, subject to a minimum of three.

The Standards Committee and Cabinet have their own rules as to quorum. These are set out in Article 9 of Part 2 and in the Cabinet Procedure Rules.

## **9. Duration of Meeting**

Unless the majority of Councillors present vote for the meeting to continue, any meeting that has lasted for four hours will adjourn immediately. Remaining business will be considered at a time and date fixed by the Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting. Virtual Full Council meetings will commence at 18.00 hours and aim to finish at 21.00 hours. Any unfinished business will be completed on a pre-arranged and pre-published adjourned date.

## **10. Petitions Scheme**

The Council welcomes petitions and recognises that petitions are one way in which people can bring their concerns to the attention of the Council. The subject of any petition to be presented must relate to a matter for which the Council has powers, duties or functions or which affects the Borough or part of it or its inhabitants. However, the Council will not deal with a petition which in the opinion of the Monitoring Officer is vexatious, abusive, similar in nature to one previously accepted within the past year or otherwise inappropriate to be considered under this rule.

There are different types of petition as set out below.

### **Ordinary petitions**

10.1 These are petitions which relate to matters for which the Council has powers, duties and responsibilities or which affects the Borough or part of it or people who live work or study in the Borough. These petitions should be presented to the Mayor or to the Chief Legal Officer at Muriel Matters House, Breeds Place, Hastings, TN34 3UY.

A petition shall comply with the following:-

- (a) The wording of the petition will appear at the head of each page of signatures.
- (b) The petition shall bear the signatures of ten or more persons from different households who live, work or study in the Borough.
- (c) The petition presented shall be the original and shall bear the signatures, name and address of each signatory.
- (d) By signing the petition the petitioner is agreeing to have their personal information published in the public domain.

10.2 A petition shall NOT be presented if it relates to:

- (a) matters relating to an individual or relating to a current housing or grant application;
- (b) matters which are the subject of legal proceedings or an appeal to a tribunal or government minister or an investigation by the Local Government Ombudsman or the Standards Committee or through the Council's Corporate Complaints Procedure;
- (c) matters relating to a Council Officer or the conduct of a Councillor; or
- (d) any other matter which would require the release of any exempt information as defined in Part 1 of Schedule 12A of the Local Government Act 1972.

### **Consultation petitions**

10.3 These are petitions compiled in response to consultation by the Council on a proposal such as a planning application, licensing application, proposed policy or strategy. Such petitions should be returned to the address in the consultation and will be considered by the Committee or body with responsibility for making the decision or recommendation.

### **Governance Petitions**

10.4 These petitions are outside the Petitions Scheme. These relate to such matters as a call from electors for the Council to hold a referendum on whether to have an elected Mayor or for the establishment of a parish or community council in part of the Council's area. The legislation governing E-Petitions has not yet been extended to such petitions.

### **Petitions for Debate**

10.5 A petition which can require a debate at a meeting of the Council must comply with Rule 10.1 above except that it must have at least 1,500 signatures or more of persons who live, work or study in the Borough.

This rule does not apply where the petition requires that an Officer be called to account.

A petition for debate at Council will be reported to the next available ordinary meeting of the Council, when the petition organiser will be given 5 minutes in which to address the Council, followed by questions from Councillors. Council will then discuss the subject of the petition for no more than 15 minutes.

The Council then has the following options:-

- a. where it is a decision on which it can make a decision, to make a decision;

- b. where the decision is one which only Cabinet can make, to refer the matter to Cabinet for consideration with or without Council's recommendations; or
- c. refer the matter to another committee with responsibility, such as the Overview and Scrutiny Committee for investigation and, possibly, further report.

Petitions for debate should be addressed to the Council as for Ordinary Petitions.

### **Petitions to call an Officer to account**

10.6 There may be exceptional circumstances where a petition is used to call a relevant Officer of the Council to account so that he or she is required to attend before the Overview and Scrutiny Committee to give evidence and to answer questions on a particular matter.

The petition must satisfy the requirements of Rule 10.1, except that it shall bear at least 750 signatures of persons who live, work or study in the Borough. The petition must also identify the Officer to be called to account either by name or job title. The petition must also give grounds for the request which relate to the discharge of functions for which the Officer is responsible.

Relevant Officers who may be called to account by such a petition are the Chief Officers.

On receipt of such a petition, the Overview and Scrutiny Committee will exercise its powers under Section 21(13) (a) Local Government Act 2000 to require the relevant person to appear before it to answer questions relevant to the petition. It may decide that an Officer other than that Officer identified in the petition would be more appropriate to attend for questioning and the Head of Paid Service, will be consulted on this before another Officer is asked to attend.

Only members of the Committee may address questions to the Officer and the Chair may pose questions provided by the petition organiser to the Chief Legal Officer at least three working days before the meeting.

Following such attendance and questioning, the Committee will then make a report or recommendations to the Council or Cabinet, as appropriate, and send a copy of the report or recommendations to the petition organiser.

Petitions to call an Officer to account should be addressed to the Council as for ordinary petitions.

### **E-Petitions**

10.7 The Council acknowledges that E-Petitions can be a faster, more convenient alternative to a more traditional paper petition and therefore accepts the submission of E-Petitions. The E-Petition facility is facilitated by Modern.Gov and can be accessed using the link on the Hastings Borough Council website. The minimum number of signatures required for an E-Petition to be considered under this rule is ten for ordinary and consultation petitions, 750 for petitions calling Officers to account and 1500 for petitions for debate as described above in paragraphs 10.1 to 10.6. For E-Petitions relating to current planning applications and current licensing applications the minimum number of signatures required for an E-Petition to be considered under this rule is ten from different households. The same rules and procedures apply as for paper petitions and the signatories must all live, work or study in the Borough. Where an identical E-Petition and paper petition and both received in respect of the same matter, the Council will accept the petition which is received first. E-petitions are not accepted for petitions

alleging misconduct by a Councillor or Councillors (complaint to Standards Committee), relating to a Council Officer or Service (Corporate Complaints Process / Disciplinary) or to matters relating to an individual.

### **Current Planning Applications**

10.8 E-Petitions which relate to current planning applications are accepted by the Council subject to the following:-

- a) They must contain a minimum of ten signatories from different households.
- b) All signatories must live, work or study in the Borough. Random checks that signatories meet this criteria will be undertaken.
- c) The E-Petition must clearly state the planning application reference number to which it is referring, giving the full address of the property / site, the reasons for the petition and what action or decision you want the Council / relevant Committee to take.
- d) E-Petitions regarding current planning applications should be submitted within 21 days of the date the application is initially advertised (by press notice / site notice or letter where appropriate). This is to ensure that they are fully taken into account in the assessment of the application. Signatures cannot be collected on an E-Petition beyond this period.
- e) E-Petitions relating to current planning applications must state who the Lead Petitioner is and how they can be contacted.
- f) E-Petitions can be submitted for current planning applications which are scheduled to be determined by the Planning Committee in accordance with the Council's public speaking rights as set out in the Planning Protocol (Part 5 of the Constitution). E-Petitions can only be accepted **at least three clear working days** before the Planning Committee considering the item is due to sit and the petition is contrary to the Officer's recommendation.
- g) An acknowledgement will be sent to the Lead Petitioner within 10 working days of receipt of the petition (excluding E-Petitions submitted following publication of the Planning Committee agenda set out in f) above. The Lead Petitioner will be notified if the application is referred to the Planning Committee and advised of the date of the Planning Committee meeting and their public speaking rights (if relevant).
- h) Validated E-Petitions regarding current planning applications will be uploaded onto the application file and available for public inspection on the Council's website.
- i) Paper petitions will still be accepted for current planning applications.

### **Current Licensing Applications**

10.9 E-Petitions which relate to current licensing applications are accepted by the Council subject to the following:-

- a) They must contain a minimum of ten signatories from different households.
- b) All signatories must live, work or study in the Borough. Random checks that signatories meet this criteria will be undertaken.



- c) The E-Petition must clearly state the name of the business which is subject of the licensing application, giving the full address of the property, the reasons for the petition and what action or decision you want the Council / relevant Committee to take.
- d) E-Petitions regarding current licensing applications under the Licensing Act 2003 should be submitted within 28 consecutive working days commencing the day after the application is submitted. This is to ensure that they are fully taken into account in the assessment of the application. Signatures cannot be collected on an E-Petition beyond this period.
- e) E-Petitions relating to current licensing applications must state who the Lead Petitioner is and how they can be contacted.
- f) An acknowledgement will be sent to the Lead Petitioner within 10 working days of receipt of the petition. The Lead Petitioner will be notified if the application is referred to the relevant Committee and advised of the date of the meeting.

Guidance on the submission of E-Petitions can be found on the Council's website at <https://hastings.moderngov.co.uk/mgEPetitionListDisplay.aspx?bcr=1>

### **How will the Council respond to petitions? (Excluding E-Petitions relating to current planning and licensing applications which are dealt with separately above)**

10.10 An acknowledgement will be sent to the petition organiser within 10 working days of receipt of the petition, notifying how it is intended to deal with the petition and indicating when the petition organiser will be contacted again. This might include setting out the Council's views about the request in the petition

If the Council can do what the petition requests immediately, the Council will acknowledge that it has received the petition and tell the petition organiser that the Council has taken the action requested and the petition will be closed.

Otherwise the Council's response to a petition will depend on what a petition asks for and how many people have signed it. This could include one or more of the following: -

- taking the action requested in the petition
- considering the petition at a council meeting
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the Council's Overview and Scrutiny Committee
- writing to the petition organiser setting out the Council's views about the request in the petition
- no further action and the petition will be returned to the sender.

If the petitioner is heard at any meeting of the Council they will be given up to 5 minutes in which to address the meeting followed by questions from Councillors (if applicable). Only one member of the delegation presenting the petition should be allowed to speak and must be someone who resides, works or studies in the Borough.

### **Conclusion of the petition process**

10.11 Once the petition has been dealt with in accordance with this rule, the petition organiser will be advised in writing within 10 working days of the outcome of the petition if they were not present at the meeting where the petition was discussed.

### **Review of steps taken in response to the petition by the Overview and Scrutiny Committee**

10.12 If the petition organiser is not satisfied that the petition has been dealt with properly, the petition organiser may request that the Overview and Scrutiny Committee reviews the adequacy of the steps taken or proposed to be taken in response to the petition.

On receipt of a request for a review, the Overview and Scrutiny Committee shall consider the request at its next available meeting or as soon as practicable thereafter.

The Council shall within 10 working days of the decision on review inform the petition organiser of the outcome of the review.

## **11. Public Question Time**

### **General**

11.1 Members of the public who reside or work in the Borough may at ordinary meetings of the Council, in accordance with these rules, ask questions of the Leader and Portfolio Holders (including the Chair of Charity Committee) on any matter within the Borough Council's powers, duties or functions. Public question time will last no longer than 30 minutes. A question asked within the 30 minutes will be answered. When the Full Council meeting is virtual we may undertake Public Question Time wholly in writing for both substantive questions and supplementary questions. The questions and answers will both be published on the Council's website <https://hastings.moderngov.co.uk/ieListMeetings.aspx?Committeeld=168> with the minutes of the full council meeting. The questioner's name will be published. Requests for anonymity from publishing when asking a question are to be made with the initial question and will be entirely at the discretion of the Monitoring Officer.

### **Order of questions**

11.2 Questions will be asked in the order in which they are recorded as being received by the Chief Legal Officer, except that the Mayor may group together similar questions.

## **Notice of questions**

- 11.3 A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Legal Officer no later than five clear working days before the day of the meeting. Each question must give the name and address of the questioner.

## **Number of questions**

- 11.4 At any one meeting no person or organisation may submit more than one question.

## **Scope of questions**

- 11.5 The Chief Legal Officer may reject a question and the ruling shall be final if:
- it is not about a matter for which the local authority has a responsibility, power, duty or function or which affects the Borough;
  - it is defamatory, frivolous or offensive;
  - it is substantially the same as a question which has been put at a meeting of the Council in the past six months;
  - it requires the disclosure of confidential or exempt information;
  - its purpose is not primarily to seek information.
  - it is about a matter which is the subject of legal proceedings or an appeal to a tribunal or to a government minister or an investigation by the Local Government Ombudsman or the Standards Committee, or through the Council's Corporate Complaints Procedure;
  - the preparation of the answer would require the expenditure of a disproportionate amount of time, money or effort.

## **Copies of questions**

- 11.6 Copies of all questions received together with the written reply from the Leader or relevant Portfolio Holder will be circulated to all Councillors and will be made available to members of the public attending the meeting. The question and answer will be taken as read.

## **Supplementary question**

- 11.7 A questioner who has submitted a question may also ask one supplementary question, without notice, to the Cabinet member who has replied to their original question. Questions shall be put and answered without debate. A supplementary question must arise directly out of the original question or the reply. The Mayor may reject a supplementary question on any of the grounds in Rule 11.5 above.

## Written answers

- 11.8 Any question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Cabinet member to whom it was to be put, will be dealt with by a written answer within 10 working days of the Council meeting at which the question was asked.

## 12. Questions by Councillors

### Questions on notice at Full Council

- 12.1 A Councillor may also submit one written question to the Chief Legal Officer five clear working days before the relevant meeting.

A member of the Council may ask:

- the Mayor;
- the Leader or a Portfolio Holder; or
- the Chair of any Committee or Sub-Committee

one question on any matter in relation to which the Council has powers, duties or functions or which affects Hastings Borough. The Chief Legal Officer may reject a question and the ruling shall be final if it:

- It is not about a matter for which the local authority has a responsibility power, duty or function or which affects the Borough;
- It is defamatory, frivolous or offensive;
- It is substantially the same as a question which has been put at a meeting of the Council in the past six months;
- It requires the disclosure of confidential or exempt information;
- It is about a matter which is the subject of legal proceedings or an appeal to a tribunal or to a government minister or an investigation by the Local Government Ombudsman or the Standards Committee, or through the Council's Corporate Complaints Procedure; or
- the preparation of the answer would require the expenditure of a disproportionate amount of time, money or effort.

## Response

- 12.2 An answer may take the form of:
- a. a direct oral answer;
  - b. where the desired information is in a publication of the Council or other published work, a reference to that publication; or
  - c. where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

## Supplementary question

- 12.3 A Councillor who has submitted a question may ask one supplementary question, without notice, of the Councillor to whom the first question was asked. The supplemental question must arise directly out of the original

question or the reply. The Mayor may reject a supplementary question on any of the grounds in Rule 11.5 above.

### **Questions to the Leader, Deputy Leader or other Portfolio Holder**

- 12.4 At each ordinary meeting of the Council a maximum period of 30 minutes shall be set aside for oral questions by Councillors to the Leader, Deputy Leader or other Portfolio Holder, (including the Chair of Charity Committee).
- 12.5 The Leaders of the opposition group/s are entitled to ask the first questions, such questions to be received in order of group size.
- 12.6 All other Councillors may, subject to the time limit, ask a question. The Mayor shall determine the order of these questions. If time permits Councillors may ask a further question.
- 12.7 When asking a question the Councillor must identify the Councillor to whom the question is addressed.
- 12.8 The Mayor may disallow a question on any of the following grounds:-
- it is not relevant to the functions, powers and duties of the Council
  - it is wholly or partly frivolous or derogatory to the dignity of Council
  - it is not put with reasonable brevity
  - it comprises more than one part
  - it is identical or moderately similar to another question which has already been put during question time.
- 12.9 No supplementary questions are permitted.

### **On reports of the Cabinet or Committees**

- 12.10 A member of the Council may ask the Leader, Deputy Leader or a Portfolio Holder any question without notice upon an item of the report of the Cabinet when that item is being received or under consideration by the Council.

### **Ward Councillors to Speak at any Meeting**

- 12.11 A Councillor may speak on an item particularly affecting their ward at any meeting of Council bodies of which he or she is not a member, subject to any limitations imposed by law or this Constitution.

## **13. Reports and Minutes of Cabinet and Committees**

- 13.1 At ordinary meetings of the Council when the appropriate agenda item is reached the Mayor will ask the Councillors to state the numbers of the items on which they wish to speak. This process is known as "call-over". Such items are called "reserved items".
- 13.2 When an item is reserved, any other item before the Council ruled by the Mayor to be related to it shall be deemed to be reserved.
- 13.3 No discussion shall take place on any items which have not been reserved. Items not reserved, including items requiring Council decision,

shall be deemed adopted without discussion.

- 13.4 Where the decision to be taken is a decision for the Council, the Leader and Chairs of Committees (starting with the Leader or relevant Cabinet Member) shall move in turn the adoption of the recommendations as set out in the items in the report or minutes of the Cabinet or Committee, which have been reserved, in the order which they appear on the agenda, save that reserved matters requiring Council decision will be called first.
- 13.5 In the absence of the Chair of a Committee or relevant Cabinet member, the Vice Chair or another Member nominated by the Chair may move the recommendations.
- 13.6 A motion to adopt the recommendations of Cabinet or Committee need not be seconded.
- 13.7 Where the Cabinet and Overview and Scrutiny Committee are reporting or making recommendations on the same subject matter, their reports or minutes shall be considered together and, if in the opinion of the Mayor, there is a material difference between the recommendations, the Chair of the Overview and Scrutiny Committee (or nominee) shall move its recommendations as an amendment to the recommendations moved under Rule 13.4 as soon as these have been moved. This amendment need not be seconded and shall then be open for debate.
- 13.8 Where the reports or minutes on a reserved item do not contain any recommendations to the Council, the Mayor shall call the Councillor who reserved the item or their nominee to speak first. The Leader or relevant Cabinet member or Chair of the Committee concerned shall have the right of reply at the end of debate on the reserved item. No motion may be moved in respect of that matter other than to refer it back to the Cabinet for review or to the Overview and Scrutiny Committee for review and report. A motion to refer back a report or minute of the review of a decision previously referred back under this Rule or called-in under Rule 29.15 (unless as part of the call-in process) shall be out of order.

## **14. Motions on Notice**

### **Notice**

- 14.1 Motions must be about matters for which the Council has statutory powers, duties or functions or address the built or natural environment of the Borough of Hastings or address a matter of local, regional or national policy that affects the lives of people in the Borough of Hastings. The ruling of the Monitoring Officer in consultation with the Mayor shall be final as to the relevance of the motion.

Further, a motion may not be tabled in any of the following circumstances:-

- a. any matter relating to an individual or individuals which relates to the application or use of any of the Council's powers, past or present, in respect of that individual, other than in relation to admission to the honorary freedom of the Borough or in relation to an individual as a

Councillor holding office in the Council;

- b. a matter which is the subject of legal proceedings or an appeal to a tribunal or to a government minister or an investigation by the Local Government Ombudsman or the Standards Committee, or through the Council's Corporate Complaints Procedure;
- c. the appointment, promotion, dismissal, salary or other payments, superannuation or conditions of employment or the conduct or ability of any individual employed by the Council or the conduct of a member of the Council;
- d. any other matter which would require the disclosure of exempt information as defined by Schedule 12A to the Local Government Act 1972.

Except for motions which can be moved without notice under Rule 15, written notice of every motion, signed by at least one Councillor, must be delivered to the Chief Legal Officer not later than 8 clear working days before the date of the Council meeting. These will be entered in a book open to public inspection.

### **Motion set out in agenda**

- 14.2 Motions for which notice has been given will be listed on the agenda in the order in which notice of the motion was received and the motion accepted, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.
- 14.3 The agenda for each Council meeting, other than the Annual Meeting, shall include all notices of motions which relate to Council functions proposed to be moved at that meeting which have been received in time, accepted by the Chief Legal Officer and have not been withdrawn in writing by the proposer. Motions which are the responsibility of Council will be dealt with in the order upon which they are received.
- 14.4 If a motion set out in the summons is not moved either by a Councillor who gave notice thereof or by some other Councillor on their behalf it shall, unless postponed by consent of the Council, be treated as withdrawn and shall not be moved without fresh notice.
- 14.5 Motions which relate to matters which are not the responsibility of Council (e.g. Cabinet functions) will be referred by the Chief Legal Officer to the responsible body for consideration at its next available meeting. The proposer and seconder (or some other Councillor on their behalf) of the motion are entitled to speak to the motion at the meeting of that body. Only members of that body may move or second a proposition at the meeting of that body.
- 14.6 No notice of motion, which if adopted, will, in the opinion of the Mayor, rescind, or substantially reverse the effect of a Council resolution made within the previous six months, shall be proposed unless the notice is signed by a majority of the members of the Council.
- 14.7 The Chief Legal Officer will, if requested, help Councillors with the wording of

motions.

- 14.8 No notice of motion shall be accepted which in the opinion of the Chief Legal Officer relates to a quasi judicial matter before the Council.

## **15. Motions Without Notice**

The following motions may be moved without notice:

- a. to appoint a Chair of the meeting at which the motion is moved;
- b. in relation to the accuracy of the minutes;
- c. to change the order of business in the agenda;
- d. to refer something to an appropriate body or individual;
- e. to appoint a Committee or Councillor arising from an item on the summons for the meeting;
- f. to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- g. to withdraw a motion;
- h. to amend a motion;
- i. to proceed to the next business;
- j. that the question be now put;
- k. to adjourn a debate;
- l. to adjourn a meeting;
- m. that the meeting continue beyond four hours in duration;
- n. to suspend a particular Council procedure rule;
- o. to exclude the public and press in accordance with the Access to Information Rules;
- p. to not hear further a Councillor named under Rule 22.3 or to exclude them from the meeting under Rule 22.4; and
- q. to give the consent of the Council where its consent is required by this Constitution.
- r. questions by Councillors under Rule 12.1;
- s. to move into Committee under Rule 16.14.

## **16. Rules of Debate**

### **No speeches until motion has been seconded**

- 16.1 No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded other than a motion to adopt the recommendations of Cabinet or a committee under Rule 13.4.



## **Right to require motion in writing**

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

## **Secunder's speech**

- 16.3 When seconding a motion or amendment, a Councillor may reserve their speech until later in the debate.

## **Content and length of speeches**

- 16.4 Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed three minutes except:-
1. the Mayor's address to the Annual Council;
  2. on the motion to adopt a programme for the year when the time limit for speeches by the Leader of the Council and the Leader of each Political Group having three or more Councillors, shall be 15 minutes;
  3. on the motion to approve the capital programme and revenue budget for the next financial year, when the time limit for speeches by the Leader of the Council and the Leader of each Political Group having three or more Councillors shall be 15 minutes;
  4. on a motion to adopt the Corporate Plan when the time limit for speeches by the Leader of the Council and the Leader of each Political Group having three or more Councillors, shall be 15 minutes;
  5. when the Council (following a vote without debate) allows a Councillor's speech to continue for one further period of up to one minute.
  6. the proposer of a motion to Council or item for Council decision will have 5 minutes to propose and 5 minutes for their right of reply. (This does not apply to call over for Cabinet minutes).

## **When a Councillor may speak again**

- 16.5 A Councillor who has spoken on an item may not speak again whilst it is the subject of debate, except:
- a. to speak once on an amendment moved by another Councillor;
  - b. to move a further amendment if the motion has been amended since he/she last spoke;
  - c. if their first speech was on an amendment moved by another Councillor, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
  - d. in exercise of a right of reply;
  - e. on a point of order; and

- f. by way of personal explanation.

## **Amendments to motions**

### 16.6

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

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

- b. Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of
- c. If an amendment is not carried, other amendments to the original motion may be moved.
- d. If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- e. After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

## **Alteration of motion**

### 16.7

- a. A Councillor may alter a motion of which he/she has given notice with the consent of the meeting and the seconder. The meeting's consent will be signified by a vote without discussion.
- b. A Councillor may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion
- c. Only alterations which could be made as an amendment may be made.
- d. Where a proposed amendment is acceptable to the proposer of the original motion the consent of the seconder is required.

## **Withdrawal of motion**

- 16.8 A Councillor may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Councillor may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

## Right of reply

16.9

- a. The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- b. If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- c. The mover of the amendment has no right of reply to the debate on their amendment.

## Motions which may be moved during debate

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

- a. to withdraw a motion;
- b. to amend a motion;
- c. to proceed to the next business;
- d. that the question be now put;
- e. to adjourn a debate;
- f. to adjourn a meeting;
- g. that the meeting continue beyond four hours in duration
- h. to exclude the public and press in accordance with the Access to Information Rules; and
- i. to not hear further a Councillor named under Rule 22.3 or to exclude them from the meeting under Rule 22.4.

## Closure motions

16.11

- a. A Councillor may move, without comment, the following motions at the end of a speech of another Councillor:
  - i. to proceed to the next business;
  - ii. to amend a motion
  - iii. that the question be now put;
  - iv. to adjourn a debate; or
  - v. to adjourn a meeting
- b. In a motion to proceed to next business, if the Mayor thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.
- c. In a motion that the question be now put, if the Mayor thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote.

If it is passed he/she will give the mover of the original motion a right of reply before putting their motion to the vote.

- d. If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

### **Point of order**

- 16.12 A Councillor may raise a point of order at any time. The Councillor must indicate the rule or law and the way in which he/she considers it has been broken. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The ruling of the Mayor, who shall hear the Councillor immediately, will be final.

### **Personal explanation**

- 16.13 A Councillor may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Councillor which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

### **Council proceeding as if in committee**

- 16.14 When the Council is debating some matter requiring a decision by the Council and the Council feels it is appropriate, it may resolve to proceed for all or some of that item as if it were a committee. This will enable the Council to take advice from officers, and such other persons as it sees fit, in order to inform its decision making. On closure of the debate in committee, the Mayor will invite Council to move to a vote on the matter in accordance with Rule 18.

## **17. Previous Decisions and Motions**

### **Motion to rescind a previous decision**

- 17.1 A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by a majority of Councillors.

### **Motion similar to one previously rejected**

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

## **18. Voting**

### **Majority**

- 18.1 Unless this Constitution or the law provides otherwise, any matter will be decided by a simple majority of those Councillors voting at the time the question was put. For the avoidance of doubt, an abstention from voting does not constitute a vote and the majority, or such greater proportion otherwise required by law or this Constitution, shall be calculated from those voting for or against the motion.

### **Mayor's casting vote**

- 18.2 If there are equal numbers of votes for and against, the Mayor will have a second or casting vote. There will be no restriction or assumption made on how the Mayor chooses to exercise a casting vote.

### **Show of hands**

- 18.3 Unless a recorded vote is demanded under Rules 18.4, the Mayor will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting. During all virtual council meetings voting will be undertaken by roll call.

### **Recorded vote**

- 18.4 If six or more Councillors present at the meeting stand and request it before the vote is taken, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. During all virtual council meetings if a Councillor requests a recorded vote and five more Councillors indicate agreement with that request then the vote will be recorded in the minutes in accordance with this paragraph.

### **Right to require individual vote to be recorded**

- 18.5 Where any Councillors requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

### **Voting on appointments**

- 18.6 If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

## **19. Minutes**

### **Signing the minutes**

- 19.1 The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

### **No requirement to sign minutes of previous meeting at extraordinary and special meetings**

- 19.2 Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting) or a Special Meeting, then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

### **Form of minutes**

- 19.3 Minutes will contain all motions and amendments in the exact form and order the Mayor put them.

## **20. Record of Attendance**

A record of attendance shall be kept at every formal council meeting.

