



Name of meeting: Standards Committee

Date: 14 May 2012

Title of report: Proposed revisions to the adopted Planning Protocol

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes / No or “not applicable” If yes give reason why N/A
Is it in the Council’s Forward Plan ?	Yes/ No or “not applicable” If yes give date it first went in N/A
Is it eligible for “call in” by Scrutiny ?	Yes/ No or “not applicable” If no give reason why not N/A
Date signed off by <u>Director</u> & name	
Is it signed off by the Director of Resources?	Yes/ No financial implications If yes give date
Is it signed off by the Acting Assistant Director - Legal & Governance?	Yes/ No legal implications If yes give date 8 May 2012
Cabinet member portfolio	Corporate

Electoral [wards](#) affected: All

Ward councillors consulted: N/A

Public or private: Public

1. Purpose of report

The current Planning Protocol (attached as Appendix 1) was approved by Full Council on 8 December 2012. The Protocol was prepared having regard to the then current law on bias and predetermination.

On 15 January 2012 section 25 of the Localism Act 2011 came into force. This section amends the legal position regarding predetermination. Relevant parts of this section provide as follows:

25. *Prior indications of view of a matter not to amount to predetermination etc.*
“(1) Subsection (2) applies if—
(a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and

- (b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.*
- (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—*
 - (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and*
 - (b) the matter was relevant to the decision.*
- (3) Subsection (2) applies in relation to a decision-maker only if that decision-maker—*
 - (a) is a member (whether elected or not) of the relevant authority, or*
 - (b) is a co-opted member of that authority.*
- (5) This section applies only to decisions made after this section comes into force, but the reference in subsection (2)(a) to anything previously done includes things done before this section comes into force.”*

Amendments to the current Protocol are necessary to ensure that the document complies with the provisions of section 25 of the Localism Act 2011. This report is brought before members of the Standards Committee as the consideration and approval of protocols relating to member conduct fall within the terms of reference of this committee.

2. Key points

The proposed amendments to the current Protocol are shown underlined in Appendix 2 attached.

3. Implications for the Council

It is essential that the Council's Planning Protocol reflects current legislation.

4. Consultees and their opinions

Copies of this report have been circulated to members of the Corporate Governance & Audit Committee and their informal views will be sought at the meeting scheduled to be held on 11 May 2012.

5. Next steps

It is the Monitoring Officer's intention to report the proposed revisions to the Planning Protocol to the Annual Council meeting on 23 May 2012.

6. Officer recommendations and reasons

It is recommended that committee consider the proposed revisions to the Planning Protocol set out in Appendix 2 and resolve to refer the proposed amendments to Annual Council on 23 May 2012 for formal approval.

7. Cabinet portfolio holder recommendation

N/A

8. Contact officer and relevant papers

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KIRKLEES COUNCIL

**PROTOCOL FOR PLANNING COMMITTEES
AND SUB-COMMITTEES**

(Approved by Full Council on 8 December 2010)

1. BACKGROUND AND INTRODUCTION

1.1 This protocol replaces and updates that which was approved by a joint meeting of the Council's Standards Committee and the Planning & Highways Committee on 16 July 2007.

1.2 The aim of this protocol is to ensure that the planning process operates properly, legally and effectively and that there are no grounds for suggesting that a decision has been biased, partial or not properly considered and made in any way. It is also intended to help councillors work effectively and seek to achieve their aims within the regimes which govern development control.

1.3 Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgment and for justifiable, properly balanced reasons which must be relevant to planning issues. If for any reason you would have difficulty in complying with this protocol or if you would usually prefer to be able to champion your constituents' point of view, you should not accept appointment to the committee or sub-committee, nor attend as a substitute.

1.4 When the protocol applies: This protocol applies to councillors at all times when involved in the planning process. This includes taking part in decision making meetings of a planning committee or sub-committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or to policy issues relating to a specific site as to planning applications. Part 11 of the protocol draws attention to issues affecting all councillors, whether or not involved in decision-making.

1.5 If you have any doubts about the application of this protocol to your own circumstances, you should seek early advice from the Assistant Director Legal & Governance or one of their staff, preferably well before any meeting takes place. Senior Planning Officers and Decision Support Officers are also able to assist.

2. RELATIONSHIP TO THE COUNCILLORS' CODE OF CONDUCT:

2.1 This protocol is additional to the councillors' code of conduct. You should always apply that code first to any issue arising and declare any personal or prejudicial interests which you may have and, in the case of a prejudicial interest, leave the meeting during the consideration of the item (unless you have been allowed to stay to make a statement as permitted by the revised code of conduct, in which case you should leave as soon as you have made that statement). As with all other matters, the duty to declare an interest also applies where it is a member of your family, a close associate of yours or your employer etc, who has an interest as defined in the code of conduct. It would be helpful if you could avoid confusing that sort of interest with the other issues raised under this protocol, especially those in part 3 below.

3. GUIDANCE REGARDING ISSUES OF BIAS, PREDETERMINATION AND PREDISPOSITION

3.1 Planning is not a quasi-judicial process. It is an administrative decision making process. Councillors who sit on planning committees cannot therefore be expected to have

the same strict level of independence and impartiality as judges or quasi-judges who make decisions in courts and tribunals.

3.2 Councillors are elected to provide and pursue policies in a situation of democratic accountability. Accordingly, members of planning committees are entitled and indeed expected, by those who have elected them, to have and express views on planning issues. They will have political allegiances and publicly known policies.

3.3 It is therefore perfectly permissible for members of a planning committee to be predisposed towards a view that is in favour of or against a planning application or development proposal. However, it is essential that, notwithstanding their predisposition, they retain an open mind as to the merits