## **21. Exclusion of Public**

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

## **22. Councillors' Conduct**

### **Standing to speak**

- 22.1 When a Councillor speaks at Full Council they must stand and address the meeting through the Mayor. If more than one Councillor stands, the Mayor will ask one to speak and the others must sit. Other Councillors must remain seated whilst a Councillor is speaking unless they wish to make a point of order or a point of personal explanation. The Mayor may excuse a Councillor from standing at their discretion. Whilst the Council is conducting Virtual Full Council meetings there is no need for a councillor to stand to speak.

## **Mayor standing**

- 22.2 When the Mayor stands during a debate, any Councillor speaking at the time must stop and sit down. The meeting must be silent. Councillor not to be heard further. During Virtual Full Council meetings the equivalent of this Rule is that the Mayor will ask the Councillor/s to be silent. The Councillor is not to be heard further.

## **Member not to be heard further**

- 22.3 If a Councillor persistently disregards the ruling of the Mayor by behaving improperly or offensively or deliberately obstructs business, the Mayor may move that the Councillor be not heard further. If seconded, the motion will be voted on without discussion. During Virtual Full Council meetings the equivalent of this Rule is for the Mayor to mute the particular Councillor/s.

## **Member to leave the meeting**

- 22.4 If the Councillor continues to behave improperly after such a motion is carried, the Mayor may move that either the Councillor leaves the meeting or that the meeting is adjourned for a specified period. If seconded the motion will be voted on without discussion. During Virtual Full Council meetings the equivalent of this Rule is for the Mayor to end the Councillor/s live stream to the meeting

## **General disturbance**

- 22.5 If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as he/she thinks necessary.

## **23. Disturbance by Public**

### **Removal of member of the public**

- 23.1 If a member of the public interrupts proceedings or behaves in an inappropriate manner the Mayor may warn the person concerned. If they continue to interrupt or behave inappropriately the Mayor may order their removal from the meeting room. During Virtual Full Council meetings the equivalent of this Rule is for the Mayor to end the member of the public's live stream to the meeting.

### **Clearance of part of meeting room**

- 23.2 If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared.
- 23.3 Members of the public may not bring placards or banners into a meeting room.

## **24. Suspension and Amendment of Council Procedure Rules**

### **Suspension**

- 24.1 All of these Council Rules of Procedure except Rule 16.6, save to permit all proposals to be considered together when the Council is considering the budget and the corporate plan, and 17.2 may be suspended by motion on notice or without notice if at least two thirds of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

### **Amendment**

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

## **25. Application to Committees and Sub-Committees**

All of the Council Rules of Procedure apply to meetings of full Council. Rules 9, 10, 12.11, 13.3, 16.1, 16.3, 16.6, 16.7, 16.8, 16.9, 16.10, 18, 19, 20, 21, 22.3, 22.4, 22.5, 23 and 24 apply to Cabinet. Rules 4-10 and 16, 18-21, 22.3, 22.4, 22.5, 23-25 apply to meetings of committees and sub-committees.

## **26. Access to Information Procedure Rules**

### **Scope**

#### **Cabinet Arrangements**

- 26.1. These rules apply to all meetings of the Council, Overview and Scrutiny Committee, the Standards Committee and regulatory committees and public meetings of the Cabinet (together called meetings).

#### **Additional Rights to Information**

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

#### **Rights to Attend Meetings**

- 26.3. Members of the public may attend all meetings subject only to the exceptions in these rules. For Virtual council meetings this means that they can view the meetings at <https://www.hastings.gov.uk/my-council/cm/>

#### **Notices of Meeting**

- 26.4. The Council will give at least five clear days notice of any meeting by posting details of the meeting at Muriel Matters House and on its website.



## **Access to Agenda and Reports before the Meeting**

- 26.5. The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda. It will also be circulated to Councillors.

## **Supply of Copies**

- 26.6. The Council will supply copies of:
- a. any agenda and reports which are open to public inspection;
  - b. any further statements or particulars necessary to indicate the nature of the items in the agenda; and
  - c. if the proper officer thinks fit, copies of any other documents supplied to Councillors in connection with an item
- to any person on payment of a charge for postage and any other costs.

## **Access to Minutes etc after the Meeting**

- 26.7. The Council will make available copies of the following for six years after a meeting:
- a. the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
  - b. a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
  - c. the agenda for the meeting; and
  - d. reports relating to items when the meeting was open to the public.

## **Background Papers**

### **List of background papers**

- 26.8 Council Officers will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in their opinion:
- a. disclose any facts or matters on which the report or an important part of the report is based; and
  - b. which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined in Rule 26.11) and in respect of Cabinet reports, the advice of a political advisor.

## **Public Inspection of Background Papers**

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

## **Summary of Public's Rights**

- 26.10 A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at Muriel Matters House. These rules constitute that written summary

## **Exclusion of Access by the Public to Meetings**

### **Confidential information – Requirement to Exclude Public**

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

### **Exempt information – discretion to exclude public**

- 26.12 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

### **Meaning of confidential information**

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

### **Meaning of exempt information**

- 26.14 Exempt information means information falling within the following paragraphs (with Paragraphs 7a-7c being applicable only to the Standards Committee), but subject to the qualifications set out under 8-10 below.
1. Information relating to any individual.
  2. Information which is likely to reveal the identity of an individual.
  3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
  4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations

matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes –
  - a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person: or
  - b. to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
  - a. Information which is subject to any obligation of confidentiality.
  - b. Information which relates in any way to matters concerning national security.
  - c. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of the Localism Act 2011.

Qualifications:-

8. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under –
  - a. the Companies Act 1985;
  - b. the Friendly Societies Act 1974;
  - c. the Friendly Societies Act 1992;
  - d. the Industrial and Provident Societies Acts 1965 to 1978;
  - e. the Building Societies Act 1986; or
  - f. the Charities Act 1993.
9. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
10. Information which –
  - a. falls within any of paragraphs 1 to 7 above; and
  - b. is not prevented from being exempt by virtue of paragraph 8 or 9 above,is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Exclusion of Access by the Public to Reports**

- 26.15 If the Chief Legal Officer thinks fit, the Council may exclude access by the public to reports which in their opinion relate to items during which, in

accordance with Rule 26.11 and Rule 26.12, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

## **Application of Rules**

26.16 The Access to Information rules apply to all council committees and the Cabinet.

## **Procedure Before Taking Key Decisions**

- 26.17 Subject to Rule 26.20 (general exception) and Rule 26.21 (special urgency), a key decision may not be taken unless:
- a. a notice (called here a Forward Plan) has been published in connection with the matter in question;
  - b. at least five clear days have elapsed since the publication of the Forward Plan; and
  - c. where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 26.4 (notice of meetings).

## **The Forward Plan**

### **Period of Forward Plan**

26.18 Forward Plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

### **Contents of Forward Plan**

- 26.19 The Forward Plan will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, Officers or under joint arrangements in the course of the discharge of Cabinet functions during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:
- a. the matter in respect of which a decision is to be made;
  - b. where the decision taker is an individual, their name and title, if any and where the decision taker is a body, its name and details of membership;
  - c. the date on which, or the period within which, the decision will be taken;
  - d. the identity of the principal groups whom the decision taker proposes to consult before taking the decision;

- e. the means by which any such consultation is proposed to be undertaken;
- f. the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- g. a list of the documents submitted to the decision taker for consideration in relation to the matter.

The Forward Plan must be published at least 28 days before the start of the period covered.

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

### **General Exception**

- 26.20 If a matter which is likely to be a key decision has not been included in the Forward Plan, then subject to Rule 26.21 (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 Chief Legal Officer has informed the chair of the 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 Chief Legal Officer has made copies of that notice available to the public at the offices of the Council; and
  - d. at least five clear days have elapsed since the Chief Legal Officer complied with b. and c.

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

### **Special Urgency**

- 26.21 If by virtue of the date by which a decision must be taken Rule 26.20 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair of the Overview and Scrutiny Committee, or if the Chair of the Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor or, in their absence, the Deputy Mayor will suffice.

## Emergency Situations

- 26.22 In urgency and/or emergency situations whereby Cabinet or Council and their respective Committees cannot meet to determine the Council's business, delegated authority is given to the Council's Chief Executive (or nominee) in consultation with a minimum of 4 members of Cabinet, one of whom to be the Leader or Deputy Leader of the Council. The Chief Executive (or nominee) should also consult with the Leader or Deputy Leader of the opposition. These emergency powers require the Chief Executive to make a risk assessment as to the holding of all Council, Cabinet or Committee meetings 'in person' in such emergency situations and putting in place the necessary arrangements to be able to conduct those meetings in safety and in compliance with the current government and legal guidance. The delegation is to cover all Cabinet's, Council's and Committee's powers, duties and functions not currently covered by Part 8 of the Council's Constitution. In relation to Regulatory Committees, the Chief Executive should also consult with the Chair of the relevant Committee and the Council's Monitoring Officer to make a decision as to the conduct of that Committee meeting and the manner in which it is to be held. In circumstances where the Chief Executive's nominee is exercising these emergency powers (in the absence of the Chief Executive) he or she must also consult with the Council's Monitoring Officer and Section 151 Officer. Emergency circumstances would include the sorts of events covered by our Emergency Plan as well as unprecedented episodes, such as pandemics. "Urgency" would in most cases be confined to essential decision making during such emergency situations. This change to apply from 13<sup>th</sup> October 2021 for a period of no more than 6 months. Any proposed extension or reinstatement of this change must be put to Full Council with full reasons outlined.

## Report to Council

### When the Overview and Scrutiny Committee can require a Report

- 26.23 If the Overview and Scrutiny Committee thinks that a key decision has been taken which was not:
- included in the Forward Plan; or
  - the subject of the general exception procedure; or
  - the subject of an agreement with the Overview and Scrutiny Committee Chair, or the Chair/Vice Chair of the Council under Rule 26.21;

the committee may require the Cabinet to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the committee, but is also delegated to the Chief Legal Officer who shall require such a report on behalf of the committee when so requested by the Chair or any two members of the committee. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

## **Cabinet's Report to Council**

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

## **Half Yearly Reports on Special Urgency Decisions**

- 26.25 In any event the Leader will submit half yearly reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule 26.21 (special urgency) in the preceding six months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **Record of Decisions**

- 26.26 After any meeting of the Cabinet or any of its committees, whether held in public or private, the Chief Legal 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.

## **Notice of Meeting of the Cabinet**

- 26.27 Members of the Cabinet or its committees will be entitled to receive five clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

## **Overview and Scrutiny Committee Access to Documents**

### **Rights to copies**

- 26.27 Subject to Rule 26.28 below, the Overview and Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to
- a. any business transacted at a public or private meeting of the Cabinet or its committees; or
  - b. any decision taken by an individual member of the Cabinet.

### **Limit on rights**

- 26.28 The Overview and Scrutiny Committee will not be entitled to:
- a. any document that is in draft form;

- b. any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision the committee is reviewing or scrutinising or intends to scrutinise.

## **Additional Rights of Access for Councillors**

### **Material relating to previous business**

- 26.29 All Councillors will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting unless (a) below applies:
- a. it contains exempt information falling within paragraphs 1 to 7 of the categories of exempt information.

### **Material relating to key decisions**

- 26.30 All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its committees which relates to any key decision unless Rule 26.29a above applies.

### **Nature of rights**

- 26.31 These rights of a Councillor are additional to any other right he/she may have.

## **27. Budget and Policy Framework Procedure Rules**

### **The framework for Cabinet decisions**

- 27.1 The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

### **Process for developing the framework**

- 27.2 The process by which the budget and policy framework shall be developed is:
- a. The Cabinet will publicise, by including in the Forward Plan and any other appropriate means depending upon the circumstances, a timetable for making proposals to the Council for the adoption of any plan, strategy or budget that forms part of the budget and policy framework and its arrangements for consultation after publication of those initial proposals.
  - b. Before a plan/strategy/budget needs to be adopted, the Leader or relevant Portfolio Holder will publish initial proposals for the budget and policy framework in a manner suitable to the matter under consideration.
  - c. The initial proposals shall be referred to the Overview and Scrutiny Committee for advice and consideration. The views of local stakeholders will also be canvassed. The Overview and Scrutiny Committee shall



report to the Cabinet on the outcome of its deliberations. The Overview and Scrutiny Committee shall have four weeks to respond to the proposals of the Cabinet.

- d. Having considered the report of the Overview and Scrutiny Committee, the Cabinet, if it considers it appropriate, may amend its proposals before submitting them to the Council for consideration.
- e. The Council will consider the proposals of the Cabinet and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place. In considering the matter, the Council shall have before it the Cabinet's proposals and any report from the Overview and Scrutiny Committee.
- f. The Council's decision will be published and a copy shall be given to the Leader to the Council. The notice of decision shall be dated and shall state either that the decision shall be effective immediately, if the Council accepts the Cabinet's proposals without amendment or, if the Cabinet's proposals are not accepted without amendment, that the Council's decision will become effective on the expiry of five working days after the publication of the notice of decision, unless the Leader objects to it in that period.
- g. If the Leader objects to the decision of the Council, he/she shall give written notice to the Chief Legal Officer to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. Where such notification is received, the Chief Legal Officer shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.
- h. The Council meeting must take place within eight working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.
- i. The Council shall at that meeting make its final decision on the matter on the basis of a simple majority. The decision shall be made public and shall be implemented immediately.
- j. Where before 8 February in any financial year, Cabinet submits to Council for its consideration in relation to the following financial year
  1. estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49 Local Government Finance Act 1992 ("the calculation");
  2. estimates of other amounts to be used for the purposes of the calculation;
  3. estimates of such a calculation; or
  4. amounts required to be stated in a precept under Chapter IV of Part I Local Government Finance Act 1992

and Council objects to such estimates, Council shall, before it makes the calculation, take the following action. It shall inform the Leader of its objections and require Cabinet to reconsider the estimates and amounts in light of those objections, specifying a period of no less than eight

working days, beginning with the date on which the Leader receives the instruction, within which the Leader may

- submit revised estimates or amounts to Council with Cabinet's reasons for the amendments; or
- inform Council of any disagreement Cabinet has with Council's objections and giving its reasons.

At the end of the period for objection, when considering the calculation, Council shall take account of Cabinet's responses.

(This paragraph does not apply to calculations made in accordance with Section 52I, 52J, 52T or 52U Local Government Finance Act 1992.)

- k. In approving the budget and policy framework, the Council will also specify the degree of in-year changes to the policy framework which may be undertaken by the Cabinet, in accordance with Rule 27.5. Any other changes to the budget and policy framework are reserved to the Council.

## **Decisions outside the budget or policy framework**

### 27.3

- a. Subject to the provisions of the rules on virement contained in Financial Rules, the Cabinet, committees of the Cabinet, and any Officers, or joint arrangements discharging Cabinet functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by Full Council, then that decision may only be taken by the Council, subject to 27.4 below
- b. If the Cabinet, committees of the Cabinet, any Officers, or joint arrangements discharging Cabinet functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Finance Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those Officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 27.4 (urgent decisions outside the budget and policy framework) shall apply.

## **Urgent decisions outside the budget or policy framework**

### 27.4

- a. The Cabinet, a committee of the Cabinet, individual members of the Cabinet or Officers or joint arrangements discharging Cabinet functions may take a decision which is outside 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 if the chair of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

The chair of the Overview and Scrutiny Committee's 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 chair of the Overview and Scrutiny Committee the consent of the Mayor and in the absence of both the Deputy Mayor will be sufficient.

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

### **In year changes to policy framework**

27.5 The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Cabinet, a committee of the Cabinet, Officers, or joint arrangements discharging Cabinet functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- a. which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- b. necessary to ensure compliance with the law, ministerial direction or government guidance;
- c. in relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

### **Call-in of decisions outside the budget or policy framework**

27.6

- a. If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Financial Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Chair of the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within five days of the request by Chair of the Overview and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Finance Officer. The Council may either:
  - i. endorse a decision or proposal of the Cabinet as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way;

or

- ii. amend the Council's financial rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that Cabinet function and agree to the decision with immediate effect. In this case, no

further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way;

or

- iii. where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the Monitoring Officer / Chief Finance Officer.

## **28. Cabinet Procedure Rules**

### **How the Cabinet operates.**

#### **Who can make Cabinet decisions**

- 28.1 The arrangements for the discharge of Cabinet functions are set out in the arrangements adopted by the Council and explained in Part 3 of the Constitution. The arrangements may provide for executive functions to be discharged by:
- i. the Cabinet as a whole;
  - ii. a committee of the Cabinet;
  - iii. an individual member of the Cabinet;
  - iv. an Officer;
  - v. a neighbourhood forum;
  - vi. joint arrangements with another local authority;
  - vii. another local authority.
- 28.2 The Council appoints the Leader. The Leader appoints the Deputy Leader and members of the Cabinet. The Leader is also the Chair of Cabinet meetings. The Leader allocates portfolios to Cabinet members.

#### **Delegation of Cabinet Functions**

- 28.3 The Cabinet may delegate its functions to a committee of the Cabinet and may delegate decisions on matters of urgency to an individual Member of the Cabinet.

Where the Cabinet or a committee of the Cabinet is responsible for a Cabinet function, they may delegate further to an Officer.

#### **Conflicts of Interest**

- 28.4 Any conflict of interest by a member of the Cabinet will be dealt with in accordance with the Council's Code of Conduct for Councillors in Part 5 of this Constitution.

## **Cabinet meetings**

28.5 The Cabinet shall meet at Muriel Matters House, Breeds Place, Hastings, TN34 3UY, or another location to be agreed by the Leader.

Cabinet meetings will be held in public, in accordance with the Council's principles of openness in decision making set out in Article 12 of this Constitution, Part 2. The Access to Information Rules in Part 4 of this Constitution set out the requirements covering public and private meetings.

## **Quorum**

28.6 The quorum of the Cabinet will be three.

## **The Conduct of Cabinet Meetings**

### **Chair**

28.7 If present, the Leader will chair the meeting. In their absence, the Deputy Leader will chair the meeting. In the absence of the Leader and the Deputy Leader a member appointed to do so by those present shall chair the meeting.

### **Attendance**

28.8 These details are set out in the Access to Information Rules in Part 4 of this Constitution. Meetings are usually open to the public. During Virtual meetings this means that the public can view the meetings at <https://www.hastings.gov.uk/my-council/cm/> . A Councillor (who is not a member of Cabinet) may speak at meetings of the Cabinet where a decision affects that Councillor's ward. Petitioners also have an opportunity to address Cabinet where the subject of the petition relates to a Cabinet function. Councillors who have proposed a motion on notice which has been referred to Cabinet, may address Cabinet on their motion. The seconder of the motion may also speak at Cabinet.

### **Cabinet business**

28.9 At each meeting of Cabinet the following business will be conducted:

- i. consideration of the minutes of the last meeting;
- ii. declarations of interest, if any;
- iii. matters referred to Cabinet (whether by the Overview and Scrutiny Committee or by the Council) for reconsideration by Cabinet in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- iv. consideration of reports from the Overview and Scrutiny Committee; and

- v. matters set out in the agenda for the meeting, which shall indicate which are key decisions and which are not, in accordance with the Access to Information Procedure Rules set out in Part 4 of this Constitution.

## **Items for the Cabinet agenda**

### 28.10

- a. Agenda items for meetings of Cabinet will be agreed by the Leader of the Council and the Chief Executive or, in their absence her nominee. The advice of the Council's Monitoring Officer and Chief Finance Officer will also be relevant in considering what items should be put on the agenda by the Chief Legal Officer.
- b. The Chief Legal Officer will make sure that an item is placed on the agenda of the next appropriate meeting of Cabinet where the Overview and Scrutiny Committee or the Full Council have resolved that an item be considered by Cabinet.
- c. The Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the Chief Legal Officer to call such a meeting in pursuance of their statutory duties.

- 28.11 The conduct of Cabinet meetings is at the discretion of the Chair and the following Council procedure rules apply: 9, 10, 12.11, 16.1, 16.3, 16.6, 16.7, 16.8, 16.9, 16.10, 18, 19, 20, 21, 22.3-5, 23 and 24.

## **29. Overview and Scrutiny Procedure Rules**

### **Arrangements for Overview and Scrutiny Committee**

#### 29.1

- a. The Council will have one Overview and Scrutiny Committee: It will perform all overview and scrutiny functions on behalf of the Council.
- b. The terms of reference of the Overview and Scrutiny Committee will be:
  - i. the performance of all overview and scrutiny functions on behalf of the Council relating to the service areas specified in Article 6 (The Constitution, Part 2);
  - ii. To agree an annual overview and scrutiny work programme for the Overview and Scrutiny Committee in consultation with the Chief Executive and Chief Legal Officer;
  - iii. To ensure that referrals from Overview and Scrutiny Committee to the Cabinet, either by way of report or for reconsideration, are managed efficiently and do not exceed the limits set out in this Constitution;
  - iv. in the event of reports to the Cabinet exceeding limits in this Constitution, or if the volume of such reports creates difficulty for the management of

Cabinet business or jeopardises the efficient running of Council business, at the request of the Cabinet, to make decisions about the priority of referrals made.

- v. To receive requests from the Cabinet and/or the Full Council for reports from Overview and Scrutiny Committee.
- vi. To call in decisions of the Cabinet, made but not implemented, where those decisions are within the scope of the Terms of Reference of the Overview and Scrutiny Committee.
- vii. To review the performance of the Council's departments in delivering services which are relevant to the work of the Overview and Scrutiny Committee.
- viii. To consider Scrutiny Reviews and make recommendations to the Cabinet and/or Council
- ix. To appoint elected Members to the Review Groups.
- x. The Overview and Scrutiny Committee is the Council's crime and disorder committee for the purposes of Section 19 Police and Justice Act 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009.
- xi. The committee can exercise its function in relation to the Charity Committee, a committee of the Cabinet.

## **Membership of Overview and Scrutiny Committee**

- 29.2 There will be eleven members on the Overview and Scrutiny Committee. All Councillors except members of the Cabinet, the Mayor and Deputy Mayor may be members of the Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

All members appointed to Overview and Scrutiny Committee must commit to be trained in order to perform the specialist role required.

## **Co-optees**

- 29.3 The Overview and Scrutiny Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees.

The Hastings and St Leonards Museum Association may appoint persons who are for the time being members of the Association to attend any meeting of an Overview and Scrutiny Committee at which the management of the Hastings Museum Collection is the subject of consideration. These members will be entitled to vote and to speak at the meeting on any question relating to the management of the Collection. The number appointed may be up to 40% of the size of the original Overview and Scrutiny Committee. (These members may not speak, other than at the invitation of the committee chair, or vote on any question other than one relating to the management of the Collection). Attendance by members of the Association at the Overview and Scrutiny Committee will not affect the continuing

role of the Museums Committee.

(Reference: Statutory Instrument 2000 No. 2853)

## **Meetings of the Overview and Scrutiny Committee**

- 29.4 There shall be four formal regular public meetings of the Overview and Scrutiny Committee in each year.

There will also be up to five reserve dates for the committee in each year. These reserve dates are for work on policy development discussions, service reviews and training. If required, any of these reserve dates may be used as formal public meetings to deal with the call-in of a Cabinet decision under Rule 26.20 of this part of the constitution.

The decision to use a reserve date as a formal meeting must be taken by the Chair of the Overview and Scrutiny Committee, or by request from any three members of the committee or by the Chief Legal Officer if he/she considers it necessary.

## **Quorum**

- 29.5 The quorum for the Overview and Scrutiny Committee shall be as set out for committees in the Council Procedure Rules in Part 4 of this Constitution.

## **The Chair of Overview and Scrutiny Committee meetings**

- 29.6 The Council will appoint the Chair and Vice Chair of the Overview and Scrutiny Committee. Chair and Vice Chair may be minority party members. The rules of political balance will apply to these posts.

## **Work programme**

- 29.7 Shortly after Annual Council there will be an annual public meeting of the Overview and Scrutiny Committee to set a work programme for the overview and scrutiny function for the municipal year and to review the results of the previous year's work programme.

The Overview and Scrutiny Committee will be responsible for setting their own work programme and in doing so they shall take into account wishes of members on that committee who are not members of the largest political group on the Council.

## **Agenda items**

- 29.8 Any member of the Overview and Scrutiny Committee or sub-committee shall be entitled to give notice to the Chief Legal Officer that he/she wishes an item relevant to the functions of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Legal Officer will ensure that it is included on the next available agenda.

The Overview and Scrutiny Committee shall also respond, as soon as its work



programme permits, to requests from the Council and if they consider it appropriate, the Cabinet, to review particular areas of Council activity. Where they do so, the Overview and Scrutiny Committee shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or the Cabinet shall consider the report of the Overview and Scrutiny Committee at the next available meeting.

The Chair of a Best Value Project Group can refer that Best Value Review back to the Overview and Scrutiny Committee for further consideration at any point in the Review.

## **Policy review and development**

### 29.9

- a. The role of the Overview and Scrutiny Committee in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- b. In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, the Overview and Scrutiny Committee may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- c. The Overview and Scrutiny Committee may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration. The Cabinet is required to meet reasonable requests for funding. Funding should be used for specific activities in support of the functions outlined in the Terms of reference for the Overview and Scrutiny Committee.

## **Reports from the Overview and Scrutiny Committee**

### 29.10

- a. Once it has formed recommendations on proposals, the Overview and Scrutiny Committee will prepare a formal report and submit it for consideration by the Cabinet if it is a Cabinet matter. If it is a matter for Council then the Cabinet will be invited to comment before the report goes before the Council.
- b. If an Overview and Scrutiny Committee cannot agree on one single final report to the Council or Cabinet as appropriate, then one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.
- c. Where the final outcome of a Best Value Review is reported to the Overview and Scrutiny Committee, the Head of Service may produce an Officer response for consideration by Members.
- d. The Council or Cabinet shall consider the report of the Overview and Scrutiny Committee at the next available meeting.

## **Forward Plan**

- 29.11 The Overview and Scrutiny Committee will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation.

## **Rights of Overview and Scrutiny Committee members to documents**

29.12

- a. In addition to their rights as Councillors, members of the Overview and Scrutiny Committee have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- b. Nothing in this paragraph prevents more detailed liaison between the Cabinet and Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

## **Councillors and Officers giving account**

29.13

- a. The Overview and Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet or the Chief Executive to attend before it to explain in relation to matters within their remit:
  - i. any particular decision or series of decisions;
  - ii. the extent to which the actions taken implement Council policy; and/or
  - iii. their performanceand it is the duty of those persons to attend if so required.
- b. Where any Councillor or officer is required to attend an Overview and Scrutiny Committee under this provision, the chair of that committee will inform the Chief Legal Officer. The Chief Legal Officer shall inform the Councillor or Officer in writing giving at least five working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the Councillor or Officer concerned will be given sufficient notice to allow for preparation of that report.
- c. Where, in exceptional circumstances, the Councillor or Officer is unable to attend on the required date, then the Overview and Scrutiny Committee, shall in consultation with the Councillor or Officer, arrange an alternative date for attendance or for an alternative Officer to attend.

## Attendance by others

- 29.14 The Overview and Scrutiny Committee may invite people other than those people referred to in Rule 29.13 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Councillors and officers in other parts of the public sector and shall invite such people to attend. Attendance cannot be made compulsory. During Virtual meetings this means attendance by joining the meeting on Microsoft Teams.

At each programmed meeting of the Overview and Scrutiny Committee, the appropriate Cabinet Members may be questioned by members of that Committee on key issues and respond to questions on those issues. If any members of that Committee wish to question a Cabinet Member on a particular issue, it may be helpful to provide the question in advance.

For the purposes of completing service reviews and policy development, any Councillor may be invited by the Chair of the Overview and Scrutiny to participate, although all decisions and reports will be the responsibility of the members appointed to the Overview and Scrutiny Committee by Annual Council.

## Call-in

- 29.15 Call-in should only be used in exceptional circumstances.
- a. When a decision is made by the Cabinet, a committee of the Cabinet or a key decision is made by an officer with delegated authority from the Cabinet the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. Members of the Overview and Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale.
  - b. 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 three working days after the publication of the decision, unless the Overview and Scrutiny Committee objects to it and calls it in.
  - c. During that period, the Chief Legal Officer shall call-in a decision for scrutiny by the committee if so requested by the chair or any two members of the relevant committee, and shall then notify the decision-taker of the call-in. The meeting will be held within eight working days, where possible after consultation with the chair of the committee.
  - d. If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the Cabinet for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. On receipt of the response from the Overview and Scrutiny Committee the Cabinet or Council may decide to proceed with the original decision or make an amended decision.
  - e. If, following an objection to the decision, the Overview and Scrutiny Committee does not meet within eight working days of the decision to call-in or does meet but does not refer the matter back to the Cabinet, the

decision shall take effect on the expiry of the period, or the date of the overview and scrutiny meeting, whichever is the earlier.

- f. If the matter was referred to Full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of a Cabinet decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the Cabinet, together with the Council's views on the decision. The Cabinet shall choose whether to amend the decision or not before reaching a final decision and implementing it.
- g. If the Council does not meet, or if it does but does not refer the decision back to the Cabinet, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

## **Exceptions**

In order to ensure that call-in is not abused, nor causes unreasonable delay, a written request signed by the Chair or any two members of the Overview and Scrutiny Committee is needed for a decision to be called in. The notice shall specify which part or parts of the decision is/are called in and the reason why it/they should be referred to the committee for consideration.

## **Call-In and Urgency**

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 Party Whip**

- 29.16 The Party Whip is defined here as any instruction given by or on behalf of a political group to any Councillor who is a member of that group as to how that Councillor shall speak or vote on any matter before the Council or any committee or sub-committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he/she speak or vote in any particular manner. Government guidance says that the party whip should not apply on Overview and Scrutiny Committee.

## **Procedure at Overview and Scrutiny Committee meetings**

29.17

- a. The Overview and Scrutiny Committee shall consider the following business:
  - i. minutes of the last meeting;

- ii. declarations of interest (including whipping declarations);
  - iii. consideration of any matter referred to the committee for a decision in relation to call in of a decision;
  - iv. responses of the Cabinet to reports of the Overview and Scrutiny Committee;
  - v. the business otherwise set out on the agenda for the meeting.
- b. Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the committee may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:
- i. that the investigation be conducted fairly and all members of the committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - ii. that those assisting the committee by giving evidence be treated with respect and courtesy; and
  - iii. that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- c. Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

## **Matters within the remit of Overview and Scrutiny**

### **Councillor Call for Action (CCFA)**

29.18 Ward Councillors have the power to request a debate and discussion at the Overview and Scrutiny Committee on the subject of neighbourhood concern. The powers are limited to single issues affecting the Councillor's ward and are there as a longstop when all other attempts at a resolution have failed. The matter must be a local government matter for which the Overview and Scrutiny Committee has a responsibility, relate to the Councillor's ward and not be excluded.

Excluded matters are:

- a. matters relating to a planning or licensing decision;
- b. a matter relating to an individual or entity in respect of which that individual or entity has recourse to a right of appeal conferred by legislation;
- c. any matter which is vexatious, discriminatory or unreasonable.

29.19 The process for the consideration of requests is that the ward Councillor submits the request by e-mail to [democraticservices@hastings.gov.uk](mailto:democraticservices@hastings.gov.uk). The Ward Councillor must specify the exact nature of the issue, what steps have already been taken to resolve it, how the Overview and Scrutiny Committee can assist and what a successful resolution might be. Relevant Officers would be requested to comment before consideration of the request by the Chair and Vice-Chair at an agenda planning meeting. The agenda planning meeting

would consider whether the matter was appropriate for reference to the Overview and Scrutiny Committee. Having regard to the criteria and exclusions set out in Rule 29.18 where it is decided not to be appropriate to refer the matter to the agenda planning meeting reasons for refusal shall be provided in writing.

29.20 At a meeting of the Overview and Scrutiny Committee to consider the matter, the ward Councillor is entitled to address the Committee to present the call for action. Relevant Portfolio Holders, Officers and partner organisations, where appropriate, will be invited to attend and contribute. The Committee will explore the potential options for resolution and decide on their recommendation for certain action. The Committee might consider any delegated decision making powers the ward Councillor may have and representations from the ward Councillor on why it would be appropriate for the Committee to exercise its powers as Overview and Scrutiny Committee. The Committee will direct its recommendation to the Cabinet or the relevant committee of the Council, or relevant Head of Service where there is a delegation to officers. The Cabinet, committee, or relevant Head of Service, in question, is required to report back to the Overview and Scrutiny Committee on actions taken as a result of the reference or the reasons for not taking action. If it decides not to take any action, the Committee shall notify the Councillor of its decision and the reasons for the decision.

29.21 Where the Committee makes recommendations to the Council it must provide a copy of the report to:

- a. the Councillor who referred the matter; and
- b. such of the responsible authorities and co-operating persons and bodies as it shall think appropriate.

When notifying those authorities, persons or bodies of the report recommendations the Committee shall inform them that they are required:

- a. to consider the report and recommendations;
- b. respond indicating what action is proposed; and
- c. have regard to the report or recommendations in exercising their functions.

## **30. Officer Employment Procedure Rules**

### **Introduction**

30.1 These rules are intended to give effect to the provisions of the Local Authorities (Standing Orders)(England) Regulations 2001, as amended, and will form the standing orders prescribed regarding employment matters. These rules take effect subject to the provisions of those Regulations.

### **Interpretation**

30.2 For the purposes of these rules the following meaning apply:-

“Head of Paid Service” means the Chief Executive

30.3 “Chief Officer” means the Chief Executive.

## **Recruitment and appointment**

30.4

- a. Declarations
  - i. The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.
  - ii. No candidate related to a Councillor or an Officer will be appointed without the authority of the relevant chief officer or an Officer nominated by him/her.
- b. Seeking support for appointment.
  - i. The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
  - ii. No Councillor will seek support for any person for any appointment with the Council.

## **Recruitment of Head of Paid Service and Chief Officers**

30.5 Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- a. draw up a statement specifying:
  - i. the duties of the Officer concerned; and
  - ii. any qualifications or qualities to be sought in the person to be appointed;
- b. make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- c. make arrangements for a copy of the statement mentioned in Rule 30.4a to be sent to any person on request.

## **Appointment of Head of Paid Service**

30.6

- a. The Full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by the Employment Committee of the Council. That Committee must include at least one member of the Cabinet.
- b. The Full Council may only approve the appointment of the Head of Paid Service where no well-founded objection has been made by any member of the Cabinet.

## **Appointment of Chief Officers**

30.7

- a. The Employment Committee of the Council will appoint Chief Officers of the Council. It must be advised by the Head of Paid Service.
- b. The Committee will not confirm such an appointment if a well-founded objection has been made by any member of the Cabinet or the Head of Paid Service until it has heard the objection.

## **Other appointments**

### **Officers other than Assistants to Political Groups**

30.8

- a. Appointment of Officers other than the Head of Paid Service or Chief Officers is the responsibility of the Head of Paid Service or their nominee

### **Assistants to Political Groups**

- b. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group

## **Disciplinary action**

30.9

- (i) Where an allegation is made against the Head of Paid Service, Monitoring Officer or Chief Finance Officer (Statutory Officers) relating to conduct or capability or some other substantial issue that requires investigation, the matter will be considered by the Employment Committee
- (ii) The Employment Committee will consider and action suspension, where appropriate to allow for an investigation. Any suspension must not last longer than two months, unless an extension is recommended by a suitably qualified and independent investigator
- (iii) For the purposes of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, the Employment Committee will operate as the Panel (including two or more independent persons who have accepted the invitation)
- (iv) The Employment Committee will include two or more independent persons who accept the invitation in the following priority order:
  - a) A relevant independent person who has been appointed by the Council and who is a local government elector;



- b) Any other independent person who has been appointed by the Council;
  - and
  - c) An independent person who has been appointed by another council or councils.]
- (v) At the relevant time, the Employment Committee will consider whether potential disciplinary/dismissal issues require investigation and whether the relevant Officer should be suspended. In this regard the authority must ensure that the Panel is in place at least 20 working days before the meeting at which it considers whether to approve a proposal to dismiss.
  - (vi) The Employment Committee will inform the relevant Officers of the allegations, and allow him/her to respond in writing and in person. The Employment Committee will then decide whether no further action is required or that the matter requires an investigation by a suitably qualified and independent person and the Committee will use its best endeavours to agree this person with the officer
  - (vii) The Employment Committee will review the results of the investigation to consider what action if any is appropriate, after hearing the views of the relevant Officer and the independent persons, and report its recommendations. The independent persons do not have a vote on whether the relevant person should be dismissed. Full Council must consider whether or not to approve such dismissal.

## **Dismissal**

- (viii) Where dismissal is recommended, the Employment Committee will provide advice, views or recommendations to Full Council for the authority to vote on whether it approves the proposal to dismiss. The relevant Officer will be provided with all relevant papers and documents in advance of the meeting and allowed to make their representations. Written representations may also be given by the relevant Officer in advance of the meeting.
- (ix) No notice of dismissal shall be given until the matter has been referred to the Full Council for approval.
- (x) The Council's disciplinary, capability and related procedures, as adapted from time to time, allow a right to appeal for all Officers to Members in respect of dismissals. Such appeals will be heard by the Employment Appeals Committee. Councillors will not be involved in the dismissal of any officer other than the Head of Paid Service, Chief Finance Officer, Monitoring Officer and Chief Officers except where such involvement is necessary to assist any investigation or inquiry being conducted by a Senior Officer or an independent person into alleged misconduct.

In relation to any further appeal for statutory officers, as Full Council has approved the dismissal, there is no one in the authority who has the power to overturn the dismissal decision. In this respect and as set out above, the relevant Officer will have the opportunity to make representations to the Employment Appeals Committee before any dismissal recommendation is made at Full Council.



## **31. Procedural Appendices**

Minute's Silence at Council Meetings

Honorary Freedom of the Borough

### **Appendix 1**

#### **Protocol – Minute's Silence at Council Meetings**

A minutes silence will be held at the next meeting of Full Council following the death of:

- a. A current member of the Council or one who left office within the preceding 4 years.
- b. Former Mayor of the Borough.
- c. Former MP for Hastings and Rye
- d. Member of the Order of 1066
- e. Freeman/woman of Borough
- f. The Monarch or a significant member of the Royal Family.
- g. Any other person who has made a significant contribution to the Borough and its residents, or to the UK as determined by the Mayor in consultation with leaders of all political groups represented on the Council.
- h. A minute's silence will be held at the next meeting of Full Council following a local, national or international disaster, as determined by the Mayor in consultation with leaders of all political groups represented on the Council.

**Where any of the above has been convicted of a criminal penalty, or brought themselves or office into disrepute the Mayor in consultation with leaders of all political groups represented on the Council may decide to withhold this tribute**

## Appendix 2

### HONORARY FREEDOM OF THE BOROUGH

#### Introduction

1. The Borough Council has power to admit individuals as Freemen of the Borough and this is set out in Section 249(5) Local Government Act 1972:-

“the Council of a ...district having the status of a ...borough ...may, by resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, admit to be honorary freemen of the...borough....persons of distinction and persons who have, in the opinion of the council, rendered eminent services to the...borough, but the admission of a person to be an honorary freeman shall not confer on him any such rights as are referred to in Section 248(4) above.”

2. The legislation goes on to provide that the Council may spend “such reasonable sum as they think fit for the purposes of presenting an address or casket containing an address to a person upon whom they have conferred the title...”.
3. The title is entirely honorary – there are no rights or privileges arising from the award - and the Council’s powers to spend are strictly limited by the section.

#### Motion to bestow the Freedom of the Borough

4. In most cases the consideration of the Council admitting a person to the Freedom of the Borough will result from a motion to Council.
5. Under the Constitution a motion, which is required to be considered by Council, would normally be included on the agenda of the next ordinary meeting of the Council. The Act, however, refers to meeting of the Council specially convened for the purpose.
6. The honour has been bestowed by the Borough on just six occasions since 1972. The individuals honoured and the reasons why the Council considered them as persons of distinction or persons who have, in the opinion of the Council, rendered eminent services to the Borough are as follows:-

1978	William Henry Dyer. For services to the town’s old people and encouraging interest in local history.
1986	Victor James Pain. For 60 years work for the Borough of Hastings and as Leader of the Council.
2006	Pam Brown. OBE. In recognition of outstanding service to the Borough and its citizens.
2008	47 Royal Artillery Regiment. In recognition of the great debt owed to the armed forces, serving at home and abroad.
2011	Michael Foster. Member of Parliament for Hastings and Rye.
2016	Maureen Charlesworth. For services as a local Councillor and to voluntary organisations in the Town.

7. The admission to the Freedom of the Borough is an honour that is not to be given lightly, as witnessed by the small number of admissions to the freedom since the introduction of

the power and the need for a two-thirds majority of the Council voting thereon at the meeting. Whilst there has been one admission to a group in 2008, the Councillors considering this procedure note considered that the freedom was more appropriate as a means of honouring individuals of distinction.

8. It is important that, if a motion to admit to the freedom is to be considered, that all members will be in possession of sufficient facts in order to make a decision as to whether the honour should be given. Furthermore, there may be instances where there are strongly held views for and against and that these need to be addressed as far as possible in advance of an extraordinary Council meeting called for the purpose. So far as possible Council would want to be meeting with the clear consensus that the person of distinction is to be honoured and not humiliated by the proceedings. A unanimous decision is desirable, but the absence of unanimity cannot prevent the motion coming forward for consideration by Council.

### **Criteria for admission to Freedom of the Borough**

9. It is in the interests of transparency and public confidence that the Council adopts clear criteria for admission to the freedom of the Borough. It is suggested that one or more of the following are used at the criteria for the award:-

- evidence of exceptional service to the Borough Council whether as a Councillor or an officer;
- evidence of exceptional charitable service to the Borough, whether a national or locally based charity;
- evidence of exceptional voluntary service to the Borough or any part of it or community within it;
- evidence of exceptional commercial service to the Borough;
- evidence of exceptional service to the public services working for the residents and businesses of the Borough;
- evidence of exceptional service to the Borough or the nation

### **Procedure on receipt of a motion to admit to the Freedom of the Borough**

10. On receipt of the motion, the Chief Legal Officer will ask the proposer to provide full reasons why the person is considered:
  - a person of distinction; or
  - a person who has rendered eminent services to the Borough
11. When in possession of sufficient information, the Chief Legal Officer will convene a panel of the leaders of the political groups on the Council or their nominees, with relevant officers (the Freedom Panel) to consider:
  - whether they have sufficient information on which to form a view and, if not, to instruct officers to seek further information;
  - once satisfied that they have adequate information, whether there is sufficient support for the matter to go to full Council for decision.
12. In the event that the Freedom panel concludes that it is unlikely that the motion would

receive sufficient support, the Chief Legal Officer will advise the proposer of the motion of this conclusion and the reasons for reaching that conclusion. The Councillor would then be given the opportunity to withdraw the motion, though the Councillor would still be entitled to have their motion considered by Council.

13. Should the Freedom Panel conclude that there would be likely to be a two thirds majority voting in favour of the motion, the Chief Legal Officer will convene an extraordinary meeting of the Council specifically for the consideration of the one item of business. The timing of the meeting will be such as, so far as it practicable, to meet the availability of the individual concerned to attend and to concord with the Council's diary commitments.
14. The subject of the motion will be invited to attend the extraordinary meeting of Council where the motion is to be considered.
15. At the extraordinary meeting of Council, there will be only the one item of business and Officers will present a report setting out the matters considered by the Panel and the recommendation of the Panel to Council to approve the motion.
16. The Mayor will take a vote on the motion and a two-thirds majority of those present and voting is required.

(Note: abstentions do not count as a vote and the required majority will be deduced from the number of Councillors actually voting on the item).

Then the Mayor will then immediately close the meeting.

17. The ceremonial award of the Freedom with scroll or casket will take place at Annual Council as part of the incoming Mayor's announcements and the new Freeman/woman would be given the opportunity to make a short speech (5 minutes) in response.

## APPENDIX 3

### Participants Guidance for Virtual Meetings

#### Participants Guidance – Virtual Meetings

1. Regulations have been introduced to provide local authorities with the power to provide ‘virtual’ meetings. To ensure the quality and consistency of ‘virtual’ meetings councillors and officers need to work together to assist the process in every way they can.
2. Council officers have differing roles in ‘virtual’ meetings. Democratic Service officers are the ‘Producers’ of the meeting. They need to know who is going to speak and in what order as far as they are able. They need to be able to know who to connect to next. There is a 3 second time lag between speakers. IT support the network and connectivity during the meetings. They ‘Enable’ the meetings to take place. Legal Services ‘Direct’ the meetings as they work on the procedure and advise during the meetings. Officers from IT, Democratic Services and Legal Services may be present at Muriel Matters house for the duration of the meetings in order to facilitate the process.
3. To enable the smooth production of a ‘virtual’ meeting it is necessary for Legal Services and Democratic Services to know the following in advance of each meeting:
  - Apologies for absence and lateness;
  - Items to be called and any changes to the agenda;
  - Proposer and seconder of motions;
  - Who will be presenting and speaking on agenda items.
4. It is necessary for officers to contact participants before the meeting takes place so that we can check that there are no issues with the link and we can see and hear the participant where necessary.
5. All councillors should regularly check their internet connectivity and council issued devices are in working order. If there is a technical issue then Councillors should contact IT Helpdesk without delay. The sooner a problem is reported the sooner it can be resolved. This is important as the meeting may need to be adjourned if not quorate or if councillors are late joining the meeting they may not be able to participate in an agenda item.
6. If equipment or network failure occurs there is a telephone ‘dial in’ procedure in to the meetings. It is good practice for participants to remain on mute when

they are not speaking. Headsets provided by the council must be worn by all councillors during 'virtual' meetings.

7. Depending on the type of meeting the participants may be visual all of the time or just when they are speaking. Councillors should have their cameras switched on at all times. Councillors need to be aware that what they do in front of the camera is in the public domain such as eating, drinking, using mobile phones, talking to other members of the family etc. Please do not turn your camera off for the duration of the meeting or leave the meeting except if you have a prejudicial interest. Members of the public need to see councillors are present at the meeting and there for the voting process. Please speak clearly when voting. Councillors should ensure that they have the Council's logo as their background without exception.
8. Meeting participants can use the 'raise your hand facility' available on Teams when they wish to speak. For council meetings, a councillors name will be called out when they have raised their hand. Councillors must lower their hand after their name has been called out and not re-raise their hand after their name has been called out.
9. Meeting participants should also consider the lighting arrangements to ensure that their image is clearly seen on screen.
10. When considering Part 2 items councillors should ensure that there is no one else in the room who may be able to hear confidential council information. They need to be aware of their surroundings if they are participating in meetings on mobile devices and generally. Anyone can be seen publicly if they are in view of the camera, children, pets and other persons. Please ensure that the space that you are using remains free for the expected duration of the meeting.
11. It will be necessary for 'virtual' council meetings for political group leaders to work with officers to agree speakers on agenda items before the meeting. It may also be necessary to deal with members questions in a different way procedurally. It is likely, due to the demands of producing each meeting that in future we will have shorter meetings more frequently.
12. All participants should familiarise themselves with the virtual meeting procedure available on the website. Participants need to be very careful that they do not click other screen shots during a meeting as that can be shown to the public as a 'screen shot' breaking Data Protection rules. If in any doubt as to how this could happen please contact IT Helpdesk.



13. Contact between participants within the meeting can take place but remember if you use the chat function for the meeting this is visible by members of the public. If you want to message privately with a participant of a meeting hover over the person's name and then chat. The chair of a meeting is asked to take legal advice as and when required. This is not disclosable under the Freedom of Information Act.
14. All chairs of meetings have or will be given training before they chair a live virtual meeting. Training can also be carried out for any participants on request. Please contact IT Helpdesk. Participants are advised to watch themselves on available recordings as a training exercise.

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# Agenda Item 5

## Hastings Borough Council Constitution of the Council

### Part 5

#### Codes and Protocols

## The Constitution, Part 5 - Codes and Protocols

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# Hastings Borough Council

## Code of Conduct for Councillors and Co-opted Members

As a Councillor or co-opted member of Hastings Borough Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

### The Seven Principles of Public Life

#### *Selflessness*

**1.** Councillors and co-opted members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### *Integrity*

**2.** Councillors and co-opted members should not place themselves in situations where integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Councillors and co-opted members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority. Holders of public office must avoid placing themselves under any obligation to people or organisations that might try to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### *Objectivity*

**3.** Councillors and co-opted members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### *Accountability*

**4.** Councillors and co-opted members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### *Openness*

**5.** Councillors and co-opted members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

#### *Honesty*

**6.** Councillors and co-opted members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour. Councillors and co-opted members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

#### *Leadership*

**7.** Councillors and co-opted members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

On their election or co-option to the Hastings Borough Council Councillors and co-opted members are required to sign an undertaking to comply with the authority's Code of Conduct.

This Code of Conduct, adopted by the authority on 21 June 2012 is set out below. It is made under Chapter 7 of the Localism Act 2011 and includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require Councillors and co-opted members to leave meetings in appropriate circumstances, while matters in which they have a personal interest are being considered.

## Part 1 – General Provisions

### Introduction and interpretation

1. (1) This Code applies to you as a Councillor or co-opted member of the authority, when acting in that capacity.

(2) This Code is based upon seven principles fundamental to public service, which are set out above. You should have regard to these principles as they will help you to comply with the Code.

(3) If you need guidance on any matter under this Code you should seek it from the authority's Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.

(4) It is a criminal offence to fail to notify the authority's Monitoring Officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly to provide false or misleading information to the authority's Monitoring Officer.

(5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding -

(a) whether to take action in relation to you and

(b) what action to take.

(6) In this Code—

“authority” means **Hastings Borough Council**

“Code” means this Code of Conduct

“co-opted member” means a person who is not a councillor of the authority but who-

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

"meeting" means any meeting of—

- (a) the authority;
- (b) the Cabinet of the authority;
- (c) any of the authority's or its Cabinet's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"register of Councillors and co-opted members' interests" means the authority's register of Councillors and co-opted members pecuniary and other interests established and maintained by the authority's Monitoring Officer under section 29 of the Localism Act 2011.

## Scope

**2.** —(1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.

(2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## General obligations

**3.** —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of its the equality duties (in particular as set out in the Equality Act 2010);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

- (i) a complainant,
- (ii) a witness, or
- (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a councillor or co-opted member (including yourself) has failed to comply with their authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

**4. You must not—**

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
  - (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the authority;

(b) prevent another person from gaining access to information to which that person is entitled by law.

**5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.**

**6. You—**

(a) must not use or attempt to use your position as a Councillor or co-opted member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;

(b) must, when using or authorising the use by others of the resources of your authority—

- (i) act in accordance with your authority's reasonable requirements;
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7. —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—**

- (a) your authority's Chief Finance Officer; or
- (b) your authority's Monitoring Officer,

where that officer is acting pursuant to their statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.



## Part 2 – Interests

### Personal interests

8. – (1) The interests described in paragraphs 8(3) and 8(5) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.

(2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests-

(a) the authority may deal with the matter as mentioned in paragraph 1(5) and

(b) if the failure relates to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).

(3) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(4) In sub-paragraph (3)(b), a relevant person is—

(a) a member of your family or a close associate; or

(b) 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;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (3)(a)(i) or (ii).

8(5) Subject to sub-paragraphs (6) and (7), you have a personal interest which is also a disclosable pecuniary interest in any business of your authority where (i) you or (ii) your partner have any interest of a description specified as a disclosable pecuniary interest in Regulations made by the Secretary of State pursuant to section 30 of the Localism Act 2011.

### **Employment, office, trade, profession or vocation:**

Any employment, office, trade, profession or vocation carried on for profit or gain.

### **Sponsorship:**

Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by a councillor or co-opted member in carrying out duties as a councillor or co-opted member, or towards the election expenses of a councillor or co-opted member.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(3).

### **Contracts:**

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority-

(a) under which goods or services are to be provided or works are to be executed; and

(b) which has not been fully discharged.

### **Land:**

Any beneficial interest in land which is within the area of the relevant authority.

## **Licences:**

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

## **Corporate tenancies:**

Any tenancy where (to Councillor or co-opted member's knowledge)-

- (a) the landlord is the relevant authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

## **Securities:**

Any beneficial interest in securities of a body where-

- (a) the body (to Councillor or co-opted member's knowledge) has a place of business or land in the area of the relevant authority; and
- (b) either-

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued shared capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

(6) In sub-paragraph (5), your partner means—

- (a) your spouse or civil partner,
- (b) a person with whom you are living as husband and wife, or
- (c) a person with whom you are living as if you were civil partners,

(7) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that that your partner has the interest.

## **Disclosure of personal interests**

(See also Part 3)

**9.** —(1) Subject to sub-paragraphs (2) to (6), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) If the personal interest is entered on the authority's register there is no requirement for you to disclose the interest to that meeting, but you should do so if you wish a disclosure to be recorded in the minutes of the meeting.

(3) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(4) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of Councillors and co-opted members interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.

(5) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(6) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

### **Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where either-

(a) the interest is a disclosable pecuniary interest as described in paragraph 8(5), or

(b) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) For the purposes of sub-paragraph (1)(b), you do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to Councillors or co-opted members;
- (v) any ceremonial honour given to councillors or co-opted members ; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

## **Interests arising in relation to Overview and Scrutiny Committee**

**11.** You also have a personal interest in any business before an Overview and Scrutiny Committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's Cabinet or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the Cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

## **Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any matter in relation to the business of your authority—

(a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter is being held. For virtual meetings you must disconnect from the meeting by leaving. When consideration of the matter has concluded you will be re-invited back into the virtual meeting —

- (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
- (ii) in any other case, whenever it becomes apparent that the matter is being considered at that meeting;

unless you have obtained a dispensation from your authority's Monitoring Officer or Standards Committee;

(b) you must not exercise executive functions in relation to that matter; and

(c) you must not seek improperly to influence a decision about that matter.

(2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), you may attend a meeting (including a meeting of the Overview and Scrutiny Committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(3) Where you have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

## Part 3 – Registration of Interests

### Registration of Councillors and members' interests

**13.** —(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by the authority; or

(b) your election or appointment to office (where that is later), register in the register of Councillors and co-opted members' interests details of-

- (i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and
- (ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)

by providing written notification to your authority's Monitoring Officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(i) or (1)(ii) or any change to any personal interest registered under sub-paragraphs (1)(i) or (1)(ii), register details of that new personal interest or change by providing written notification to your authority's Monitoring Officer.

### Sensitive information

**14.** —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on any copies of the register of Councillors or co-opted members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's Monitoring Officer asking that the information be included in the register of Councillors or co-opted members' interests.

(3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

### Dispensations

**15 -** (1) The Standards Committee, or any sub-committee of the Standards Committee, or the Monitoring Officer may, on a written request made to the Monitoring Officer of the authority by a Councillor, grant a dispensation relieving the Councillor from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.

(2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Standards Committee, its sub-committee, or the Monitoring Officer—

(a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating Cabinet arrangements, considers that without the dispensation each Councillor of the authority's Cabinet would be prohibited by paragraph 12 from participating in any particular business to be transacted by the authority's Cabinet; or

(e) considers that it is otherwise appropriate to grant a dispensation.

(2) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

(3) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

# Hastings Borough Council

## Written Undertaking

I ..... having become a Councillor/co-opted member (delete as appropriate) of Hastings Borough Council, declare that I will duly and faithfully fulfil the requirements of this role according to the best of my judgement and ability.

I undertake to observe the code as to the conduct which is expected of Councillors/co-opted members (delete as appropriate) of Hastings Borough Council.

Signed: ..... Date:.....

This undertaking was made and signed before me

Signed: ..... Date:.....

Proper Officer of the authority\*

\*Where the declaration is made before another person authorised by section 83(3) of the above Act, state instead the capacity in which that person takes the declaration.



# **Hastings Borough Council**

## **Protocol for Relationships Between Councillors and Officers**

# Hastings Borough Council Protocol for Relationships between Councillors and Co-opted Members and Officers

“Every local authority should have its own written statement or protocol governing relations between councillors and officers”. (Third report of the Committee on Standards in Public Life – the Nolan Committee)

## Introduction and Principles

- 1.1 The purpose of this Protocol is to guide Councillors and Officers in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 If the Protocol is followed it should ensure that Councillors receive objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Councillors.

## Definitions

1. Unless the context indicates otherwise, references to the term **Council** include the Cabinet, Overview and Scrutiny Committees, and other committees and sub-committees.
2. For the purposes of this protocol, the term **Cabinet** refers to the Leader and Cabinet.
4. **Officers and staff** means all persons employed by the Council.
5. **Senior officer** means the Chief Executive, Heads of Service and Senior Managers, except where otherwise stated.
6. **Designated Finance Officer** means the officer exercising the duties prescribed by law for the financial administration of the Council.
7. **Monitoring Officer** means as described under S5 Local Government and Housing Act 1989.

## Principles

8. Councillors and co-opted members and Officers must at all times observe the protocol.
9. The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.
10. Councillors and co-opted members and Officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
11. Whilst Councillors and co-opted members and Officers are indispensable to one another, their responsibilities are distinct. Councillors and co-opted members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to Councillors and co-opted members (individually and collectively) and to carry out the Council's work under the direction of the Council.
12. The Council adopted a new Code of Conduct for Councillors and co-opted members in June 2012. The Code of Conduct is based on the Nolan principles. These principles underpin this protocol. The Code of Conduct is to be found at Part 5 of the Council's Constitution with this protocol.
13. Until such time as a new national code appears, Officers are bound by the Council's own code of conduct for staff and, in some cases, by the codes of their professional

associations. The Council's Code of Conduct is available on the Intranet under Personnel, Policies and Procedures Index.

14. Breaches of this protocol by a Councillors and co-opted member may result in a complaint to the Standards Committee whether or not it appears the Councillors and co-opted members' code has also been breached. Breaches by an Officer may lead to disciplinary action.

### **The Role of Councillors and Co-opted Members**

15. Councillors and co-opted members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, councillors and co-opted members may wish to seek the advice of the Monitoring Officer/Chief Legal Officer.
16. Collectively, Councillors and co-opted members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
17. Councillors are elected to represent their constituents. They represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
18. Every elected Councillor represents the interests of, and is an advocate for, their ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.
19. Some Councillors members have roles relating to their position as members of the Cabinet, Overview and Scrutiny Committee or other committees and sub-committees of the Council.
20. Councillors serving on Overview and Scrutiny Committee monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They may also monitor other public sector service provision eg local health service relevant to the borough.
21. Councillors and co-opted members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Cabinet.
22. Some Councillors may be appointed to represent the Council on local, regional or national bodies.
23. As politicians, Councillors may express the values and aspirations of the party groups to which they belong, recognising that in their role as Councillors they have a duty always to act in the public interest.
24. Councillors and co-opted members are not authorised to instruct Officers other than:
  - through the formal decision-making process
  - to request the provision of consumable resources provided by the Council for Councillors and co-opted members' use
  - where staff have been specifically allocated to give support to a Councillor or co-opted member or group of Councillors and co-opted members. eg the Corporate and Democratic Services Team
25. Councillors and co-opted members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
26. Councillors and co-opted members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Councillors and co-opted members have an obligation under their code of conduct to have regard, when reaching

decisions, to any advice provided by the Monitoring Officer/Chief Legal Officer or the Chief Finance Officer, or their nominees.

27. Councillors and co-opted members must respect the impartiality of Officers and do nothing to compromise it, e.g. by insisting that an officer change their professional advice or by seeking to involve an officer in the pursuit of a personal or political dispute with others.

### **The Role of Officers**

28. Officers are responsible for giving advice to Councillors and co-opted members to enable them to fulfil their roles. In doing so, Officers will take into account all available relevant factors.
29. Under the direction and control of the Council (including, as appropriate, the Cabinet, committees and sub-committees), Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
30. Officers have a duty to implement decisions of the Council, the Cabinet, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
31. Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
32. Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
33. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Councillors and co-opted members, the media or other sections of the public.
34. Officers have the right not to support Councillors and co-opted members in any role other than that of Councillor and co-opted member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation for certain Officers concerning involvement in political activities.

### **The Relationship: General Points**

35. Officers are responsible for day-to-day managerial and operational decisions within the authority and provide support to the Leader, Cabinet, Committee Members and all Councillors and co-opted members in their respective roles.
36. Certain Statutory Officers – the Head of Paid Service, the Monitoring Officer and the Section 151 Officer (currently the Chief Finance Officer) – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by Councillors and co-opted members.
37. Informal and collaborative two-way contact between Councillors and co-opted members and Officers is encouraged, but personal familiarity can damage the relationship, as might a family or business connection.
38. Councillors and co-opted members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
39. It is not enough to avoid actual impropriety. Councillors and co-opted members and Officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be

perceived. Specifically, a Councillor or co-opted member should not sit on a body or participate in any decision which directly affects the Officer on a personal basis.

40. Officers have a duty to implement the properly authorised decisions of the Council.
41. Officers work to the instructions of their senior officers, not individual Councillors and co-opted members. It follows that, whilst such Officers will always seek to assist a Councillor or co-opted member, they must not be asked to exceed the bounds of authority they have been given by their managers. For minor or routine matters Councillors and co-opted members should deal with the officer concerned and not automatically elevate the matter to Head of Service or the Chief Executive level. Councillors and co-opted members should use the reporting tools provided e.g. My Hastings On-line account in the first instance
42. Councillors and co-opted have been supplied with contact details of the relevant service managers to whom enquiries can be made. Councillors and co-opted members should only escalate issues to the Chief Executive or Head of Service if an issue is no longer minor or routine or if an issue is not resolved satisfactorily at the first point of contact.
43. Councillors and co-opted members should keep correspondence and telephone conversations confined between themselves and the responsible Officer without copying it to Senior Managers and other Councillors and co-opted members. Councillors and co-opted members should also not 'copy' members of the public as this can make a proper reply difficult for Officers. Councillors and co-opted members should keep correspondence factual and not express an opinion until such time as the matter has been investigated.
44. Heads of Service are responsible for all aspects of the budgets and work of the areas they are managing. Matters of service performance should initially always be directed to them. They have the responsibility to resolve most major issues and should know when a performance issue is sufficiently important to refer it to the Chief Executive (and in some cases for discussion with political leadership).

Directors should be involved if:-

- i) There is a problem of service failure (not individual complaints)
  - ii) A problem is of a scale that presents a risk to the Council achieving its objectives, has severe reputational risk implications, public safety concerns, and/or a major impact on the budget or carries a high political significance.
  - iii) If a corporate response is required which is beyond individual middle managers to agree.
45. Councillors and co-opted members views are representative of their constituents unless there is clear evidence to the contrary. The views of Officers are based on professional judgements derived from experience and academic qualification. On occasions differences between these two approaches will arise. Where there is no lawful reason for the Councillors or co-opted members request not to be actioned, but an objection from an Officer on professional grounds there is a need to resolve these differences without a significant amount of time being taken up while achieving both analysis and consistency on one side and being responsive with community on the other.
  46. It is proposed that where a Councillor and the senior manager of a service cannot reach agreement the matter is considered by the appropriate Head of Service and the Portfolio Holder at a regular one to one meeting or other suitable (reasonably prompt) time with the aim to resolve the issue. If the Head of Service and Portfolio Holder cannot reach agreement the matter is to be referred to the regular meeting of the Leader, Deputy Leader and the Chief Executive.
  47. Officers will do their best to give timely responses to Councillors and co-opted members' enquiries and will endeavour to observe the standards stated in the Council's Contact Charter ie 5 working days. However, Officers should not have unreasonable requests

placed on them. Their work priorities are set and managed by senior managers. Overall priorities are agreed between the Leader, Portfolio Holders, and the Chief Executive on the basis of policies, strategies and plans agreed by the full Council or Cabinet in accordance with the Constitution. Members should avoid disrupting Officers' work by imposing their own priorities ie 5 working days.

48. Councillors and co-opted members will endeavour to give timely responses to enquiries from Officers.
49. Councillors and co-opted members and Officers should respect each other's free (i.e. non-Council) time.

### **The Council as Employer**

50. Officers are employed by the Council as a whole.
51. Councillors' roles are limited to:
  - the appointment of the Head of Paid Service / Chief Executive
  - determining human resources policies and conditions of employment, and
  - hearing and determining appeals of the Head of Paid Service / Chief Executive and the disciplinary hearings of statutory Officers.
52. In light of the nature of the Councillors and co-opted members' role, an Officer should not discuss with a Councillor or co-opted member personal employment matters concerning him/herself or another individual employee. The Council has established procedures should the personal matter be in the nature of a grievance (see Grievance Policy and Procedure). This does not, of course, prevent an Officer raising on a personal basis, and in their own time, a matter with their ward member.
53. Councillors and co-opted members shall not act outside these roles.
54. If participating in the appointment of Officers, Councillors should:
  - remember that the sole criterion is merit
  - never canvass support for a particular candidate
  - not take part where one of the candidates is a close friend or relative
  - not be influenced by personal preferences, and
  - not favour a candidate by giving him/her information not available to the other candidates.
55. A Councillor should not sit on an appeal hearing if the appellant is a friend, a relative, or an Officer with whom the Councillor has had a close working relationship.

### **Mayor and Officers**

56. Officers will respect the position of Mayor and provide appropriate support.

### **Members of Cabinet and Officers**

57. Members of Cabinet will take decisions in accordance with the Constitution and will not otherwise direct staff. Senior officers will be responsible for instructing staff to implement the Cabinet's decisions.
58. Senior Officers and members of Cabinet shall agree mutually convenient methods of regular contact. The Chief Executive shall meet regularly with the Leader and Deputy Leader and Shadow Leader and Deputy Shadow Leader. Before taking any formal decisions, the Cabinet will seek appropriate professional advice.
59. Performance management arrangements for the Chief Executive will be exercised by the Leader and Deputy Leader.

60. Before any formal decisions with a financial implication are taken by the Cabinet, the Finance Officer and the senior Officer(s) for the service(s) concerned must be consulted. This is to ensure that those Officers who are budget holders:
- are aware of the proposed decision
  - have the opportunity to offer advice, and
  - are subsequently able properly to authorise the financial transactions needed to implement decisions.
61. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Portfolio Holder/s of their intentions in advance when the matter to which the decision relates to is likely to be sensitive or contentious, or has wider policy implications.
62. In relation to Cabinet decision-making, at present the Council does not operate individual Cabinet member decision-making and so delegation will be to a senior Officer in consultation with the Leader or Portfolio Holder and sometimes with the leader of the opposition group or groups.

### **Overview and Scrutiny Members and Officers**

63. Members of the Overview and Scrutiny Committee, when questioning Councillors and Officers should:
- Direct their question to the merits of the decision under review
  - Ascertain the factual and other information on which the decision was based
  - Confirm the compliance of the decision making process with the Council's principles of decision making
  - Test what alternatives have been considered and the reasons for their rejection.
64. They should not:
- Question the conduct of Individual Councillors or Officers
  - Seek for Officers to disclose the contents of confidential discussions, papers or advice
  - Criticise an Officer by name
  - Seek to instigate or become in any way involved in disciplinary or grievance procedures in relation to the actions of Councillors or Officers
  - Act as a "court of appeal" against specific decisions relating to individuals or pursue complaints by individuals (Councillors, Officers or members of the Public) where other procedures exist for this.
65. It is recognised that officers required to appear before the Overview and Scrutiny Committee may often be those who have advised the Cabinet or another part of the Council on the matter under investigation. In these circumstances, an Officer may have a conflict of interest. Both Councillors and Officers need to consider the severity of the conflict. In case of such conflict, provision may be made for managing the conflict eg by means of advice from an outside source.
66. In giving evidence, Officers must not be asked to give political views.
67. In exercising the right to call-in a decision of the Cabinet, Overview and Scrutiny Committee members must seek senior Officer advice if they consider the decision is contrary to the Council's approved plans, policies or frameworks, or is unlawful.

## **Members of Other Committees or Sub-Committees and Officers**

68. The appropriate senior Officers will offer to arrange regular informal meetings with chairs, vice-chairs, and spokesperson of committees and sub-committees.
69. Senior Officers (including the Monitoring Officer and the designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
70. Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct Officers to act.
71. At some committee or sub-committee meetings, a resolution may be passed which authorises the Chief Executive or their nominee to take action between meetings in consultation with the chair. In these circumstances, it is the Officer, not the Councillor, who takes the action and is responsible for it. A Councillor has no legal power to take decisions on behalf of a committee or sub-committee, neither should he/she apply inappropriate pressure on the Officer. It may be that in such circumstances it would be appropriate to take the matter back to committee for decision, though this will not always be possible due to urgency.

## **Party Groups and Officers**

72. Senior Officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
73. Officers have the right to refuse such requests, and will normally not attend a meeting of a party group where some of those attending are not Councillors or co-opted members of the Council.
74. Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
75. Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
76. Where Officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
77. It must not be assumed that an Officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
78. Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other Councillor or co-opted member. This shall not prevent an Officer providing feedback to other senior Officers on a need-to-know basis.
79. In their dealings with party groups, Officers must treat each group in a fair and even-handed manner.
80. Councillors and co-opted members must not do anything which comprises or is likely to compromise Officers' impartiality.
81. The duration of an Officer's attendance at party group meetings will be at the discretion of the group, but an Officer may leave at any time if he/she feels it is no longer appropriate to be there.



82. An Officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each.
83. An Officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
84. No Councillor or co-opted member will refer in public or at meetings of the Council to advice or information given by Officers to a party group meeting.
85. At party group meetings where some of those present are not Councillors or co-opted members of the Council, care must be taken by Councillors and Officers not to divulge confidential information relating to Council business. Persons who are not Councillors or co-opted members are not bound by the Councillors and co-opted members' Code of Conduct. They do not have the same rights to Council information as Councillors and co-opted members.
86. Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Chief Executive and the relevant party group leader.

### **Local Councillors and Officers**

87. To enable them to carry out their ward role effectively, Councillors need to be fully informed about matters affecting their ward. Senior Officers must ensure that all relevant staff are aware of the requirement to keep local Councillors informed, thus allowing Councillors to contribute to the decision making process and develop their representative role.
88. This requirement is particularly important:
  - a. during the formative stages of policy development, where practicable
  - b. in relation to significant or sensitive operational matters
  - c. whenever any form of public consultation exercise is undertaken, and
  - d. during an overview and scrutiny investigation.
89. Issues may affect a single ward. Where they have a wider impact, a number of local Councillors will need to be kept informed.
90. Whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the wards affected should be invited to attend the meeting as a matter of course.
91. If a local Councillor intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant senior Officer. Provided the meeting has not been arranged on a party political basis:
  - an Officer may attend but is not obliged to do so, and
  - the meeting may be held in Council-owned premises, subject to availability.
92. No such meetings should be arranged or held in the immediate run-up to Council elections i.e. from the time when notice of election is published.
93. Whilst support for Councillors' ward work is legitimate, an Officer should never, in their capacity as Officer, be invited to or to accompany a Councillor to a ward surgery or a ward or constituency political party meeting.
94. It is acknowledged that some Council staff (e.g. those providing dedicated support to Cabinet councillors) may receive and handle messages for Councillors on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.
95. In seeking to deal with constituents' queries or concerns, Councillors should not seek to jump the queue, but should respect the Council's procedures. Officers have many

pressures on their time. They may not be able to carry out the work required by Councillors in the requested timescale, and may need to seek instructions from their managers.

### **Councillors' and Co-opted Members Access to Documents and Information**

96. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution. Councillors and co-opted members of the Council have the same rights as any other member of the public to information under the Freedom of Information Act 2000 and are subject to the same requirements and exemptions.
97. As Councillors, they may request senior Officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as Councillors. This is generally known as the "need to know" principle. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. It is not, however, a licence to a "roving commission to go and examine the books or documents of a corporation". Where information is requested on behalf of a third party, it will only be provided if:
  - it is in the public domain, and
  - it is not barred by the Data Protection Act from being given.
98. Every member of the Cabinet, an Overview and Scrutiny Committee, and/or any other committee or sub-committee has a right to inspect documents about the business of that Overview and Scrutiny Committee, other committee or sub-committee or the Cabinet.
99. A Councillor who is not a member of the Overview and Scrutiny Committee, other committee or sub-committee, or the Cabinet may have access to any document about the business of those committees, except certain categories of exempt or Part II information.
100. Disputes as to the validity of a Councillor's request to see a document on a need to know basis will be determined by the Monitoring Officer/ Chief Legal Officer. Officers should seek their advice if in any doubt about the reasonableness of a Councillor's request.
101. A Councillor should obtain advice from the Monitoring Officer/Chief Legal Officer in circumstances where he/she wishes to have access to documents or information:
  - where to do so is likely to be in breach of the Data Protection Act, or
  - where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the Councillors and co-opted members' code of conduct.
102. Information given to a Councillor or co-opted member must only be used for the purpose for which it was requested.
103. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.
104. Councillors, co-opted members and Officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. This does not, however, in general prevent an Officer disclosing such information to his or her line manager.
105. When requested to do so, Officers will keep confidential from other Councillors and co-opted members, advice requested by a Councillors and co-opted member.
106. Councillors and co-opted members and Officers must not prevent another person from gaining access to information to which that person is entitled by law.

## **Media Relations**

107. All officer communications with the press must be made through the Communications Manager or their nominee.
108. Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
109. Officers will keep relevant councillors and the Communications Manager or their nominee informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
110. If a Councillor or co-opted member is contacted by, or contacts, the media on an issue, he/she should:
  - indicate in what capacity he/she is speaking (e.g. as Ward Councillor, in a personal capacity, as an Cabinet Councillor, on behalf of the Council, or on behalf of a party group)
  - always, when he/she would like a press release to be issued, seek assistance from the Council's Marketing and Major Projects Manager or their nominee and/or relevant senior Officer, except in relation to a statement which is party political in nature.
  - consider the likely consequences for the Council of their statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions)
  - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter
  - consider whether to consult other relevant Councillors and co-opted members.

## **Correspondence**

111. Correspondence (letters, emails etc) between an individual Councillor or co-opted member and an Officer should not be copied to another Councillor or co-opted member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no 'blind' copies. Correspondence between an Officer and a Councillor or co-opted member should not be copied to a member of the public except with the express consent of the author or in circumstances where the author understood that it was intended to provide copies to others.
112. Official letters written on behalf of the Council should normally be in the name of the relevant Officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of a Cabinet councillor or the chair of a Council committee.
113. The Mayor may initiate correspondence in their own name.
114. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Councillor or co-opted member.
115. When writing in an individual capacity as a Ward Councillor, a Councillor must make clear that fact.
116. Councillors and co-opted Members and Officers are asked to give due consideration to the tone of their correspondence.

## **Access to Premises**

117. Officers have the right to enter Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.
118. Councillor or co-opted members have a reasonable right of access to Council land and premises to fulfil their duties.
119. When making visits as individual Councillors and co-opted members, Councillor and co-opted members should:
  - whenever practicable, notify and make advance arrangements with the appropriate manager or Officer in charge
  - comply with health and safety, security and other workplace rules
  - not interfere with the services or activities being provided at the time of the visit.

## **Use of Council Resources**

120. The Council provides all Councillors and co-opted members with services such as printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as Councillor and co-opted members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
121. Councillor and co-opted members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
  - where facilities are provided in Councillors and co-opted members' homes at the Council's expense
  - in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
  - regarding ICT security.
122. Councillor and co-opted members should not put pressure on staff to provide resources or support which Officers are not permitted to give. Examples are:
  - business which is solely to do with a political party
  - work in connection with a ward or constituency party group meeting
  - electioneering
  - work associated with an event attended by a Councillor or co-opted member in a capacity other than as a Councillor or co-opted member of the Council
  - private personal correspondence
  - work in connection with another body or organisation where a Councillor or co-opted member's involvement is other than as a Councillor or co-opted member of the Council; and
  - support to a Councillor or co-opted member in their capacity as a Councillor of another local authority.

## **Interpretation, Complaints and Allegations of Breaches**

123. This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.

124. Councillors or co-opted members or Officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
125. A Councillor or co-opted member who is unhappy about the actions taken by, or conduct of, an officer should:
  - avoid personal attacks on, or abuse of, the Officer at all times
  - ensure that any criticism is well founded and constructive
  - never make a criticism in public, and
  - take up the concern with the Officer privately.
126. It is not appropriate for a Councillor or co-opted member to continue to pursue a matter with the Officer concerned, to avoid any cause for complaint of harassment or bullying of the Officer concerned (see Council's Harassment Policy). It is inappropriate for a Councillor or co-opted member to impugn an Officer's impartiality or integrity by addressing this repeatedly to the officer concerned, without raising it with a more senior Officer.
127. If direct discussion with the Officer is inappropriate (e.g. because of the seriousness of the concern or because the officer is a junior member of staff) or fails to resolve the matter, the Councillor or co-opted member should raise the issue with the Officer's manager or the relevant senior Officer.
128. A serious breach of this protocol by an Officer may lead to an investigation under the Council's disciplinary procedure.
129. Councillors and co-opted members should consult with the relevant senior Officer or manager to seek an explanation before raising any question of failure by a particular part of the Council or group of officers in public. Officers do not have the same freedom to respond in a public meeting as Councillor or co-opted members.
130. An Officer who believes a Councillor or co-opted member may have acted other than in accordance with this protocol should raise their concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may result in reference to the Council's Standards Committee with responsibility for Councillor and co-opted member standards.
131. Whilst there are formal procedures in place for disputes between Officers and Councillor and co-opted members it is hoped that attempts would be made to resolve all disputes amicably on an informal basis.

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**Part 5 Appendix 1**

**Planning Protocol**

## Hastings Borough Council Planning Protocol Introduction

1. This Protocol replaces and updates that which was adopted by Council on 18<sup>th</sup> April 2018.
2. Planning has a positive and proactive role to play at the heart of local government. The planning system works best when Councillors, officers and all other parties essential to its effective operation clearly understand their roles and responsibilities and the context and constraints in which they operate. The purpose of this Protocol is to give clear guidance to Councillors about how they should carry out their duties in relation to planning and development proposals. This Protocol seeks to ensure openness, transparency, fairness and consistency in planning decisions and to ensure that the planning process operates properly, legally and effectively. Planning decisions should be made openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.
3. Planning decisions involve balancing:
  - a. the needs and interests of individual constituents and the community, with
  - b. the need to maintain an ethic of impartial decision making on what can be highly controversial proposals.

This Protocol provides guidance on achieving this balance. It reflects the enhanced role for Councillors as champions of their local communities and recognises their ability to participate in discussions prior to the receipt of a planning application on behalf of their communities. Councillors may be contacted by members of the public and asked to advise them how to make representations on planning applications or if they would address the Planning Committee on their behalf in their role as Ward Councillor. This Protocol provides guidance on the role of Councillors and how to avoid predetermination or bias in decision making.

4. This Protocol applies to Councillors at all times when involved in the planning process. This includes taking part in decision making meetings of the Planning Committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or the making of compulsory purchase orders.
5. If in any doubt about the application of this Protocol, take immediate advice from the Monitoring Officer or Deputy Monitoring Officer, preferably well before any meeting takes place.

### The Relationship to the Council's Code of Conduct for Councillors

6. This Protocol is a Council Protocol under Part 5 of the Constitution of the Council. Breach of this Protocol could lead to a complaint being made to the Council's Standards Committee.
7. This Protocol supplements the Council's Code of Conduct for Councillors (the Code). It is unlikely that there will be any conflict between the two but, if there is, the provisions of the general Code of Conduct will take precedence.



8. Councillors must apply both the general Code of Conduct and this Protocol in dealing with all planning issues. Failure to do so may place the Council at risk of legal challenge or a finding of maladministration by the Local Government Ombudsman.

## **The General Role and Conduct of Councillors and Officers**

9. Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors. It follows that instructions may only be given to officers through a decision of the Council or its Cabinet or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust which it underpins, must never be abused or compromised.
10. The Code sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, as well as appropriate relationships with other Councillors, staff and the public.
11. In planning terms there is a presumption in favour of sustainable development which must be balanced with that of the wider interest. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, all Planning Committee members should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
12. The Council's Standing Instructions to Authorised Officers (Part 8 of the Constitution of the Council) sets out the functions and responsibilities in respect of Planning and lists the circumstances under which applications as specified in Part 3b paragraph 43 of the Standing Instructions are determined by the Planning Committee and not under delegated authority where:
  - a. The application has attracted five or more written representations from different households or businesses on planning grounds or a petition as defined in Standing Orders and the written representations or petition are contrary to the officers recommendation, or
  - b. The Chair of the Planning Committee has referred any application to the Planning Committee within 21 days after validation of an application or 21 days after the date of any advert placed in the press whichever is the later giving clear planning reasons in writing for the referral, or
  - c. Any Member of the Council with the consent of the Chair or a Ward Councillor, has given written notice to the Head of Strategic Programmes within 21 days after validation of an application or 21 days after the date of any advert placed in the press whichever is the later requiring that application to be considered by the Planning Committee, giving clear planning reasons for the referral, or
  - d. The application relates to or affects Council owned land and the application is submitted by or on behalf of the Council, or

- e. The application is submitted by, or on behalf of, a serving Councillor or officer of the Council where the officer is employed in a politically restricted post and/or within the Council's planning service, or
- f. The Planning Committee otherwise direct in respect of any particular application or reserved matter; or
- g. The Head of Strategic Programmes has referred an application or matter to the Planning Committee within 21 days after validation of an application or 21 days after the date of any advert placed in the press whichever is the later giving clear planning reasons for the referral, or
- h. The application relates to or affects Foreshore Trust land and the application is submitted by or on behalf of the Foreshore Trust.

### **Gifts or Hospitality**

- 13. Councillors shall not accept gifts or hospitality from developers or from any person involved in or affected by a planning proposal, including pre-application proposals. A gift or hospitality might be considered to influence a Councillor's judgment and it is important that there can be no justifiable grounds for suggesting a decision either has been, or appears to have been, influenced or biased in any way. The Code, in any event, requires that the Councillor must within 28 days of receiving any gift or hospitality over the value of £50, provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality. A gift over £50 will constitute a personal interest and be registerable as such. All details will go on the register of gifts and hospitality, which is open to public inspection and will remain on the register for 3 years. Councillors must consider whether any gift or hospitality over the value of £50 constitutes a prejudicial interest.

### **Registration and Declaration of Interests**

- 14. The Local Government Act 2000 and the national code place requirements on Councillors on the registration and declaration of their interests, as well as the consequences for the Councillor's participation in consideration of an issue, in light of those interests.
- 15. Both Councillors and Officers are required to observe codes of conduct and statutory provisions; the aim of which is to ensure the integrity of the Council and individual Councillors. These require the open disclosure of any personal and/or prejudicial interests in issues being considered by the Council, its Cabinet or any of its Committees. The Code requires that Councillors register their financial or other interests in the Register of Councillors' Interests held by the Monitoring Officer. This is in addition to the requirement for Councillors to declare any personal interests as defined in the Code. If a Councillor has a personal interest, they should consider whether that interest is prejudicial as defined in the Code.
- 16. The Council's Monitoring Officer has provided all Councillors with detailed guidance on the Code and in particular, declaration of interests. This is regularly updated. Members of the Planning Committee must ensure they are familiar with the Code. The requirements must be followed scrupulously and Councillors should review their situation regularly. It is the personal responsibility of individual Councillors to ensure

they comply with the Code and make all appropriate declarations at Planning Committee meetings. Councillors should take advice early, from the Monitoring Officer or the Deputy Monitoring Officer, and preferably well before any meeting takes place, if they are in any doubt as to their position.

17. The provisions of the Code are an attempt to separate out interests arising from the personal and private interests of the Councillor and those arising from the Councillor's wider public life.
18. The Register of Councillors' Interests is maintained by the Monitoring Officer and is available for public inspection. An interest can either be personal, prejudicial or pecuniary. The Code defines these terms and should be referred to for the appropriate detail. If Councillors have an interest in any matter, they must disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with Officers and other Councillors. Councillors are advised to disclose their interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. Councillors can still declare an interest which only comes to mind or light after declarations of interest have been considered on the agenda at any point prior to discussion of that particular matter. The obligation to disclose the existence and nature of an interest applies to **all Councillors attending the Planning Committee meeting, whether sitting as a Member of the Planning Committee or as a Councillor addressing the Planning Committee or sitting in the public gallery**. The responsibility rests with individual Councillors to ensure that they indicate to the Chair that they have an interest to declare.
19. Where a Councillor has a personal interest in a matter they must always declare the existence and nature of their interest. They can participate in the discussion and be involved in making the decision.
20. If a Councillor has both a personal and prejudicial interest in a matter they must always declare the existence and nature of their interest. **THEY CANNOT PARTICIPATE IN ANY DISCUSSION OR BE INVOLVED IN MAKING THE DECISION, EITHER FORMALLY OR INFORMALLY AND MUST NOT SEEK TO INFLUENCE THE DECISION IN ANY WAY**. They must withdraw from the room (or virtual meeting where appropriate) during discussion of the matter and cannot remain even as a member of the public. This applies to all Councillors with a prejudicial interest regardless of whether they are members of the Planning Committee which is making the decision. A prejudicial interest would require withdrawal of the Councillor from the Committee during consideration of that item.
21. If in any doubt about Registration and Declaration of Interests, take immediate advice from the Monitoring Officer or Deputy Monitoring Officer.

### **Predetermination, Predisposition or Bias**

22. In addition to declaring personal or prejudicial interests, members of a Planning Committee need to avoid any appearance of bias or of having predetermined their view before taking a decision on a planning application. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints.

23. Section 25 of the Localism Act 2011 introduced provisions for dealing with allegations of bias or pre-determination where the Councillor had or appeared to have a closed mind when making the decision. The Councillor is considered not to have a closed mind "just because" they had previously done anything relevant to the decision, that directly or indirectly, indicated what view the Councillor took, or would or might take, in relation to a planning decision.
24. The fact that a Councillor may have campaigned for or against a proposal does not automatically mean that they have a closed mind. Councillors will need to be careful to consider, and ensure that it is apparent that they have considered, all relevant considerations and made their decision in accordance with their statutory duty. Councillors must be prepared to change their view right up to the point of making the decision. Councillors can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of the issues. Councillors can support or oppose an application and represent the views of their constituents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Councillors are advised to seek advice from the Monitoring Officer or Deputy Monitoring Officer.

### **Predisposition**

25. A distinction is drawn by the Courts between a Councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination) and a predisposition to an initial view. Where the Councillor is clear they have an open mind and are willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote, there is no predetermination.

### **Predetermination**

26. If a Planning Committee Member has been lobbied by friends or others and wishes to promote or oppose a planning application, they will need to carefully consider whether this has become a personal interest or not. In addition, they also need to consider if their view is likely to be regarded as predetermined. In other words whether they have already made up their mind and are not prepared to listen to the material considerations presented at the Planning Committee before making their decision. If a Councillor has predetermined their position they should not take part in the decision making for that application as to do so will be a breach of the Code of Conduct and leave the decision open to legal challenge by way of judicial review.

### **Bias**

27. Councillors should not participate in the consideration of a planning application if to do so would give the appearance of bias. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" It is not the Councillor's view of whether they are biased that is relevant but the view of the independent observer. Perception is important and can lead to judicial challenge in the High Court. If a Councillor believes that their participation would lead a fair-minded observer to consider that there is a real possibility of bias, they should not participate in making the decision and should withdraw from the room (or virtual meeting where appropriate). The Courts have held that it is primarily a matter for the Councillor to judge whether to withdraw, but given the scope for challenge the Councillor should always err on the side of caution. Whilst not every application will raise the question of

bias, there will be occasions when a member of the public in possession of all the facts might consider that there is a real risk of bias. In these circumstances, the Councillor should seek the advice of the Monitoring Officer or Deputy Monitoring Officer.

28. Councillors do not have to have a personal interest in order to come within the definition of bias. There may not be specific consequences for the Councillor who has failed to acknowledge and respond to their bias, as opposed to failing to declare a personal or prejudicial interest under the Code. Councillors must be aware that in failing to consider the issue of bias there are consequences for the decision, which may be challenged on the grounds of bias in the High Court.
29. If in any doubt about the issue of bias, take immediate advice from the Monitoring Officer or Deputy Monitoring Officer.

### **Development Proposals Submitted by Councillors and Council Development**

30. Planning applications submitted by the Council are considered by the Planning Committee in a public meeting rather than by Officers under delegated authority in accordance with the Council's Standing Instructions to Authorised Officers.
31. Planning applications submitted by Councillors can easily give rise to suspicion of impropriety. Whilst it is perfectly legitimate for such proposals to be submitted it is vital to ensure they are handled in such a way that gives no grounds for accusations of favouritism. All proposals submitted by Councillors are for this reason determined by the Planning Committee. Current Councillors who submit their own proposals or act as agents for people pursuing planning matters, should not play any part in the decision making process for those proposals.
32. The consideration of a proposal from a Councillor in such circumstances would be considered as a prejudicial interest under the Code, and as such the Councillor would be required to withdraw from any consideration of the matter. The Code also provides that the Councillor should "not seek improperly to influence a decision about the matter". It is important to emphasise that "improperly" does not imply that a Councillor should have any fewer rights than a member of the public seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
33. A Councillor submitting a planning application has a prejudicial interest but may address the Planning Committee where members of the public enjoy the same public speaking rights i.e. as the applicant. The Councillor should consider whether it would be wise to address the Planning Committee given all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the Councillor with the remainder of the Planning Committee. If the Councillor as an applicant decides to address the Planning Committee they must leave the room (or virtual meeting where appropriate) once they have made their presentation.

### **Lobbying of and by Councillors**

34. Lobbying of Councillors for or against proposals is a normal part of the planning process. Those who may be affected by a planning decision will often seek to influence it by approaching their elected Ward Councillor or a Member of the Planning Committee. Lobbying can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense is exercised by all the parties involved.

35. It is important in maintaining the integrity of individual Councillors and the Council as a whole that Members of the Planning Committee (or Members who may end up acting as substitutes on the Planning Committee) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, Councillors should:-
- a. If lobbied, explain that, whilst they can listen to/receive viewpoints from residents or other interested parties, they cannot decide or indicate before the relevant Planning Committee meeting which way they intend to vote as it would prejudice their impartiality. They should also explain that it is necessary for them to hear all the arguments both for and against the proposal before making up their mind.
  - b. Avoid giving members of the public planning advice except in relation to general planning procedures and often it may be wise to direct any such request to an appropriate Planning Officer.
  - c. If approached by residents or other interested parties, they should be referred to the appropriate Planning Officer in order that advice can be given and their opinions can be included in the Officers report to the Planning Committee. Copies of any correspondence or other written material received by a Councillor should be forwarded to the Planning Officer without delay.
36. Councillors should be aware of the need to act fairly and without bias towards every application. Councillors must keep an open mind upon an issue upon which they will be asked to vote, up until the moment that they vote upon it. Failure to keep an open mind may result in an application for judicial review of the decision reached. Any interested party may apply for judicial review of a planning decision. One of the grounds being that a Councillor who voted in favour of the decision to approve or refuse the application had approached the issue with a closed mind, and so had failed to take all relevant considerations into account. Failure to maintain an open mind may invalidate the entire decision-making process.

### **Pre-application Discussions**

37. Discussions between a potential applicant and Hastings Borough Council prior to the submission of an application can be of considerable benefit to both parties.
38. With the recognition of the need to allow and encourage Councillors to be champions of their local communities it is now accepted that Lead Councillor and Ward Councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfill this role. Councils have not previously involved Councillors in pre-application discussions for fear of them being accused of predetermination when the subsequent planning application came before the Planning Committee for determination. In order to avoid perceptions that Councillors might have fettered their discretion in any pre-application discussions, all Councillors should enter into such discussions within clear guidelines, and include:
- a. Clarity at the outset that any discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.
  - b. Advice given by Officers should be consistent and based on the Development Plan

and material considerations. Officers should be present where practicable when Councillors attend any pre-application discussions. Councillors should not become drawn into any negotiations and should ask Officers to deal with any necessary negotiations to ensure that the Council's position is co-ordinated. Councillors should complete the form at Appendix 1 following any pre-application discussion which will be attached to the Planning file in the interests of openness and transparency.

- c. Pre-application discussions should be arranged by Officers where practicable. A written note should be made by Officers of all meetings and the matters discussed should be confirmed by letter which should be placed on the file as a matter of public record. If there is a legitimate reason for confidentiality regarding the proposal, a note of the non-confidential issues raised, or advice given, should be recorded on the file in the normal manner.
39. If Councillors are invited to, or asked to arrange, a formal meeting with applicants, developers or groups of objectors (for instance, residents' associations) or supporters, they should inform the case officer dealing with the application. This applies to meetings at all stages of the planning process, including the pre-application stage.

## **Presentations of Development Proposals**

40. The Council does, on occasion, allow presentations of development proposals. Presentations are to keep Councillors informed generally on matters, which appear to have or are likely to have strategic importance for the Borough. Presentations will not be allowed in relation to any matter which is the subject of a current planning application to the Council. At such presentations Councillors must try to maintain an impartial role, listening to what is said and asking appropriate questions but not expressing a fixed opinion, and keeping an open mind on the issues at all times. This applies to pre-application public consultation meetings arranged by Developers in accordance with the Council's Statement of Community Involvement.

## **Pre-Application Consultation Forum**

41. The Council has introduced a Pre-Application Consultation Forum to consider significant major developments, prior to them being submitted as planning applications. Significant development proposals are defined as residential schemes of 30 units or more, employment/industrial scheme of 5,000 m<sup>2</sup> or more, retail schemes of 2,500 m<sup>2</sup> or more and leisure schemes of 1,000 m<sup>2</sup> or more. The Council reserves the right to seek wider community involvement on other applications which do not fall within these thresholds if they consider that they are likely to be particularly sensitive or will have a very significant impact on the local community.
42. A Forum is a meeting held in public where a developer is able to explain proposals directly to Councillors, the public and key stakeholders at an early stage about a development site. The purpose of the Forum is to:-
- a. enable the developer to explain development proposals directly to Councillors, the public and key stakeholders at an early stage.
  - b. identify any issues that may be considered in any formal application.
  - c. inform Councillors and the public of a development proposal at an early stage in the

pre-application process.

- d. inform officer pre-application discussions with the developer.
  - e. enable the developer to shape an application to address community issues.
43. The Chair of the Forum is the relevant Portfolio Holder or their nominated substitute, who is not a member of the Planning Committee, who will introduce the Forum and explain who is going to speak. The planning officer will provide a background to the proposal. The developer explains the proposal (this may involve contributions from several people). Those persons specified in paragraph 44, then have the opportunity to speak and raise any issues, observations and comments. The developer has an opportunity to respond to what has been said by invited speakers. Councillors present at the Forum may ask questions of the developer. The planning officer summarises the main points raised during the Forum, which is then closed by the Chair of the Forum
44. Forum meetings will be held in public, but only those invited to speak on behalf of recognised key stakeholder groups will be able to raise issues at the Forum. Groups invited to ask questions and express their views at the Forum will be restricted to properly constituted residents' groups covering the area of the proposed development, traders' groups for the immediate area, local campaign groups that have emerged specifically to comment on the development (only one of this type of group will be allowed to ask questions although more than one representation may be received) and properly constituted Borough wide bodies which could include business organisations.
45. Properly constituted is defined as those groups with a published constitution, has an open membership and a democratic election of officers. In addition, registered social landlords will be allowed to ask questions. Individuals do not have an automatic right to speak at the Forum unless invited to do so. Attendees can then make written comments to officers who will forward any comments received to developers. The Forum will not affect any rights to make representations when a formal planning application is submitted. All Councillors are invited to attend the Forum, including those who are on the Planning Committee.
46. After the Forum, the main points will be recorded and passed to the developer for their consideration during further pre-application discussions with officers and in putting the application together. A copy will be passed to all interested parties and placed on the planning application file. The Planning Committee will in due course consider an application based on the facts, issues and advice and nothing said at the Forum will prejudice that consideration.

### **Chair's Briefings**

47. The purpose of Chair's Briefings will be to brief the Chair and Vice Chair on applications to be brought to the next meeting of the Planning Committee. The purpose of the Briefing is for Officers to explain the forthcoming agenda, consider whether a site visit is required in respect of a particular application and consider administrative arrangements. Chair's Briefings are not to discuss the planning merits of the application or to make decisions

### **Officer Reports to Committee**



48. All matters requiring a decision by the Planning Committee should be the subject of a written report from Officers, which should be accurate and cover all relevant planning issues. In particular, it should include a clear outline of the site history, the relevant development plan policies, the response of consultees and the nature of objections (electronic links to objection letters and correspondence will be provided to Councillors prior to the Planning Committee Meeting). The report shall include a clear recommendation with a technical appraisal justifying it. Any objections or other relevant issues arising after the report is published shall be reported verbally to the Planning Committee at the meeting. Councillors shall not put improper pressure on Officers to make a particular recommendation and should not do anything which compromises, or is likely to compromise, the officers' impartiality
49. The Courts and Local Government Ombudsman have advised that officer reports on planning applications must have regard to the following points:
  - a. Reports should be accurate and cover the substance of any objections and the views of those consulted.
  - b. Relevant information should include a clear exposition of the Development Plan; relevant parts of the National Planning Policy Framework (NPPF); site or related history; and any other material considerations.
  - c. Reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur.
  - d. Reports should contain technical appraisal which clearly justify a recommendation.
  - e. If the reports recommendation is contrary to the provisions of the Development Plan, the material considerations which justify the departure must be clearly stated.
  - f. Any oral updates or changes to the Report should be recorded.
50. It is important that the report covers these points, not only as a matter of good practice, but because failure may constitute maladministration or give rise to judicial review on the grounds that the decision was not taken in accordance with the Development Plan and the Council's statutory duty under Section 38A of the Planning and Compulsory Purchase Act 2004 (see paragraph 66 below).
51. Officers must always act openly and impartially and provide consistent professional advice, in accordance with the rules of their professional body, based on planning policies and procedures, ensuring Councillors are aware of all relevant material planning considerations before decisions are made.
52. Councillors shall give due regard to recommendations and professional advice given by Officers. Councillors are not bound to follow recommendations or advice received, but may depart from this where there is justification to do so, based on clear and legitimate planning grounds which must be recorded in full when making the decision having regard to the relevant planning policy where appropriate.

## **Chair / Vice Chair**

53. In cases where the Chair or Vice Chair is not available to Chair the meeting (or part of),

the Legal Officer will ask for a nomination for Chair for the duration of the meeting (or part of). The nomination must be of a permanent member of the Planning Committee and not a substitute.

## Public Speaking at Planning Committee

54. Members of the Planning Committee shall not allow members of the public to discuss planning applications with them during the course of the Meeting itself other than through the procedure for public speaking. The procedure for public speaking set out below does not apply to the Pre-Application Consultation Forum.
55. All planning matters will be considered in public session, unless there are specific reasons for dealing with an item as exempt under the provisions of the Local Government Act 1972 (as amended) in which case the public will be asked to leave the room (or virtual meeting where appropriate). Whilst this will be rarely exercised it may be necessary for example in consideration of enforcement matters.

## Petitions

### Paper Petitions

56. The procedures for public speaking allow members of the public to address the Planning Committee where a petition is received **at least three clear working days** before the Planning Committee considering the item is due to sit and the petition is contrary to the Officer's recommendation. Paper Petitions must contain a minimum of ten signatories from different households. Each page of the petition must clearly state the planning application reference number to which it is referring, giving the full address of the property / site and the reasons for the objection. Petitions must contain full names, full addresses and signatures. Paper petitions submitted must be the original document as photocopies are not accepted. Petitions must state who the Lead Petitioner is and how they can be contacted.

### E-Petitions

57. E-Petitions which relate to current planning applications are accepted by the Council subject to the following:-
  - a) They must contain a minimum of ten signatories from different households.
  - b) All signatories must live, work or study in the Borough. Random checks that signatories meet this criteria will be undertaken.
  - c) The E-Petition must clearly state the planning application reference number to which it is referring, giving the full address of the property / site, the reasons for the petition and what action or decision you want the Council / relevant Committee to take.
  - d) E-Petitions regarding current planning applications should be submitted within 21 days of the date the application is initially advertised (by press notice / site notice or letter where appropriate). This is to ensure that they are fully taken into account in the assessment of the application. Signatures cannot be collected on an E-Petition beyond this period.
  - e) E-Petitions relating to current planning applications must state who the Lead Petitioner is and how they can be contacted.
  - f) E-Petitions can be submitted for current planning applications which are scheduled to be determined by the Planning Committee in accordance with the

Council's public speaking rights as set out in the Planning Protocol (Part 5 of the Constitution). E-Petitions can only be accepted **at least three clear working days** before the Planning Committee considering the item is due to sit and the petition is contrary to the Officer's recommendation.

g) An acknowledgement will be sent to the Lead Petitioner within 10 working days of receipt of the petition (excluding E-Petitions submitted following publication of the Planning Committee agenda set out in f) above. The Lead Petitioner will be notified if the application is referred to the Planning Committee and advised of the date of the Planning Committee meeting and their public speaking rights (if relevant).

h) Validated E-Petitions regarding current planning applications will be uploaded onto the application file and available for public inspection on the Council's website.

i) Paper petitions will still be accepted for current planning applications.

58. A standard form of petition is available to view on the Council's website as is guidance entitled "Comment on an application" <http://www.hastings.gov.uk/planning/commenting> and "Petitioning a Planning Application" <http://www.hastings.gov.uk/planning/advice/petitioning>.
59. Where there is a petition the lead petitioner is invited to attend the Planning Committee meeting. Petitions should clearly state who the lead petitioner is and provide their full name and contact details. They (or their representative) will be invited to address the Planning Committee. Where the lead petitioner (or their representative) fails to attend the scheduled Planning Committee meeting the Chair will ask if there is anyone else present in the public gallery who wishes to address the Planning Committee on behalf of the petition. The applicant or their agent has a right to speak in response to the petition. Each person making representations may speak for up to a maximum of five minutes and may be asked questions by members of the Planning Committee.
60. The procedure for public speaking allows for an applicant (or their agent) and a petitioner to speak for and against the application respectively. If two petitions are received and petitioners are making similar points, the Chair (or Vice Chair in their absence) will exercise their discretion and preference will be given to petitions from the immediate locality of the neighbourhood. Where the petitions are making different points the Chair (or Vice Chair in their absence) may exercise their discretion and allow both petitioners to speak. Each person may speak for up to a maximum of five minutes. Where there are two petitioners, the applicant may speak for up to a maximum of ten minutes in the interests of natural justice.

### **Ward Councillors addressing the Planning Committee**

61. If a Ward Councillor wishes to address the Planning Committee about a matter in their ward being considered at the Planning Committee they should advise the Chair (or Vice Chair in their absence) and the Committee Administrator prior to the meeting itself and will be entitled to speak after the petitioner and applicant have addressed the Committee. Ward Councillors should comply with the procedure for declaration of interests if they speak at a Planning Committee meeting in the same way as members of the Committee. A Ward Councillor may address the Planning Committee for a maximum of five minutes but may not be asked questions by Members of the Planning

Committee. County Councillors should direct any County related queries they have in respect of a planning application to East Sussex County Council. Where the Ward Councillor has a prejudicial interest they may only address the Planning Committee if they are the applicant or lead petitioner and must withdraw from the room (or virtual meeting where appropriate) once they have made their representations.

## Submission of Documentation

62. Documents must be submitted **at least three clear working days** before the Planning Committee meeting. For example if the Planning Committee was held on a Wednesday, documents should be received by the Council by 3pm on the previous Friday. Any late documents should not be circulated to the Planning Committee as all parties may not have time to react to the submissions, and members of the Planning Committee may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This must be made clear to those who intend to speak. Members of the Planning Committee should not read emails or correspondence received after the deadline for submission of documents. The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. This care needs to be taken to avoid the perception of external influence or bias.

## Decision Making

63. A decision on a planning application must not be made before the formal Planning Committee Meeting scheduled to determine the application. **Political group meetings shall not be held prior to a Committee Meeting**, as Group Meetings can give the appearance of bias. The fair-minded observer may perceive that Group Meetings behind closed doors are likely to affect the decisions of those Members attending. The holding of Group Meetings may therefore give rise to judicial challenge. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration by the Local Government Ombudsman. Councillors will be seated alphabetically and shall not sit according to their political groups in order to avoid the appearance of group decision-making. Section 38A of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. If the Officer's report recommends a departure from the Development Plan the justification for this must be contained in the report. Such applications must be advertised in the local paper in advance of consideration by the Committee. Decisions must be made on planning merits and the reasons for making a decision should be clear and supported by material planning considerations. The reasons for refusing an application shall always be recorded, as should any conditions attached to an approval. If the Planning Committee wish to refuse an application contrary to Officer recommendations or impose additional planning conditions the reasons for doing either must be clearly stated when this is proposed.
64. Councillors are advised to take the following steps before making a decision which differs from the officer recommendation:
  - a. Discussing the areas of difference and the reasons for that with planning officers prior to the Planning Committee meeting.

- b. Recording the detailed reasons as part of the mover's motion.
  - c. Adjourning for a few minutes for those reasons to be discussed with Officers advising the Planning Committee and then agreed by the Planning Committee.
65. If a Member of the Planning Committee proposes to refuse or grant an application contrary to the Officer recommendation, they should give justification for doing so, based on clear and legitimate planning reasons and having regard to the relevant planning policy where appropriate. Where Councillors are proposing to vote against the Officer recommendations, the Chair (or Vice Chair in their absence) shall make sure that the reasons are clearly stated before a vote is taken. These reasons must be recorded in the minutes if the officer recommendations are not agreed and a copy placed on the application file. The reasons given by Councillors should be clear, observe the principles of reasonableness, take into account all relevant information (i.e. material considerations) and ignore all irrelevant information (i.e. non material matters). The officer should be given the opportunity to explain the implications of the proposed decision.
66. Councillors must attend meetings with an open mind and shall demonstrate through their conduct at the meeting that they are giving careful, fair and balanced consideration to the applications under discussion. Councillors shall make a decision only after they have considered all the relevant information needed to make a decision.
67. Councillors shall not vote or take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including any petition, representations made by the applicant and the officer's introduction to the matter. Councillors who leave the virtual room will be advised by the Chair (or Vice Chair in their absence) that they cannot vote or take any further part in the discussion. The rules of natural justice mean that planning applications should be determined in an open and fair manner taking account of relevant information and arguments. It is only at Planning Committee meetings that members of the Planning Committee will have, and be able to consider, all the relevant information and arguments about an application. Failure to take account of relevant considerations or to take account of irrelevant considerations is a ground for judicial review in the High Court.

## **Site Visits**

68. Site visits shall be organised by Officers of the Planning Department. All Members of the Planning Committee will be invited to attend the site visit. The site visit will be guided by the Planning Officer who will point out matters of material relevance to the application and answer Councillors' questions. Formal site visits by Members of the Planning Committee should be made only in exceptional circumstances. For example, where the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by Officers, where the proposal is particularly contentious and where the site cannot adequately be viewed from the road. A record shall be maintained of who attended the site visit and recorded in the minutes.
69. A site visit is not a meeting to discuss the planning merits of the application or to make decisions. The purpose of the inspection is to gather factual information about the site and visually assess the likely or actual impact of the proposal. It is not to debate the merits of the application or the Officers' recommendation. During the formal site visit detailed discussions and/or negotiations must not be conducted with the applicant or

third parties by either Councillors or Officers. All discussion and debate should be undertaken at the Planning Committee meeting when the application is presented for formal consideration. Any arguments applicants or third parties wish to put forward can be heard at that stage through the public speaking arrangements. Councillors should be aware of the appearance of bias should they be seen in conversation with an applicant or objector.

70. Members of the Planning Committee are expected to attend the organised site visit. Councillors not attending an organised site visit must sit back from the table and not take part in debate and voting on the matter when it comes up for consideration.

## **Deferred Applications**

71. Applications may be deferred to a future meeting if there are valid reasons for doing so. Consideration must be given to the procedures for public speaking where petitioners and the applicant have addressed the Planning Committee at the previous meeting. There may be occasions when there are a number of petitioners raising different objections to the application and the applicant must have the chance to respond. A judgement has to be made whether it is in the interests of good decision making to re-hear all oral representations again or to restrict the Planning Committee to its constitution at the earlier meeting. That is a decision for the Chair at the Chair's Briefing (or Vice Chair in their absence). It may be necessary (in exceptional circumstances such as public disturbance) to adjourn the Planning Committee meeting and re-convene in another room.

## **Substitutions**

72. Substitutions have implications where applications are deferred from a previous Planning Committee meeting. Where the petitioner/s and applicant have previously addressed the Planning Committee and the application is deferred to another meeting, any Councillors substituting on the Planning Committee will not have heard all the representations which will form some part of the basis for the decision. Where the petitioner/s and applicant are given the opportunity to address the Committee a second time, there is not a problem with substitutes since the matter is heard afresh. Where applications are not deferred but a continuation of the earlier meeting no substitutions are permitted. Group Leaders/authorised persons should be informed where substitutions are not to be permitted on a particular item as soon as practicable after the Chair's Briefing. Where applications are deferred into a new municipal year the application may have to be considered afresh and petitioner/s and the applicant given the opportunity to address the Planning Committee again if there is a change in membership of the Planning Committee.

## **Annual Review of Decisions**

73. On an annual basis, arrangements will be made for members of the Planning Committee to review a sample of implemented planning permissions to assess the quality of the decisions made. The Planning Services Manager will arrange for members of the Planning Committee to visit a number of sites where development is either completed or near to completion. As this is part of the continuing programme of training for members no decisions are taken during the visit. A record is kept of the sites visited but no record is kept of any discussions that take place. The Planning Committee will consider the review and decide whether it gave rise to the need to reconsider any policies or practices. Such a review should improve the quality and

consistency of decision making, strengthening public confidence in the planning system and can help with reviews of planning policy. It will also assist Planning Committee members to refine their understanding of the impact of their decisions from the visiting of completed developments.

## **Training of Councillors in Planning Law and Procedure**

74. Planning decisions are often complex and differ in nature from some of the other decisions taken by the Council. It is crucial that planning decisions are based on legitimate planning grounds. For this reason, Councillors shall not sit on the Planning Committee or act as a substitute on the Planning Committee without having previously undertaken recent training in planning law and procedures.
75. The Planning Services Manager, Monitoring Officer and Deputy Monitoring Officer will arrange suitable training opportunities at regular intervals and will supplement this with written guidance. All Members of the Planning Committee must attend training sessions provided. The Committee Administrator will maintain a register of attendance which will be copied to political group leaders annually. Members of the Planning Committee are expected to attend all training sessions but must have attended an Introduction to Planning training course provided by Officers within the current term of their office together with a minimum of two training sessions within each municipal year (May to April). New members of the Planning Committee are expected to sit and observe a meeting of the Planning Committee as part of their training prior to sitting on the Committee. If a Councillor has not attended a minimum of two training sessions within the municipal year they will not be allowed to sit on the Planning Committee until they have attended the next quarterly training session to bring their planning training up to date. Councillors who sit on Planning Committee as a substitute must have attended an Introduction to Planning training course within the term of their office in addition to two training sessions within each municipal year (May to April). One to one training will not be provided except in exceptional circumstances.

## **Appendix 1**

### **PLANNING APPLICATIONS: DECLARATION OF LOBBYING**

- Name of Councillor making the declaration
  
- Planning Application Number (where known)
  
- Application Site / Address
  
- Name(s) of persons undertaking lobbying and a note of their interest in the application (applicant, objector etc)
  
- Date of lobbying
  
- Brief details of the nature of the approach to the Councillor

Upon completion of this form please submit immediately to the Planning Services Manager at Muriel Matters House to be placed on the planning application file.



# Agenda Item 6



## **The Constitution**

### **Part 6 Councillors' Allowances**

## The Constitution, Part 6

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## **Councillors' Allowances**

1. The Local Government Act 2000 introduced significant changes to the way councils worked. In accordance with the new law Hastings Council introduced a Cabinet system and established Overview and Scrutiny Committee to call the Cabinet to account and scrutinise its decision and policies.
2. The Government recognised that there should be a new system of allowances intended to reward Councillors for their work and time whilst at the same recognising that they become Councillors to give public service.
3. The law requires Councils to establish and maintain an independent remuneration panel to review and provide advice on Councillors' allowances. It was recognised that the new political management arrangements created new roles and responsibilities for Councillors and that there should be appropriate allowances to support these.
4. The scheme of allowances has been adopted following consideration of the first report of the Council's independent panel. All Councillors receive a basic allowance which is intended to provide some recompense for the time spent on Council duties. There are in addition to this Special Responsibility Allowances which are paid to Councillors who have some special role, e.g. the Leader of the Council, Deputy Leader, Opposition Group Leader, Chair of Committees etc.
5. The level of allowances is updated annually in line with the rise in pay to Officers. Other aspects of the scheme of allowances will be kept under review by the independent panel which reports to Full Council as necessary.

## Councillors' Allowances Scheme

### Table of Members' Allowance Scheme

With effect from 15<sup>th</sup> May 2019 (Approved at Council)

A text version is available following this Table.

Post	Number	Basic Allowance	Special Responsibility Allowance	Total Allowance per Councillor
Basic Allowance All Councillors	32	£6,150		£6,1505
Leader of the Council (With or without Portfolio)	1	£6,150	£12,300	£18,450
Deputy Leader with Portfolio	1	£6,150	£7,999	£14,149
Cabinet Members with Portfolio and Chair of Charity Committee (Majority Group)	6 (Ex Deputy Leader)	£6,150	£6,642	£12,792
Opposition Group Members and other Group's members without Portfolios serving on Cabinet	2	£6,150	£3,318	£9,468
Chair of Overview and Scrutiny	1	£6,150	£3,077	£9,227
Vice - Chair of Overview and Scrutiny	1	£6,150	£602	£6,752
Chair of Planning	1	£6,150	£3,693	£9,843
Vice Chair of Planning	1	£6,150	£1,352	£7,502
Chair of Licensing	1	£6,150	£1,002	£7,152
Chair of Environment and Safety	1	£6,150	£586	£6,736
Chair of Audit Committee	1	£6,150	£3,077	£9,227
Ordinary Members of Planning Committee	8	£6,150	£1,002	£7,152

Ordinary Members of Licensing Committee	14	£6,150	£104.04 per Sub Committee membership	£6,150 plus £104.40 per Sub Committee attendance
Ordinary Members of Environment and Safety Committee	4	£6,150	£293	£6,443
Independent Members of the Standards Committee	2		£614.87	£614.87
Independent Members of the Museums Committee	6		£71.78	£71.78
Majority Group Leader per member (plus Standard Element)	1	£6,150	£184.15 per member plus £1,317 (22 members)	£11,518
Majority Group Deputy Leader per member	1	£6,150	£184.15 per member (22 members)	£10,201
All Opposition Group Leaders per Member (plus Standard Element)	1	£6,150	£184.15 per member plus £1,317 (7 members)	£8,756
Deputy Leader Main Opposition Group per member	1	£6,150	£184.15 per member (7 members)	£7,439

Note: Some Councillors will be in receipt of more than one Special Responsibility Allowance. Their total allowance must be calculated by adding together the relevant Special Responsibility Allowances plus the basic allowance.

## **Text version of Table of Councillors' Allowance Scheme**

With effect from 15<sup>th</sup> May 2019 (Approved at Council)

### **Post: All Councillors**

Number: 32

Basic Allowance: £6,150

Special Responsibility Allowance: Not applicable

Total Allowance per Councillor: £6,150

### **Post: Leader of the Council (with or without Portfolio)**

Number: 1

Basic Allowance: £6,150

Special Responsibility Allowance: £12,300

Total Allowance for Councillor: £18,450

### **Post: Deputy Leader with Portfolio**

Number: 1

Basic Allowance: £6,150

Special Responsibility Allowance: £7,999

Total Allowance per Councillor: £14,149

### **Post: Cabinet Members with Portfolio (Majority Group) and Chair of Charity Committee**

Number: 6 (ex Deputy Leader)

Basic Allowance: £6,150

Special Responsibility Allowance: £6,642

Total Allowance per Councillor: £12,792

### **Post: Opposition Group Councillors and other Group's Councillors without Portfolios Serving on Cabinet**

Number: 2

Basic Allowance: £6,150

Special Responsibility Allowance: £3,318

Total Allowance per Councillor: £9,468

### **Post: Chair of Overview and Scrutiny**

Number: 1

Basic Allowance: £6,150

Special Responsibility Allowance: £3,077

Total Allowance per Councillor: £9,227

### **Post: Vice - Chair of Overview and Scrutiny**

Number: 1

Basic Allowance: £6,150

Special Responsibility Allowance: £602

Total Allowance per Councillor: £6,752

**Post: Chair of Planning**

Number of Councillors: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £3,693  
Total Allowance per Councillor: £9,843

**Post: Vice Chair of Planning**

Number: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £1,352  
Total Allowance per Councillor: £7,502

**Post: Chair of Licensing**

Number: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £1,002  
Total Allowance per Councillor: £7,152

**Post: Chair of Environment and Safety**

Number: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £586  
Total Allowance per Councillor: £6,736

**Post: Chair of Audit Committee**

Number: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £3,077  
Total Allowance per Councillor: £9,2278

**Post: Ordinary Members of Planning Committee**

Number of Councillors: 8  
Basic Allowance: £6,150  
Special Responsibility Allowance: £1,002  
Total Allowance per Councillor: £7,152

**Post: Ordinary Members of Licensing Committee**

Number of Councillors: 14  
Basic Allowance: £6,150  
Special Responsibility Allowance: £104.40 per Sub Committee membership  
Total Allowance per Councillor: £6,150 plus £104.40 per Sub Committee attendance

**Post: Ordinary Members of Environment and Safety Committee**

Number of Councillors: 4  
Basic Allowance: £6,150  
Special Responsibility Allowance: £293  
Total Allowance per Councillor: £6,443

**Post: Independent Members of the Standards Committee**

Number: 2  
Basic Allowance: Not applicable  
Special Responsibility Allowance: £614.87  
Total Allowance per independent member: £614.87

**Post: Independent Members of the Museums Committee**

Number: 6  
Basic Allowance: Not applicable  
Special Responsibility Allowance: £71.78  
Total Allowance per independent member: £71.78

**Post: Majority Group Leader per member (plus Standard Element)**

Number of Councillors: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £184.15 per member plus £1,317 (22 members)  
Total Allowance per Councillor: £11,518

**Post: Majority Group Deputy Leader per Member**

Number: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £184.15 per member (22 members)  
Total Allowance per Councillor: £10,201

**Post: All Opposition Group Leaders per member (plus Standard Element)**

Number of Councillors: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £184.15 per member plus £1,317 (7 members)  
Total Allowance per Councillor: £8,756

**Post: Deputy Leader Main Opposition Group per Member**

Number: 1  
Basic Allowance: £6,150  
Special Responsibility Allowance: £184.15 per member (7 members)  
Total Allowance per Councillor: £7,439

**Note**

Some Councillors will be in receipt of more than one Special Responsibility Allowance. Their total allowance must be calculated by adding together the relevant Special Responsibility Allowances plus the basic allowance.

The Mayor and Deputy Mayor receive a subsistence allowance. Currently the allowance approved is £6,542 pa for the Mayor and £2,136 pa for the Deputy Mayor from 15<sup>th</sup> May 2019 . This allowance is not part of the Independent Remuneration Panel's remit.



# Agenda Item 7

## **Hastings Borough Council Constitution of the Council**

### **Part 7 Management Structure**

The Constitution, Part 7  
Management Structure

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## **Hastings Borough Council Management Structure**

### **Hastings Borough Senior Leadership Structure**

#### **Chief Executive (Head of Paid Service)**

Direct reports:

#### **Chief Finance Officer (Section 151 Officer)**

Services:-

Financial Services

Audit Services

Revenues and Benefits

#### **Chief Legal Officer (Monitoring Officer)**

Services:-

Legal and Democratic Services

#### **Head of People and Business Support**

Services:-

Human Resources

Business and Administration Support

Facilities Management Support

Organisational Development

Equalities (internal)

#### **Head of Strategic Programmes**

Services:-

Development Management Services

Strategic Policy and Programme Office

Performance and Risk Management

Procurement and Contract Management

IT/Cyber Security/Data Protection

#### **Head of Community and Regulatory Services**

Services:-

Environmental Health and Licensing

Community Contact Centre

Enforcement Services

Community Safety

Communications

Electoral Services

Emergency Planning

Business Continuity

## **Deputy Chief Executive – Director of Place**

Direct reports:-

### **Head of Environment and Operations**

Services:-

Waste and Recycling Contract  
Street, Beach and Toilet Cleansing  
Parks and Open Spaces  
Cemetery and Crematorium  
Natural Environment and Biodiversity Strategies  
Seafront Services and Coast Protection  
Non-Commercial Land Management  
Fleet Management

### **Head of Housing**

Services:-

Homelessness Services  
Housing Renewal  
Housing Strategy  
Rough Sleepers Initiative  
Residential Property Management  
Housing Company

### **Head of Commercial Services and Development**

Services:-

Regeneration Capital Programme (Town Deal/Levelling Up)  
HBC Housing Development Projects  
Inward investment  
Museum  
Theatre  
Tourism marketing  
Culture  
Leisure Facilities and Contract Management  
Active Hastings

### **Property and Commercial Assets Manager**

Services:-

Land and Property Commercialisation  
Building Surveyors  
HBC Owned Property Management

# Agenda Item 8



## **The Constitution**

### **Part 8 Standing Instructions to Authorised Officers**



## The Constitution, Part 8 – Standing Instructions to Authorised Officers

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# **Standing Instructions to Authorised Officers**

## **Introduction**

1. The Constitution Part 3 sets out delegations from the Council to Committees.
2. These Standing Instructions contain delegations from the Cabinet and Council to Authorised Officers.
3. This is not an exhaustive statement of all their individual duties, which are to be found in the job descriptions, Council and committee resolutions, instructions given or issued by the Chief Executive from time to time, and this Constitution.

## **Definitions**

4. The Chief Finance Officer for the purposes of the Local Government Act 1972 section 151 and the Local Government Finance Act 1988 section 114 is the Chief Finance Officer.
5. The Monitoring Officer for the purposes of section 5 Local Government and Housing Act 1989 is the Chief Legal Officer.
6. “Chief Officer” is the Chief Executive.
7. “Authorised Officers” are the Chief Officer, Director of Place, and Heads of Service (and their nominees).
8. “Nominees” are Officers that the Chief Officer, Director of Place, or Heads of Service have authorised to act on their behalf. Nominees may also be contractors, or officers of another authority acting on behalf of the Council.
9. The Portfolio Holder is the Cabinet Member nominated by the Leader of the Council for the purpose either generally or at a specific time or for a specific purpose. In the absence or unavailability of a Portfolio Holder, the Leader of the Council may act in place of the Portfolio Holder.
10. The discharging of functions means being ultimately accountable for decisions regarding a function under an Act of Parliament. It includes accountability under any Regulations, Statutory Instrument, other subordinate legislation, or byelaw, and any legislation re-enacting or amending the Act.

## **Assumption of full delegation**

11. Authorised Officers discharge the functions delegated to them through appropriately qualified Officers.
12. In relation to the delegations set out in these Standing Instructions, it is intended to delegate the Council’s functions fully to Authorised Officers and, through them, to all other officers acting under these Instructions except where otherwise provided in statute, regulations, or this Constitution.
13. For the avoidance of doubt, delegations are particularised for identification purposes only and do not diminish or restrict in any way a general delegation

by Council and Cabinet to Authorised Officers and, through them, to all other Officers acting under these Instructions.

14. The powers delegated to Authorised Officers and, through them, to all other Officers acting under these Instructions in performance of those functions include, but are not limited to:
- a. The service of notices, including under Section 16 Local Government (Miscellaneous Provisions) 1976.
  - b. Carrying out work in default and recovery of the cost of such works.
  - c. The investigation of alleged offences and prosecution of offenders or issue of a formal caution with the approval of the Chief Legal Officer.
  - d. Exercise of powers of entry.
  - e. Application for warrants of entry.
  - f. Application for court orders with the approval of the Chief Legal Officer.
  - g. Determination of grant entitlement.
  - h. Exercise of any discretion on behalf of the Council.
  - i. The grant, renewal or variation of any licence, consent, permit, registration or other authorisation to be granted by the Council under any Act of Parliament or subordinate legislation, either with or without conditions (including standard conditions), and in accordance with any criteria approved by the Council or the Cabinet.
  - j. The refusal of an application except where there is a legal right for, or the Council policy permits the applicant to make representations in person; or if the application is a caravan site licence unless the Chief Legal Officer agrees.
  - k. Imposing non-standard conditions subject to the Chief Legal Officer approval or waiver of this requirement.
  - l. Any action reasonably required for the investigation or detection of offences or breaches of conditions including the appointment of investigating officers and disclosure officers under the Criminal Procedure and Investigations Act 1996 and the authorisation of directed and covert human intelligence source under Sections 28 and 29 Regulation of Investigatory Powers Act 2000.
  - m. Authorising any legal proceedings under any legislation, subordinate legislation, orders or byelaws in their respective areas of responsibility (including prosecutions and applications for injunctions) with the approval of the Chief Legal Officer.
  - n. Authorising the defence of any appeal to the courts or application for judicial review or the settling any such proceedings with the approval of the Chief Legal Officer.
  - o. Exercising any statutory rights of entry, and statutory rights to seize or impound any goods, food or animals or take samples, including authorising and making applications to magistrates for warrants or authorisations subject to any directions



from the Chief Legal Officer.

- p. Authorising and serving any notice authorised by the legislation in accordance with any guidance given by the Chief Legal Officer
- q. Authorising other persons (including but not limited to officers) to act as an authorised officer, authorised inspector, inspector or proper officer to carry out any statutory function which the Authorised Officer is authorised to discharge.
- r. Authorising the making of any order (other than a compulsory purchase order) authorised by the legislation after consultation with the Chief Legal Officer and, if the Order confers a statutory right to compensation, with the consent of:
  - i. The Chief Executive if the total estimated compensation liability is up to £50,000; or
  - ii. The Chief Executive together with the Chief Finance Officer if the total estimated compensation liability is between £50,000 and £100,000; and
  - iii. The Chief Executive together with the Chief Finance Officer and in consultation with the relevant Portfolio Holder if the total estimated compensation liability is over £100,000.

### **Limitations on powers to act**

15. The power to act of the Chief Executive or any other Officer is subject to compliance with:
- a. Council policy and decisions;
  - b. Cabinet, Council Committee or Cabinet Committee decisions;
  - c. All relevant legal requirements;
  - d. The provisions of this Constitution including the Financial Rules.

### **Urgency provisions**

16. In the event of urgency, which shall be determined by the Monitoring Officer, i.e. when due to time constraints it is not possible for the decision on a matter, which:

- a. is reserved to Cabinet under the Financial Rules; or
- b. is not in accordance with Cabinet policy;

to be taken by Cabinet in time, without convening a special meeting of Cabinet, the Chief Executive or their nominee may take the decision, in consultation with the Leader of the Council, relevant Portfolio Holder and Opposition Group Leaders. The decision and the reasons for urgency shall be reported to the next meeting of the Cabinet.

17. The Authorised Officers acting under these Instructions must ensure that the

relevant Lead member is made aware of all issues of significant public interest or sensitivity before taking action.

18. The Authorised Officers acting under these Instructions are not obliged to exercise the powers delegated to them under these Instructions and may, whenever they deem it appropriate, consult the relevant Lead member or refer the matter to the Cabinet for decision.

## **Part 1: Matters Reserved to Council**

19. The following matters are reserved to Council and cannot be delegated to Officers:
  - a. Changes to major policy decisions of the Council;
  - b. Changes to the budget approved by the Council, except as provided for in the Financial Rules;
  - c. Changes to this Constitution (save for Part 3 Rule 14.3) of this Constitution.

## **Part 2: Matters Reserved to the Chief Legal Officer**

### **Statutory Responsibilities**

20. The Chief Legal Officer is the Council's Proper Officer and authorised for the following purposes:

Local Government Act 1972 (as amended):-

Section 83 - Members Declarations of Acceptance of Office  
Section 84 - Resignation of Members  
Section 88 - Convening meeting of Council to fill casual vacancy in office of Chair  
Section 89 - Receipt of notice of vacancy  
Section 100B(2) – Designation of reports “not for publication”.  
Section 210(6) and (7) - Charity functions  
Section 225 - Deposit and safekeeping of documents  
Section 229 - Certification of photographic copy documents  
Section 234 - Authentication of documents  
Section 236 and 238 - Byelaws  
Section 248 - Roll of Freeman  
Schedule 12 para 4(2)(b) - Summonses for Council meetings  
Schedule 12 para 4(3) - Notices of addresses to which Council summons is to be sent  
Schedule 14 para 25(7) - Certification of resolutions.

Local Government Act 1974:-

Section 30(5) - Giving Notice about Ombudsman's Reports.  
Local Government (Miscellaneous Provisions) Act 1976:-  
Section 41 - Evidence of resolutions and minutes.

Highways Act 1980:-

Section 321 - Authentication of documents.

21. The Chief Legal Officer is the Solicitor to the Council and is responsible for the provision of professional legal services and advice to the Council and the carrying out of the Council's legal transactions. The Chief Legal Officer is also responsible for the conduct of the Council's litigation before all courts and including public inquiries, tribunals, arbitration, and mediation.

22. The Chief Legal Officer is responsible for the safekeeping of the Council's Common Seal, its deeds and documents and for the signing and sealing of documents on the Council's behalf.

23. The Chief Legal Officer is responsible for professional legal work and advice in support of all regulatory functions including the conduct of appeals and prosecutions except where such legal work is carried out by or under the control another officer (e.g. collection of Council Tax and non-domestic rates which is the responsibility of the Chief Finance Officer under the general oversight of the Chief Legal Officer).

24. The Chief Legal Officer has co-extensive authority with the Chief Executive to appoint Authorising Officers under the Regulation of Investigatory Powers Act 2000.
25. The Chief Legal Officer is designated as the Monitoring Officer under Section 5 Local Government and Housing Act 1989 and the Proper Officer and Authorised Officer for the purposes of the following legislation:

Local Government and Housing Act 1989 (as amended):-

Section 2 (part 1) - Lists of Politically Restricted Posts

Section 5 - Monitoring Officer

Sections 15-17 Schedule 1 and Local Government (Committees and Political Groups)

Regulations 1990 - Political group and political group balance

Localism Act 2011, Part I and Regulations made under the act:-

- a. Code of Conduct advice and deciding arrangements for investigating allegations of breach and action on breach of code including making the usual initial decision on whether complaints should be investigated consulting one of the independent persons as necessary
- b. Establishing, maintaining and publishing register of interests.
- c. Grant of dispensation for relief of interest restrictions.

## **Other Responsibilities**

26. The Chief Legal Officer is responsible as Clerk/Secretary to certain charitable trusts administered by the Council.
27. The Chief Legal Officer or their nominee is authorised to take the action on behalf of the Council set out in the following paragraphs subject to the conditions or limitations shown:
- a. Signing and/or sealing any deed or document which is reasonably required to give effect to any decision of the Council, or of a committee or sub committee acting under delegated powers or any officer authorised to discharge the relevant functions on the Council's behalf.
  - b. Sign and/or seal any receipt, discharge or release on the repayment of monies due, the due performance of any contract, bond or obligation, or otherwise as authorised by the Council, a committee or sub committee or an officer authorised to discharge the relevant function on behalf of the Council.
  - c. To take any legal action to recover monies owed to the Council or to recover land or property belonging to the Council including registration of land charges, obtaining orders for possession and/or sale of land or distraint for rent.
  - d. To institute any legal proceedings or to defend any appeal or other proceedings against the Council, and in the case of claims for compensation in respect of which the Council is insured to authorise its insurers to defend such claims on its behalf.

- e. Enforcing Orders for possession or sale or peaceably re-entering land:
  - i. where premises actually occupied by persons other than trespassers in consultation with the relevant Lead member;
  - ii. in all other cases.
- f. To direct unauthorised campers to leave land within the Council's area.
- g. To prosecute for contravention of byelaws.
- h. To be the Senior Responsible Officer in relation to the Regulation of Investigatory Powers Act 2000.
- i. To appoint existing staff to represent the Council before the Magistrates Court, under Section 223 of the Local Government Act 1972 (as amended).

### **Part 3: Matters Reserved to Authorised Officers**

28. The following Authorised Officers have the regulatory responsibilities, and are authorised to discharge the functions of the Council described in these Standing Instructions to Authorised Officers:
- a. Deputy Chief Executive (Director of Place);
  - b. Head of Strategic Programmes;
  - c. Head of Community and Regulatory Services;
  - d. Head of Environment and Operations;
  - e. Chief Finance Officer.
29. The powers and regulatory responsibilities of the Monitoring Officer, Chief Legal Officer, Chief Finance Officer and the Chief Executive are set out in parts 2, 4 and 5 of these Standing Instructions. The authority of the Chief Executive and the Chief Legal Officer to appoint Authorising Officers under the Regulation of Investigatory Powers Act 2000 is set out in paragraph 24 of Part 2 of these Standing Instructions and paragraph 85 of Part 5.
30. Authorised Officers acting under these Instructions are authorised to discharge any functions on behalf of the Council as set out in paragraphs 10 to 16 of these Instructions.

## **Part 3a Deputy Chief Executive (Director of Place)**

31. The Deputy Chief Executive (Director of Place) is responsible for professional work and advice for the Council, the Cabinet, the Chief Executive and Officers on the provision of the Council's housing services, housing policies and strategies, building control and engineering. The Deputy Chief Executive (Director of Place) is the Council's Proper Officer and Authorised Officer for the purposes of Part XVIII Housing Act 1985.
32. The Deputy Chief Executive (Director of Place) is responsible for operating the Council's homelessness and housing allocation functions and the enforcement of housing and landlord and tenant legislation relating to dwellings.
33. The Deputy Chief Executive (Director of Place) or Officers (which may include contractors and officers of another authority acting on behalf of the Council) duly authorised in writing by him/her is authorised to discharge the Council's functions under the following legislation and any other legislation conferring powers and/or duties exercisable by the Council which bear upon their function and responsibilities including but not limited to:

### **A. Homelessness and Allocation of Housing**

Including:-

Part XVIII Housing Act 1985  
Parts VI And VII Housing Act 1996  
Homelessness Act 2002  
Localism Act 2011  
Asylum and Immigration Act 2004

### **B. Private Sector Housing**

B.1 Housing Act 1985, including:-

Section 265 – Demolition Orders  
Section 289 – Clearance Areas  
Sections 315 to 320 - Enforcement provisions  
Section 331 - Overcrowded dwellings - action against landlord  
Section 337 – Powers of Entry  
Section 338 - Overcrowded dwellings - action against occupier  
Section 340 – Powers of Entry  
Section 358 - Prosecution - non-compliance with overcrowding notice  
Section 364 - Requisition for information where overcrowding notice in force  
Section 397 - Warrants of entry.

To charge for and recover the cost of enforcement action under Housing Act 1985 and Housing Grants Construction and Regeneration Act 1996.

B.2 Housing Act 2004:-

Part I- Housing conditions  
Part II - Licensing of houses in multiple occupation  
Part III - Selective licensing of other residential accommodation  
Part IV - Additional control provisions in relation to residential accommodation  
Part VII:-

Register of licences and management orders  
Enforcement of management regulations  
Power to require and enforcement of power to obtain information.  
Use of information obtained for certain other statutory purposes  
Offence of supply of false or misleading information  
Powers of entry and enforcement of the power of entry including prosecution for obstruction  
Powers to require documents  
Authorisations for enforcement purposes  
House in multiple occupation declarations and revocation of declarations.  
Financial penalties for certain housing offences in England.

B.3 Public Health Act 1936 including:-

Section 45 - To put defective closets into repair  
Section 287 - Notice before entry.

B.4 Public Health Act 1961, including:-

Section 17 - Remedying a defect in a stopped up drain, private sewer, water closet, waste pipe/soil pipe.

B.5 Local Government (Miscellaneous Provisions) Act 1976 – blocked private sewers

B.6 Building Act 1984, including:-

Section 59 - Repair or renewal of defective drainpipe, rainwater pipe etc  
Section 76 - Remedying of defective premises  
Section 84 - Notice requiring paving and drainage of yards  
Section 95 - Notice before entry for the purpose of inspection.

B.7 Environmental Protection Act 1990 (as amended), including:-

Section 80A - Abatement notice  
Schedule 3 - Notice before entry.

B.8 Rent Act 1977, including:-

Sections 139 and 150 - Tenants to notify landlord of sublettings  
Section 149 - Information for landlords and tenants  
Part IX and Section 150 - Unlawful premiums etc.

B.9 The Enterprise and Regulatory Reform Act 2013

Sections 83 – 88 – redress schemes: letting and property management agents

B.10 Anti-Social Behaviour, Crime and Policing Act 2014

Part 4 – Community Protection  
Chapter 1 – Community Protection Notices  
Chapter 3 – Closure of premises associated with nuisance or disorder

B.11 Prevention of Damage by Pests Act 1949 s.4



## B.12 Rent Agriculture Act 1976:-

Section 20 – Unlawful premises etc.

## B.13 Landlord And Tenant Act 1985, including:-

Section 1 – Landlords failure to give name and address

Sections 2,6,7 and 34 - Non-disclosure of names and addresses of directors and secretary of residential landlord company

Sections 3 and 34 - Failure to notify residential tenant of assignment of landlord's interest Sections 4,5 and 7 - Failure to provide rent book or information required

Sections 21,25 & 34 - Failure of landlord/lessor to provide summary of costs relating to service charges

Sections 22,23,25 and 34 - Failure to provide facilities for inspection of accounts relating to service charges

Sections 23(1), 25 and 34 - Failure of superior landlord to provide information requested re service charges.

## B.14 Unlawful eviction and harassment

Protection From Eviction Act 1977 (As Amended)

## B.15 Local Government (Miscellaneous Provisions) Act 1976, including:-

Section 33 - Restoration of private tenants' water, gas or electricity supply

Section 16 – Requisition for Information

## B.16 East Sussex Act 1981, including:-

Section 19 - Urgent repairs to water pipes and fittings.

## B.17 Accommodation Agencies Act 1953, including:-

Section 1 - Illegal commissions and advertisements

## B.18 Local Government (Miscellaneous Provisions) Act 1982 (as amended) including:-

Sections 29-32 – Protection of buildings

## B.19 Housing and Planning Act 2016.

Part 2 – Rogue Landlords and Property Agents in England

Part 5 – Housing, estate agents and recharges: other changes

## **C. Housing Grants**

Including:-

Housing Grants, Construction and Regeneration Act 1996 (as amended) Financial Assistance Policy.

## **D. Renewal Areas**

Energy Act 2013

## **E. Renewal Areas Part VII Local Government and Housing Act 1989 (as amended)**

Including:-

Section 93(5) - Financial assistance in renewal area  
Section 97 - Powers of entry and penalty for obstruction.

In relation to the delegations set out above it is intended to delegate the Council's functions fully to the Authorised Officer and their nominees as described in paragraphs 11 to 18 above.

## **F. Building control and land drainage**

The Council's functions under the following legislation:

### **A.1 Building Act 1984 (as amended), including:-**

Section 8 - Determination of applications for relaxation of or dispensation with building regulations

Section 16 - Passing or rejection of plans

Section 18 - Building over sewer

Section 19 - Use of short-lived materials

Section 20 - Renewal of period for short-lived materials

Section 24 - Provision of exits

Section 25 - Provision of water supply

Section 32 - Building plans

Section 35 - Penalty for contravention of building regulations

Section 36 - Removal or alteration of offending work

Sections 77 and 78 - Dangerous structures

Section 79 - Ruinous and dilapidated buildings

Section 81 - Counter notice following notice of demolition

Section 91 – Duties of Local Authorities

Section 95 - Powers of entry

Section 97 – Power to execute work

Section 99 - Prosecutions for non-compliance with notices

Section 113 - Prosecutions for offences

### **A.2 Building Regulations 1991**

### **A.3 East Sussex Act 1981, including:-**

Section 35 – Means of access to buildings for Fire Brigade – building plans

### **A.4 Hastings Borough Council Act 1988, including:-**

Sections 4 and 5 - Retaining walls.

A.5 Building (Approved Inspectors) Regulations 1985 (as amended by the Building (Approved Inspectors etc.) Regulations 2000) , including:-

Section 8 - Notice of rejection of initial notice.

Land Drainage and Miscellaneous:-

A.6 Land Drainage Act 1991, including:-  
Section 25 – Maintaining flow in watercourses

## **G. Local Government (Miscellaneous Provisions) Act 1982 (as amended)**

Sections 29-32 – Protection of Buildings

In relation to the delegations set out above it is intended to delegate the Council's functions fully to the Authorised Officer and their nominees as described in paragraphs 11 to 18 above.

## **H. Highways**

Towns Improvement Clauses Act 1847 (Street Numbering)

Public Health Act 1925 (naming of streets to be subject to consultation with the relevant lead member)

The Director of Place (Deputy Chief Executive) is the Council's proper officer for the purpose of the provisions of the legislation described in these instructions insofar as it provides for there to be a 'Proper Officer' or 'Authorised Officer' authorised to act for the Council including:

List of relevant Acts:

Planning and Compulsory Purchase Act 2004 (as amended)

Localism Act 2011

Town and Country Planning (Local Planning) (England) Regulations 2012

The Conservation of Habitats and Species Regulations 2010 (as amended)

Planning (Listed Buildings and Conservation Areas) Act 1990 - special controls in respect of buildings and areas of special architectural or historic interest.

Environmental Protection Act 1990 (as amended) - to make provision for the improved control of pollution and hazardous substances arising from industrial and other processes

Growth and Infrastructure Act 2013: use of infrastructure, the carrying-out of development, and the compulsory acquisition of land

List of relevant Statutory Instruments Regulations:

The Town & Country Planning (Local Planning) (England) Regulations 2012

The Conservation of Habitats & Species Regulations 2010 (as amended)

The Planning (Listed Buildings and Conservation Areas) (Amendment)(England) Regulations 2015

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007: is the principal legislative framework that controls the display of advertisements

The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015: raise the size thresholds for screening urban development and industrial estate projects

The Planning (Hazardous Substances) Regulations 2015: amend planning procedures in relation to sites where hazardous substances are held and land near those sites.

The Town and Country Planning (General Permitted Development) (England) Order 2015

The Neighbourhood Planning (General) (Amendment) Regulations 2015: The Localism Act 2011 provided a statutory regime for neighbourhood planning; updates the version published in 2012 in relation to the designation of neighbourhood areas and the submission of neighbourhood development plan proposals to local planning authorities.

## Part 3b: Head of Community and Regulatory Services

### Statutory Responsibilities

34. The Head of Community and Regulatory Services is the Council's Proper Officer for the purposes of the provisions of the legislation described in these Instructions insofar as it provides for there to be a 'Proper Officer' or 'Authorised Officer' authorised to act for the Council including:

- a. Building Act 1984;
- b. East Sussex Act 1981(bye-law);
- c. Food Safety Act 1990 (as amended)
- d. Prevention of Damage by Pests Act 1949;
- e. Public Health Acts 1936 and 1961;
- f. Public Health (Control of Disease) Act 1984;

35. The Head of Community and Regulatory Services, (and certain subordinate staff) are appointed inspectors, authorised officers or duly appointed officers for the purposes of enforcing:

- a. Environmental Protection Act 1990 (as amended); and
- b. Health and Safety at Work Act 1974.

36. The Head of Community and Regulatory Services is responsible for professional work and advice to the Council, the Cabinet, the Chief Executive and Officers on public health, environmental control and regulation issues and the statutory regulation of licensing matters. The Head of Community and Regulatory Services is also responsible for professional work and advice to the Council and Cabinet, the Chief Executive and Officers on the Council's functions in relation to highways, traffic management and parking whether as agent for the highway authority or as principal authority.

37. The Head of Community and Regulatory Services(which may include contractors and officers of another authority acting on behalf of the Council) duly authorised in writing by him/her is authorised to discharge the Council's functions under the following legislation and any other legislation conferring powers and/or duties exercisable by the Council which bear upon their function including but not limited to:

#### **A. Regulation of**

A.1 Acupuncture, tattooing, ear piercing and electrolysis including:-

Part VIII Local Government (Miscellaneous Provisions) Act 1982  
East Sussex Act 1981 (Section 27).

A.2 Animal welfare and management, including:-

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018  
Animal Welfare Act 2006  
Breeding of Dogs Act 1991  
Dangerous Wild Animals Act 1976  
Guard Dogs Act 1975  
Riding Establishments Acts 1970  
Slaughterhouses Act 1974  
Slaughter of Poultry Act 1967 (as amended by the Animal Health and Welfare Act 1984)  
Zoo Licensing Act 1981.

A.3 Betting, gaming and lotteries including amusements with prizes:-

Gambling Act 2005.

A.4 Boats, including:-

Part IV Public Health (Control Of Disease) Act 1984  
Public Health Acts Amendment Act 1907  
East Sussex Act 1981 (Section 10(2)).

A.5 Camping and caravan sites, including:-

Public Health Act 1936 (Section 269)  
Caravan Sites and Control Of Development Act 1960.  
Mobile Homes Act 2013

A.6 Charitable and similar collections, including:-

House To House Collections Act 1939  
Police, Factories etc. (Miscellaneous Provisions) Act 1916;  
Part III Charities Act 1992;  
Charities Act 2006 (as amended)

A.7 Cinemas, including:-

Licensing Act 2003.

A.8 Food premises, food production and sale, including:-

Food Safety Act 1990 (as amended)  
Official Feed and Food Controls (EC) Regulations 2009  
Food Safety and Hygiene (England) Regulations 2013 Regulations  
(EC) 178/2002  
Regulations (EC) No. 852/2004  
853/2004  
854/2004  
882/2004  
Food Information Regulations 2014

A.9 Game:-

Game Act 1831

A.10 Late night refreshment houses, including:-

Licensing Act 2003.

A.11 Liquor licensing and regulated entertainment:-

Licensing Act 2003.

Police Reform and Social Responsibility Act 2011

A.12 Public and private entertainment licensing:-

Part IX East Sussex Act 1981

Licensing Act 2003.

A.13 Taxis (hackney carriages) private hire cars and horse drawn omnibuses, including:-

Town Police Clauses Act 1847 And 1889

Part II Local Government (Miscellaneous Provisions) Act 1976

Transport Act 1980 (Section 64)

Transport Act 1985 (Sections 10-16) (as amended)

Local Services (Operation by Taxis) Regulations 1986

Disability Discrimination Act 1995.

A.14 Scrap metal dealers, including:-  
Scrap Metal Dealers Act 2013  
Motor Salvage Operators Regulations 2002

A.15  
Sex establishments, including:-

Part II Local Government (Miscellaneous Provisions) Act 1982.

Part II Policing and Crime Act 2009

A.16  
Street trading, including:-

Part III Local Government (Miscellaneous Provisions) Act 1982

Children and Young Persons Act 1933 (Section 20)

Children and Young Persons Act 1963 (Section 35).

A.17  
Sunday trading, including:-

Sunday Trading Act 1994.

A.18  
Theatres, including:-

Licensing Act 2003.

A.19  
Miscellaneous Activities, including:-

Self-operated laundries and dry cleaners:-

East Sussex Act 1981 (Section 24).

Temporary markets:-

East Sussex Act 1981 (Section 37).

## **B. Public Health and Environmental Protection**

Public Health Acts

Public Health (Control of Disease) Act 1984

National Assistance Act 1948 and National Assistance (Amendment) Act 1951

B.1 Public Health Act 1936 Sections - including:-

Section 45 - Buildings with defective closets

Section 50 - Overflowing and leaking cesspools

Section 51 - Care of water closets/earth closets

Section 52 - Common water closets

Section 78 - Scavenging of common courts and passages

Section 83 - Cleansing filthy or verminous premises

Section 84 - Cleansing or destruction of filthy or verminous articles

Section 85 - Cleansing of verminous persons and clothing

Section 140 - Polluted sources of water supply

Section 268 - Statutory nuisance from use of tents, vans, sheds, etc.

B.2 National Assistance Act 1948 and National Assistance (Amendment) Act 1951:-

removal to suitable premises of persons in need of care and attention and to the Proper Officer also in the case of emergency applications under the 1951 Act.

B.3 Public Health Act 1961, including:-

Section 17 - Defective and stopped-up drains etc.

Section 22 - Cleansing and repairing drains

Section 34 - Accumulations of rubbish

Section 35 - Filthy or verminous premises

Section 36 - Fumigation of premises

Section 37 - Disinfested or destroying household articles intended for sale.

B.4 Building Act 1984, including:-

Section 59 - Proper provision of drainage

Section 64 - Closets to be provided in buildings

Section 65 - Sanitary conveniences to be provided in workplaces

Section 70 - Food storage accommodation to be provided in houses

Section 72 - Means of escape in case of fire

Section 76 - Carrying out works in default

Section 93 - Requisition for information

Section 113 - Prosecutions.

B.5 Prevention of Damage By Pests Act 1949, including:-

Section 4 - Notice to keep land free of rats and mice

Section 5 - Works in default



Section 6 - Notice to eradicate rats and mice.

B.6 East Sussex Act 1981 Sections, including:-

Section 17 - Dust from building operations

Section 19 - Urgent repairs to water pipes and fittings

Section 20 - Control of rats and mice

Section 21 - Rights of entry under Prevention of Damage by Pest Act 1949

Section 22 - Control of foxes

Section 23 - Control of brown tail moth

Section 32 - Touting, hawking and photographing etc.

B.7 Control of Pollution Act 1974 (as amended), including:-

Section 60 - Control of noise on construction sites

Section 61 - Prior consent for work on construction sites

Section 62 - Loudspeakers in streets

Section 91 - Rights of entry

Section 93 - Requisitions for information.

B.8 Local Government (Miscellaneous Provisions) Act 1976, including:-

Section 16 - Requisitions for information as to ownership of land

Section 20 - Sanitary facilities to be provided/maintained at places of entertainment

Section 35 - Obstruction of private sewers.

B.9 Public Health (Control Of Diseases) Act 1984.

B.10 Public Health (Infectious Diseases) Regulations 1988:-

Schedule 3 - Notices re typhus or relapsing fever

Schedule 4 - Notices re food poisoning and food borne infection.

B.11 Food and Environment Protection Act 1985 (as amended).

Environmental Protection

B.12 Environmental Protection Act 1990 (as amended)

Part I Integrated Pollution Control, Air Pollution including:-

Section 6 - To grant or refuse authorisation for prescribed processes and collect fees.

Section 7 - To decide what conditions (other than approved standard conditions) are to apply to individual authorisations.

Section 9 - To receive notices of transfers of authorisations from one holder to another.

Section 10 - To vary conditions on which authorisations have been granted whether following a direction from the Secretary of State or not, and serve variation notices. To give notice advising of requirement for substantial change in manner of carrying out an authorised process.

Section 11 - To issue determinations on proposals to change an authorised process. To refuse applications for the variation of an authorisation or to issue a variation notice.

Section 12 - To revoke a Section 6 authorisation for a prescribed process:

- a. where reason to believe authorised process not carried out at all or at any time during the last 12 months;
- b. upon the direction of the Secretary of State;
- c. in any other case.

Section 13 - To serve enforcement notices for breach of conditions of authorisation or anticipated breach requiring remedial or preventative action to be taken within a set period.

Section 14 - To serve prohibition notices to prevent imminent risk of serious pollution from an authorised process requiring steps to be taken and suspending the authorisation until the notice is partly or wholly withdrawn.

Section 15 - To deal with appeals to the Secretary of State.

Section 16(6) - To appoint suitably qualified persons (including employees or consultants) as Air Pollution Inspectors to advise and carry out the functions of Inspectors under Part I of the Act.

Section 19 - To serve notice requiring specified information to be provided (Requisitions for Information).

Section 20 - To maintain the statutory public register of information about prescribed processes; applications, authorisations, variations, etc.

Sections 22(2) & (4) - To determine whether information provided in support of applications or otherwise obtained is commercially confidential (and should be excluded from the public register) or not.

Section 59 - To require removal of waste unlawfully deposited.

Part IIA Contaminated land

Part III Statutory Nuisances And Clean Air including sections:-

Sections 80/80A - Abatement notices

Section 81 - Abatement notices - supplementary provisions.

Part IV Provisions relating to litter as well as Refuse Disposal (Amenity) Act 1978

Schedule 2 in relation to the Act, and subordinate legislation including:-

Control of Pesticides Regulations 1986

Pesticides (Fees and Enforcement) Act 1989.

Clean Neighbourhoods and Environment Act 2005

Food Safety

B.13 Food Safety Act 1990, including:-

Section 7 - Rendering food injurious to health

Section 8 - Selling food not complying with food safety requirements

Section 9 - Inspection and seizure of food

Section 14 - Food not of the quality of substance demanded

Section 19 - Registration and licensing of food premises  
Section 27 - Appointment of public analyst  
Sections 29 and 30 - Procurement and analysis of samples  
Section 32 - Power of entry, seizure etc.  
Section 33 - Obstruction of officers.

B.14 Water Industry Act 1991, including:-

Sections 77 to 85 - Sufficiency and wholesomeness of water supply

Clean Air:-

B.15 Clean Air Act 1993 (as amended)

B.16 Health Act 2006, Part I

Noise – see also Environmental Protection Act 1990 above:-

B.17 Noise And Statutory Nuisance Act 1993

B.18 Environment Act 1995 (as amended)

B.19 Noise Act 1996

B.20 Anti-Social Behaviour Act 2003

Clean Neighbourhoods and Environment Act 2005

## **C. Health and Safety at Work**

C.1 Health And Safety At Work Act 1974 (the Act), where the Council is the enforcing authority, including:-

Section 19 - Enforcement  
Section 20 - Inspectors powers  
Section 21 - Improvement notices  
Section 22 - Prohibition notices  
Section 25 - Action to deal with cause of imminent danger  
Section 33 - Prosecutions  
Section 39 - Prosecutions by inspectors.

And all health and safety regulations made under the Act and otherwise.

C.2 Control of Asbestos at Work Regulations 2012.

## **D. Anti-Social Behaviour**

Anti Social Behaviour Orders and Dispersal Orders in consultation with the Chief Constable, Sussex Police

Including:-

Anti-Social Behaviour Act 2003  
Anti-Social Behaviour Crime and Policing Act 2014  
Counter Terrorism Act 2015

## Crime and Disorder Act 1998

D.1 Noisy premises, including:-  
Anti-Social Behaviour Act 2003.

D.2 Graffiti and Flyposting, including:-

Town and Country Planning Act 1990 (as amended)  
Anti Social Behaviour Act 2003

Clean Neighbourhoods and Environment Act 2005

D.3 Sale of aerosol paints, including:-

Anti-Social Behaviour Act 2003.

D.4 Anti-Social Behaviour, Crime and Policing Act 2014

## **E. Dogs**

E.1 Control of Dogs:-

Clean Neighbourhoods and Environment Act 2005.  
Anti-Social Behaviour Crime and Policing Act 2014  
Criminal Justice and Public Order Act 1994

E.2 Control of stray dogs

Environmental Protection Act 1990 (as amended)

E.3 Control of Dangerous Dogs, including:-

Dogs Act 1871  
Dangerous Dogs Act 1989  
Dangerous Dogs Act 1991  
Town Police Clauses Act 1847

## **F. Civil Contingencies**

Civil Contingencies Act 2004

## **G. Highways, Traffic and Parking**

G.1 Regulation and control of use of highways, traffic management, and off street parking where a district council is authorized to act;

Town Police Clauses Act 1847  
Highways Act 1980  
Road Traffic Regulation Act 1984 (as amended)  
Transport Act 1985 (Objections to applications to Traffic Commissioners) (after consultation with the relevant Lead member)  
Road Traffic Act 1991  
The Traffic Management Act 2004

G.2 Nuisance parking, abandoned vehicles and illegally parked vehicles:-

Clean Neighbourhoods and Environment Act 2005  
Control of Pollution (Amendment) Act 1989

#### **H. Seashore and Access**

East Sussex Act 1981 including:-

Section 11 - Removal of boats from the highway or where obstructing access to the seashore.

Section 12 - Removal of boats from seashore.

38. In relation to the delegations set out above it is intended to delegate the Council's functions fully to the Authorised Officer and their nominees as described in paragraphs 10 to 16 above.

#### **I. Abandoned Property, Litter and Waste**

Including:-

I.1 Refuse Disposal (Amenity) Act 1978

I.2 Clean Neighbourhoods and Environment Act 2005.

I.3 Environmental Protection Act 1990 (as amended), including:-

Section 33 - Prohibition on unauthorised or harmful deposit etc of waste

Section 34 - Duty of care as respects waste

Section 46 - Receptacles for household waste

Section 47 - Receptacles for commercial and industrial waste

Section 55 - Recycling waste

Section 59 - Removal of waste unlawfully deposited

Section 60 - Interference with receptacles for waste

Section 87 - Offence of leaving litter

Section 88 - Fixed penalty notices

Section 92 - Summary proceedings by litter authorities

Section 93 - Street litter control notices

Section 99 and Schedule 4 - Shopping Trolleys

I.4 Removal and Disposal of Vehicles (Loading Areas) Regulations 1986

#### **J. Travellers**

J.1 To take action for the removal of travelers under Section 77-79 Criminal Justice and Public Order Act, 1994.

## **Part 3c: Head of Strategic Programmes Statutory Responsibilities**

39. The Head of Strategic Programmes (the Authorised Officer) is responsible for professional work and advice for the Council, Cabinet, the Planning Committee, the Chief Executive and Officers on Town and Country Planning, Land Charges, and Street Naming and Numbering

### **A Planning**

40. The Authorised Officer or Officers (which may include contractors and officers of another authority acting on behalf of the Council) duly authorised in writing by him/her is authorised to discharge the Council's functions under the Planning legislation and any other legislation conferring powers and/or duties exercisable by the Council which bear upon their function and responsibilities including but not limited to the following:

41. Applications:

- a. Planning permission including approval of reserved matters;
- b. Listed building consent;
- c. Consent for the display of advertisements;
- d. Hazardous substances consents;
- e. To enter into a Section 106 agreement where the application can be granted under delegated authority and to vary a Section 106 agreement whether or not the original application was determined under delegated authority. Where the original application was determined by the Planning Committee, the Head of Strategic Programmes is authorised to amend the agreement in consultation with the Chair of the Planning Committee. Where the original application was determined by the Planning Committee, to make minor changes to the terms of a draft S106 Agreement in consultation with the Chair of the Planning Committee.

42. This authority is subject to the following exceptions:

- a. The application has attracted five or more written representations from different households or businesses on planning grounds or a petition as defined in Standing Orders and the written representations or petition are contrary to the Officers recommendation, or
- b. The Chair of the Planning Committee has referred any application to the Planning Committee within 21 days after validation of an application or 21 days after the date of any advert placed in the press whichever is the later giving clear planning reasons in writing for the referral, or
- c. Any Member of the Council with the consent of the Chair or a Ward Councillor, has given written notice to the Head of Strategic Programmes within 21 days after validation of an application or 21 days after the date of any advert placed in the press whichever is the later requiring that application to be considered by the Planning Committee, giving clear

planning reasons for the referral, or

- d. The application relates to or affects Council owned land and the application is submitted by or on behalf of the Council, or
- e. The application is submitted by, or on behalf of, a serving Councillor or Officer of the Council where the officer is employed in a politically restricted post and/or within the Council's planning service, or
- f. The Planning Committee otherwise direct in respect of any particular application or reserved matter; or
- g. The Head of Strategic Programmes has referred an application or matter to the Planning Committee within 21 days after validation of an application or 21 days after the date of any advert placed in the press whichever is the later giving clear planning reasons for the referral, or
- h. The application relates to or affects Foreshore Trust land and the application is submitted by or on behalf of the Foreshore Trust.

43. Any matters in the application of the Council:

- a. Town and Country Planning General Regulations 1992;
- b. Town and Country Planning (General Permitted Development) Order 2015;
- c. Town and Country Planning (Development Management Procedure) Order 2015;
- d. The Town and Country Planning (Fees for Applications Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013
- e. Town and Country Planning (Environmental Impact Assessment) Regulations 2017;
- f. Town and Country Planning (Use Classes) Order 1987 including the conduct of appeals in consultation with the Chief Legal Officer.
- g. Town and Country Planning Act 1990 (as amended).
- h. The Conservation of Habitats and Species Regulations 2017

List of relevant Acts:

Infrastructure Act 2015

Growth and Infrastructure Act 2013

Enterprise and Regulatory Reform Act 2013

Localism Act 2011

Local Democracy, Economic Development and Construction Act 2009

Planning Act 2008 (as amended)

Planning and Compulsory Purchase Act 2004 (as amended)

Countryside and Rights of Way Act 2000

Human Rights Act 1998

Planning and Compensation Act 1991

Town and Country Planning Act 1990 (as amended)

Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

Planning (Hazardous Substances) Regulations 2015

Environmental Protection Act 1990 (as amended)

Caravan Sites and Control of Development Act 1960

Anti-Social Behaviour Act 2003  
(Part 8 – High hedges.)

List of relevant Statutory Instruments:

The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2015

The Town and Country Planning General (Amendment) (England) Regulations 2015

The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) (Amendment) Order 2015

The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015

The Planning (Hazardous Substances) Regulations 2015

The Town and Country Planning (Compensation) (England) Regulations 2015

The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015

The Town and Country Planning (General Permitted Development) (England) Order 2015

The Town and Country Planning (Development Management Procedure) (England) Order 2015

The Town and Country Planning (Hearings and Inquiries Procedure) (England)(Amendment and Revocation) Rules 2015

The Conservation of Habitats and Species Regulations 2017



The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) (No.2) Regulations 2014

The Town and Country Planning (Fees for Applications Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013

The Town and Country Planning (Appeals) (Written Representations Procedure and Advertisements) (England) (Amendment) Regulations 2013

The Planning (Listed Buildings and Conservation Areas) (Amendment No.2) (England) Regulations 2013

The Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2013

The Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

The Town and Country Planning (Tree Preservation) (England) Regulations 2012

The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

The Planning (Hazardous Substances) (amendment) (England) Regulations 2010

The Community Infrastructure Levy Regulations 2010.

The Planning (Hazardous Substances) (Amendment) (England) Regulations 2009

The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005

The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002

The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquires Procedure) (England) Rules 2002

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002

The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002

The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000

The Town and Country Planning (Hearings Procedure) (England) Rules 2000

The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 The Hedgerows Regulations 1997

The Units of Measurement Regulations 1995

The Town and Country Planning (Crown Land Applications) Regulations 1995

The Compulsory Purchase of Land Regulations 1994 The Conservation (Natural Habitats) Regulations 1994

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

The Town and Country Planning General Regulations 1992

The Planning (Listed Buildings and Conservation Areas) Regulations 1990

The Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990

The Town and Country Planning (Applications) Regulations 1988

Town and Country Planning (Permission in Principle) Order 2017 (as amended)

For the avoidance of doubt the following applications in paragraphs 44 to 56 (inclusive) are delegated to be determined by Authorised Officers under delegated authority and unless expressly specified will not be determined by the Planning Committee unless submitted by, or on behalf of the Council, submitted by, or on behalf of the Foreshore Trust a serving elected Councillor or Officer of the Council where the officer is employed in a politically restricted post and/or within the Council's planning service in accordance with paragraph 43(e) above.

44. All consents under the Tree Preservation Order Regulations.

45. All certificates of lawfulness of existing use or development or of proposed use or development and applications for prior approval.

46. To authorise enforcement action under the Town and Country planning legislation except:

- a. Where the Chair of the Planning Committee has referred the matter to the Planning Committee or any Councillor has given written notice to the Head of Strategic Programmes requiring the matter to be considered by the Planning Committee;

- b. If the expenditure likely to be incurred by the Council as a consequence of the action is not provided for in the Revenue Budget or authorised in accordance with this instruction.
- 47. The making of tree preservation orders and confirming them if no objections are received.
- 48. Service of notices in respect of dangerous trees (Section 23 of the Local Government (Miscellaneous Provisions) Act 1976).
- 49. The Council's functions in relation to high hedges under Part VIII Anti-Social Behaviour Act 2003.
- 50. Service of requisitions for information about ownership and planning contravention notices seeking information about breaches of development control.
- 51. Planning (Listed Buildings and Conservation Areas) Act 1990 including building preservation orders and temporary listings.
- 52. All applications for Permissions in Principle and Technical Consents
- 53. All applications to discharge planning conditions
- 54. Screening and Scoping Environmental Impact Assessment applications and applications for Habitat assessments
- 55. All applications for Hazardous Substances Consents
- 56. All Non-Material Amendments

## **B. Land Charges**

- 57. The Authorised Officer or Officers (which may include contractors and officers of another authority acting on behalf of the Council) duly authorised in writing by him/her is authorised to discharge the Council's functions under the Land Charges legislation and any other legislation conferring powers and/or duties exercisable by the Council which bear upon their function and responsibilities including but not limited to the following:
- 58. Any matters in the application of the Council:
  - List of relevant Acts:
    - Local Land Charges Act 1975 (as amended)
  - List of relevant Statutory Instruments:
    - The Local Land Charges Rules 1975 (as amended)
    - The Local Authorities (England) (Charges for Property Searches) Regulations 2008

## **C. Street Naming and Numbering**

- 59. The Authorised Officer or Officers (which may include contractors and officers of

another authority acting on behalf of the Council) duly authorised in writing by him/her is authorised to discharge the Council's functions under the Street Naming and numbering legislation and any other legislation conferring powers and/or duties exercisable by the Council which bear upon their function and responsibilities including but not limited to the following:

60. Any matters in the application of the Council:

List of relevant Acts:

Towns Improvement Clauses Act 1847 (sections 64 and 65) (for numbering of properties and street naming)

Public Health Acts Amendment Act 1907 (section 21) (Alteration of names of streets)

Public Health Act 1925 (section 17 to 19) (notification of street names and name plates - subject to consultation with the relevant lead member)

## **Part 3d: Head of Environment and Operations Statutory Responsibilities**

61. The Head of Environment and Operations is authorised to act and to appoint alternative Proper Officers and Authorised Officers for the purposes of the following legislation:

### **Cemetery and Crematorium**

All relevant powers, duties and functions including authority for:

Disinfection of premises  
Disposal of dead bodies

the approval of works and materials used in the construction of monuments.

the approval of the erection of cemetery monuments which comply with the regulations governing cemeteries.

the exercise of the powers of the Council contained in the regulations relating to the selection or purchase of graves or vaults.

to approve the use of music, flags or banners in cemeteries.

to issue notices to users and authorize works to facilitate maintenance of graves and cemeteries to meet the requirements of the memorial testing regulations

Public Health (Control of Disease) Act 1984, section 46 - public health funerals

## **Part 3e: Chief Finance Officer Statutory Responsibilities**

62. The Chief Finance Officer (the Authorised Officer) is responsible for collection of local taxation and for advising the Council, Cabinet, Chief Executive and other Officers on these issues
63. The Chief Finance Officer is designated as the Chief Financial Officer under Section 151 Local Government Act 1972 and the Proper Officer and Authorised Officer for the purposes of the following legislation:
- a. Collection of Taxation
  - b. Local Government Finance Act 1992
  - c. Council Tax (Administration and Enforcement) Regulations 1992
  - d. Local Government Finance Act 1988 (as amended)
  - e. Local Government Finance Act 1989 (as amended)
  - f. Non-Domestic Rating (Collection and Enforcement) Regulations 1989
  - g. Housing Benefit Regulations: determining claims for housing benefit; reviewing determination of claims; recovery of overpayments
  - h. Council Tax Benefit: determining claims for benefit.
64. In relation to the delegations set out above it is intended to delegate the Council's functions fully to the Authorised Officer and their nominees as described in paragraphs 10 to 16 above.

## **Part 4: Matters Reserved to the Chief Finance Officer**

### **Financial Responsibility**

65. The Chief Finance Officer has responsibility for the financial administration of the Council's services and activities, and audit of them. For these purposes, the Chief Finance Officer shall be responsible for:
- a. Implementing the Council's financial policies and for coordinating any corrective action necessary to further these policies;
  - b. Ensuring that detailed financial procedures and systems incorporating the principles of separation of duties and internal checks are prepared,
  - c. documented and maintained to supplement these instructions;
  - d. Ensuring that sufficient records are maintained to show and explain the Council's transactions, in order to disclose, with reasonable accuracy, the financial position of the Council at any time;
  - e. The preparation and updating of Financial Rules for approval by the Council;
66. And, without prejudice to any other functions of the Chief Executive and employees to the Council, the duties of the Chief Finance Officer include:
- a. The design, implementation and supervision of systems of financial control; and
  - b. The preparation and maintenance of such accounts, certificates, estimates, records and reports as the Council may require for the purpose of carrying out its statutory functions.
  - c. The preparation and up-dating of the Financial Rules for approval by the Council.

### **Regulatory Responsibilities**

67. The Chief Finance Officer has shared responsibility with the Chief Executive for internal audit as set out in the Financial Rules.

### **Other Responsibilities**

68. The Chief Finance Officer shall be responsible for financial administration and advice for any charities for which the Council has undertaken responsibility for their administration.

### **Discharge of Functions**

69. The Chief Finance Officer is authorised to take action on behalf of the Council as set out below subject to any conditions or limitations shown:
70. Borrowing and Investment, including:-
- a. Carrying out borrowing of funds on the Council's behalf in accordance with the Council's strategy.
  - b. Management of the Council's investment of funds not required for immediate use in accordance with the Council's Strategy and Treasury

Management Practices.

71. Financial Approvals: to decide whether or not to give any approval required under these instructions or Regulations.
72. Mortgage Interest Rates: to fix interest rates for the purposes of Part XIV Housing Act 1985.
73. Benefit fraud investigation: authorising individual officers under Section 110A Social Security Administration Act 1992 (as amended):
  - a. Section 109B and C: power to require information and rights of entry;
  - b. Section 111: offence of dishonest representation for obtaining benefit;
  - c. Section 112: offence of making a false representation for obtaining benefit;
  - d. Section 115A: administrative penalties as alternative to prosecution.
74. Authorising individual officers under Section 110A Social Security Administration Act 1992 to exercise any of the powers set out in Section 109(B) (Power to require information) and 109C (Powers of entry) is delegated to the Chief Finance Officer only.
75. In relation to the delegations set out above it is intended to delegate the Council's functions fully to the Chief Finance Officer and their nominees as set out in paragraphs 10 to 16 above.



## **Part 5: General Delegation to the Chief Executive**

### **General Delegation to the Chief Executive and their Nominees**

76. All matters not reserved to Council, Cabinet, Committees, or other Officers of the Council are delegated to the Chief Executive and their nominees, subject to the provisions of law and this constitution, including the Financial Rules.
77. The Chief Executive has overall executive responsibility for the Council's activities, but shall, as far as reasonably practicable, delegate the detailed responsibilities to others.

### **Statutory Responsibilities**

78. The Chief Executive is the Council's Head of the Paid Service for the purposes of section 4 Local Government and Housing Act 1989 (as amended).
79. The Chief Executive is the Electoral Registration Officer.
80. The Chief Executive is the Returning Officer and is the proper officer under the Representation of the People Act 1983 (as amended).

### **Revenue Spending**

81. The Chief Executive and their nominees have full powers to spend money in the revenue budget and revenue reserves as agreed by Council subject to the provisions of the Financial Rules.
82. The Chief Executive is responsible for the Council's work on income generation.

### **Capital Spending**

83. The Chief Executive and their nominees are authorised to spend money in a capital budget on schemes and projects subject to the provisions of the Financial Rules.

### **Contract Administration**

84. The Chief Executive and their nominees are authorised to invite and accept tenders and quotations, to place orders and enter into contracts subject to the provisions of the Financial Rules.

### **Personnel Management**

85. All matters pertaining to the management of staff are delegated to the Chief Executive and their nominees provided:
- a. Costs are contained within existing budget or authorised budget variations;
  - b. Council approved policies, procedures and guidelines are complied with, though exceptions are authorised in individual cases;
  - c. Matters relating to the terms and conditions of employment of the Chief

Executive are referred to the Employment Committee. The responsibility of those Officers for the discharge of the authority's functions is referred to Cabinet.

### **Land and Property Management**

86. All matters pertaining to the management of Council owned or managed land, including purchase, disposal by sale or by lease or any other transaction involving land or property, the grant or refusal of requests for consents, licences or waivers with or without conditions, conduct of rent reviews, service of statutory or other notice, reference to arbitration or mediation whether as landlord or tenant, hiring or use of Council land (including public open space within the statutory limits), is delegated to the Chief Executive subject to the provisions of the Financial Rules.

### **Financial and Other Assistance**

87. The Chief Executive and their nominees are authorised to give grants, loans or other financial assistance in accordance with Council policy and criteria approved by Cabinet subject to the provisions of the Financial Rules.

### **Charges for Services**

88. The Chief Executive and their nominees are authorised:-

- a. To approve charges to be made by the Council for providing any service or supplying any goods or documents or hire of land and premises or the making of a grant of any application whatsoever where a fee may be charged but is not fixed by law, in accordance with Council policies and any criteria approved by Cabinet, including waiving or reducing charges in particular instances
- b. To approve or respond to consultation on charges made by others under service contracts (e.g. Sport and Leisure Management Contract) in consultation with relevant Lead member.

### **Protecting Council Property**

89. The Chief Executive and their nominees are authorised to prosecute, defend or settle any legal or other action to protect the Council's property or interests or to assert or enforce the Council's rights subject to the following limitations:

- a. Subject to the consent of the Chief Legal Officer.
- b. Settlement of any legal proceedings or threatened legal proceedings by or against the Council where the proposed settlement figure is over £50,000 to be with the consent of the Chief Finance Officer, Chief Legal Officer, relevant Heads of Service, and in consultation with the relevant Lead member. In cases of urgency the consent of the Chief Finance Officer and Chief Legal Officer only shall be required.

### **Fixing of Hackney Carriage Fares (Local Government (Miscellaneous Provisions) Act 1976**

90. Fixing of hackney carriage fares is delegated to the Chief Executive or their nominees subject to:

- a. Where there are no objections, consent of the relevant Heads of Service and prior consultation with the relevant Lead member;
- b. Where there are objections Cabinet must agree.

### **Closure Order under Section 76 Anti-Social Behaviour, Crime and Policing Act 2014**

91. Authorising closure of licensed premises is delegated to the Chief Executive and their nominees.

### **Regulation of Investigatory Powers Act 2000**

92. The Chief Executive has co-extensive authority with the Chief Legal Officer to appoint Authorising Officers under the Regulation of Investigatory Powers Act 2000

### **Responding to outside parties**

93. Responding to consultation invitations from outside parties, and commenting on any matters on behalf of the Council.

### **General**

94. In relation to the delegations set out above it is intended to delegate the Council's functions fully to the Chief Executive and their nominees as set out in paragraphs 10 to 16 above.

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# Agenda Item 9



## **The Constitution**

### **Part 9**

### **Financial Rules**

The Constitution, Part 9  
 Financial Rules

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## **The Financial Rules**

### **Application**

1. The 'Financial Rules' are in four parts: Financial Regulations, Contracts Standing Orders, Financial Authorisations and delegations.
2. These Financial Rules are the framework within which the Council's financial affairs are to be managed. Every Councillor and Officer must comply with them. They are part of the policy framework of the Council and can only be changed with the approval of the Council.
3. The Chief Finance Officer may issue Finance Operating Procedures setting out the detailed application of these Financial Rules.
4. For advice on these Financial Rules or their application, contact the Chief Legal Officer or the Chief Auditor.

### **Responsibilities of Councillors and Officers**

5. All Councillors and Officers are responsible for ensuring that they are:
  - a. Aware of these Financial Rules.
  - b. Aware of the Finance Operating Procedures that apply to their work and responsibilities.
  - c. Complying with the Financial Rules and Finance Operating Procedures.
6. All Councillors and Officers are accountable for the security of resources under their control, and for ensuring that:
  - a. The use of these resources is legal, properly authorised, and achieves best value.
  - b. Resources are used with the minimum possible level of waste, inefficiency or loss.
  - c. Resources are used only in the course of the Council's business, and that where there is specific permission for personal use, (e.g. telephone, Internet), such use is reasonable, lawful, and within any prescribed limits.
7. All Councillors and Officers must carry out, and account for, all financial transactions with due care, promptly, accurately, honestly, and adhering to the Finance Operating Procedures issued by the Chief Finance Officer.
8. All Councillors and Officers are accountable for ensuring that their claims for allowances and reimbursement of expenses include only expenses and allowances that were authorised, and that were actually and necessarily incurred in the performance of their duties.

## Financial Rules Part 1: Financial Regulations

### Budget Managers

9. In these Financial Rules, “Budget” means any revenue budget allocation or any budget allocation for a capital project. “Budget Manager” means the Officer named as the person accountable for a revenue budget or budget for a capital project.
10. Budget Managers are accountable for ensuring that budget allocations are not overspent and that significant variances, or anticipated variances, from approved budgets are investigated and reported to Chief Officers promptly.

### Chief Officers and their Authorised Officers

11. For the purposes of these Financial Rules, the term “Chief Officer” includes any Officer authorised by him/her to act on their behalf. The delegation may be made explicitly by means of an e-mail or written document, or may be implicit in a job title, job description or general responsibility for a function, operation or activity.
12. For the purposes of the Financial Rules, “Chief Officer” means the Officers set out in the Constitution Part 8 Standing Instructions to Chief Officers. It includes the Chief Executive and the Chief Finance Officer where appropriate.
13. Chief Officers are accountable for ensuring that:
  - a. All staff in their directorates are aware of the existence and content of these Financial Rules, and of the sections of the Finance Operating Procedures that apply to their area of work.
  - b. Copies of these Financial Rules are available (physically or electronically) for reference within their directorates and that their staff comply with them.
  - c. Procedures are in place within their directorate to identify, assess, contain or accept risks, and that these procedures are operating effectively, and periodically reviewed.
  - d. Income and expenditure are properly recorded and accounted for.
  - e. A proper scheme of financial delegation, approved by the Chief Executive and the Chief Finance Officer, has been established within their directorate and is operating effectively. The scheme of delegation should identify staff authorised to act on the Chief Finance Officer’s behalf in respect of budget management, payments, income collection, placing orders, and other aspects of these Financial Rules as appropriate, together with any limits of their authority.
  - f. The Finance Operating Procedures issued by the Chief Finance Officer are complied with within their directorates.
  - g. Adequate records are maintained to provide a management trail leading from the source of income/expenditure through to the accounting statements.
  - h. Any inappropriate use of Council resources is identified and action taken.
  - i. All records are up to date and available for inspection.



- j. Internal and external auditors are given access at all reasonable times, and are promptly provided with any information and explanations that they require in the course of their work.
- k. Budgetary control is maintained within their Directorates and there is a named Budget Manager for each cost-centre.
- l. Budget responsibility is aligned with the decision-making that commits the expenditure on that budget, so that Budget Managers are accountable only for income and expenditure that they can control.
- m. Performance levels/levels of service are monitored in conjunction with the budget and necessary action is taken to align service outputs and budget.
- n. Items for disposal are identified and disposed of at the most appropriate time, and only when it is in the best interests of the authority. The best price is obtained (where possible by public auction or tender), bearing in mind other factors, such as environmental issues.
- o. All staff in their directorates are aware of the existence and content of the Council's Anti-Fraud and Confidential Reporting Policy, and comply with it, and that copies are available (physically or electronically) for reference within their directorates.
- p. The Chief Auditor is informed immediately of any suspected fraud, theft, irregularity, improper use or misappropriation of the Council's property or resources.
- q. All goods and services are ordered only by appropriate persons and are correctly recorded, and that all goods and services are ordered in accordance with the contract standing orders with the Finance Operating Procedures issued by the Chief Finance Officer.

## **Internal Audit**

14. The Chief Finance Officer and the Chief Executive are accountable for ensuring that:
- a. Internal audit is independent in its planning, operation, and reporting.
  - b. Internal and external auditors have unrestricted access to all functions, systems, records, explanations, property and personnel, for the purpose of carrying out an audit, investigation or reasonable enquiry.
  - c. The Chief Auditor may report unedited under their own name to any level of management, and to any committee.

## Financial Rules Part 2: Contracts Standing Orders

### Contracts Policy

15. The policy of Hastings Borough Council is to ensure that all works, goods and services:
- a. Are obtained honestly and openly.
  - b. Are appropriate for the purpose for which they are obtained.
  - c. Offer the most advantageous balance of quality and price.
  - d. Are consistent with the policies of the Council.

### Definitions

16. **Contract** means a legally binding agreement under which the Council receives the benefit of, or incurs the liability for:

- a. The payment of money.
- b. The performance of services.
- c. The execution of work.
- d. The supply of goods or materials.
- e. The transfer of an interest in land.

17. **Authorised Officer** means a Chief Officer authorised by the Council or these Contract Standing Orders to act on the Council's behalf in connection with a contract. It includes any Officer authorised to act on their behalf.

18. **Consultancy** means an engagement to advise the Council corporately or in respect of a particular service delivered by the Council, where the advice relates to the development of strategies, or the infrastructure, or internal management of Council divisions, e.g. with a view to achieving better performance and service delivery. The consultant is to be distinguished from the contractor for professional services whose function is to be instrumental in the delivery of the particular Council service e.g. supervising architects on capital projects, locums and agency staff, counsel instructed by the Chief Legal Officer in the pursuit or defence of the Council's interest.

19. All other definitions are as contained in the Articles of the Constitution.

## **Responsibilities**

20. Chief Officers are responsible for ensuring that:

- a. A proper scheme of delegation has been established within their area of responsibility and is operating effectively. The scheme of delegation should identify staff authorised to act on the Chief Officer's behalf (referred to in these regulations as the "Authorised Officer") in respect of these contract standing orders, together with any limits of their authority, and arrangements covering the absence of Authorised Officers.
- b. Best value is obtained from the procurement of goods, works and services by taking appropriate steps to obtain competitive prices for goods, works and services of the appropriate quality, in line with best value principles.
- c. All staff in their directorates are aware of the existence and content of these Contract Standing Orders and the relevant Finance Operating Procedures. Chief Officers must ensure that copies are available (physically or electronically) for reference within their directorates and that their staff comply with them.

## **Legality**

21. All contracts and tendering procedures must comply with English Law and where appropriate the requirements of European Union Directives on public contract procurement.

## **Packaging of contracts**

22. No contract may be divided into smaller components for the purpose of avoiding the requirements of these Contract Standing Orders or the relevant Finance Operating Procedures.

## **Tendering**

23. Tendering procedures as set out in part 2 of the Finance Operating Procedures must be followed.

## **Exemptions from Tendering**

24. It is obligatory to invite tenders as set out in the Finance Operating Procedures. Exemptions from tendering may be subject to scrutiny by internal or external audit, and/or the Overview and Scrutiny Committee.

## **Contracts to be in writing**

25. Every contract shall be in writing except for purchases using petty cash or other small cash transactions that would not in the ordinary course of business be reduced to writing.

26. Every contract shall be in a form approved by the Chief Legal Officer or in accordance with guidance as to the form of contracts issued by the Chief Legal Officer from time to time and shall be signed by the Chief Legal Officer or an officer authorised in writing to sign by the Chief Legal Officer.

## **Financial Rules Part 3: Financial Authorisations from Cabinet to the Chief Executive and their nominees**

### **General Financial Authorisation**

27. The Chief Executive and their nominees have full powers to spend money in revenue budgets, capital budgets, and revenue reserves, provided that the cost/expenditure:
- a. Is in accordance with and for the implementation of Council policy and any resolution of the Cabinet, **and**
  - b. Is in compliance with all relevant legal requirements, **and**
  - c. Can be met from allocated revenue or capital budgets, or reserves, **and**
  - d. Is within the provisions of these Financial Rules including, where appropriate, the requirements for consultation and approval set out in Table A.
28. This power includes the invitation and acceptance of tenders and quotations, the placing of orders and the power to enter into contracts subject to the provisions of these Financial Rules.

### **Exceptions to the General Financial Authorisation**

29. The power to act of the Chief Executive and their nominees does not include:
- a. Making exceptions from the budget approved by the Cabinet or the Council unless expressly authorised under these Financial Rules
  - b. Authorising any expenditure otherwise than in accordance with the Financial Rules unless expressly authorised to do so by the Council or the Cabinet.
30. The Chief Executive and their nominees acting under these financial authorisations shall ensure that the relevant Portfolio Holder is made aware of all issues of significant public interest or sensitivity before taking action.
31. The Chief Executive and their nominees are not obliged to exercise the powers delegated to them under these instructions and may, whenever they deem it appropriate, consult the relevant Portfolio Holder or refer the matter to the Cabinet for decision.

## **Table A: Exceptions to the General Authorisation from Cabinet to the Chief Executive and their nominees**

To facilitate future revisions, authorisation levels are given in 4 bands:

### **Bands**

Band 1 - Up to £50,000.

Band 2 - From £50,000 to £100,000.

Band 3 - From £100,000 to £200,000.

Band 4 - Over £200,000

### **Budgets and spending consents required:**

32. Spending from a revenue reserve not previously authorised by Cabinet or Council:

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive)

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - Cabinet.

33. Virement within the revenue budget of a Chief Officer

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer.

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance.

Band 4 - Cabinet.

34. Virement between revenue budgets of different Chief Officers

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive).

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - Cabinet.

35. Transfer of provision between capital budgets in approved capital programme

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive)

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - Cabinet.

36. Carry forward of under-spending in revenue budgets from one year to the next

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive)

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - Cabinet.

37. Use of contingency provisions to finance supplementary estimates

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive).

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - Cabinet.

38. Increase in cost of a capital scheme in approved capital programme and authorised to proceed

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive).

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - Cabinet.

39. Writing off irrecoverable sums :

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer.

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance.

Band 4 - As for band 3.

#### 40. Any actions outside of Financial Rules or Finance Operational Procedures

Band 1 - Chief Finance Officer.

Band 2 - Chief Finance Officer.

Band 3 - Chief Finance Officer.

Band 4 - As for band 3.

#### 41. New or substituted capital schemes

Band 1 - Cabinet.

Band 2 - Cabinet.

Band 3 - Cabinet.

Band 4 - As for band 3.

#### 42. Any actions not in accordance with Council policy or any resolution of the Cabinet

Band 1 - Cabinet.

Band 2 - Cabinet.

Band 3 - Cabinet.

Band 4 - As for band 3.

### **Grants, loans, guarantees and financial assistance**

#### 43. Renovation and other housing specific grants under the Housing Grants Financial Policy

Band 1 - Chief Executive or their nominee may act.

Band 2 - Chief Executive or their nominee may act in consultation with Chief Finance Officer .

Band 3 - In consultation with Portfolio Holder for Finance and Chief Finance Officer.

Band 4 - Cabinet

## **Other grants, loans, guarantees and financial assistance**

44. Renovation and other grants under the Housing Grants Financial Policy

Band 1 - Chief Finance Officer.

Band 2 - Cabinet.

Band 3 - Cabinet.

Band 4 - Cabinet.

## **Land and Property**

45. Authorising disposal by lease not previously authorised by Council or Cabinet. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - Chief Finance Officer and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 3 - Cabinet.

Band 4 - As for band 3.

46. Approving terms for grant or renewal of leases or any other property transaction of Council land or buildings and the settlement of rent reviews. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - Chief Finance Officer and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 3 - Cabinet.

Band 4 - As for band 3.

47. Authorising any other property transactions relating to the Council's land and approving terms including renewals. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - Chief Finance Officer and Chief Legal Officer in consultation with Portfolio Holder for Finance.



Band 3 - Cabinet.

Band 4 - As for band 3.

48. Authorising the acquisition by lease of land or buildings and approval of terms. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - Chief Finance Officer and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 3 - Cabinet.

Band 4 - As for band 3.

49. Forfeiture of leases and tenancies or serving notice to quit or similar to obtain vacant possession. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - Chief Finance Officer and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 3 - Cabinet.

Band 4 - As for band 3.

50. Appropriation from one statutory function to another. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - As for band 1.

Band 3 - Chief Finance Officer, and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 4 - Cabinet.

51. Authorising disposal by sale not previously authorised by Council or Cabinet.

Band 1 – Chief Executive or their nominee may act.

Band 2 - As for band 1.

Band 3 - Chief Finance Officer, and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 4 - Cabinet.

52. Authorising the acquisition by purchase of land or buildings and approval of terms.

Band 1 - Chief Executive or their nominee may act.

Band 2 - As for band 1.

Band 3 - Chief Finance Officer, and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 4 - Cabinet.

53. Dilapidations claims and settlement including authorising the service of notice, actioning claims and settlement of works and dilapidation or payment in lieu. In this section, land values are the annual rent or proposed annual rent (and not the total amount of rent).

Band 1 - Chief Executive or their nominee may act.

Band 2 - As for band 1.

Band 3 - Chief Finance Officer, and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 4 - Chief Finance Officer, and Chief Legal Officer in consultation with Portfolio Holder for Finance.

54. Where the sale is other than by acceptance of the highest tender

Band 1 - Chief Finance Officer.

Band 2 - As for band 1.

Band 3 - Chief Finance Officer and Chief Legal Officer in consultation with Portfolio Holder for Finance.

Band 4 - Cabinet.

## **Management Consultancy**

55. As defined in paragraph 18 above.

Band 1 - The Chief Executive may act (nominees require the authorisation of the Chief Executive).

Band 2 - Chief Finance Officer (nominees require the authorisation of the Chief Executive).

Band 3 - Chief Finance Officer in consultation with Portfolio Holder for Finance (nominees require the authorisation of the Chief Executive).

Band 4 - As for band 3.

## Financial Rules Part 4: Delegation of Financial Authorisations from the Chief Executive through Chief Officers to Budget Managers

### General Authorisations

56. The Chief Executive has overall executive responsibility for the Council's activities but shall, as far as reasonably practicable, delegate financial responsibilities through the Chief Officers to Budget Managers as set out in the Financial Rules Part 1 paragraph 13(f)
57. The Chief Executive authorises Budget Managers to commit expenditure for the management and administration of the Council's assets, operations, and staff, where the cost/expenditure:
- a. Is in accordance with and for the implementation of Council policy and any resolution of the Cabinet, and
  - b. Can be met from allocated revenue or capital budgets, or reserves, and
  - c. Is within the provisions of these Financial Rules, and
  - d. Is within the scheme of financial delegation of their Chief Officer as described in the Financial Rules Part 1 paragraph 13(f).

### Exceptions to General Authorisations

58. Budget Managers act as nominees of the Chief Executive. Therefore, **Budget Managers must comply with the exceptions set out in Part 3 Table A.** For these exceptions the Budget Manager must obtain the required approval prior to commitment of the expenditure.
59. The detailed application of these authorisations is set out in the Finance Operating Procedures.
60. Different procedures and authorisation requirements apply to contracts for goods, works, and services. These are detailed in the Finance Operating Procedures Part 2.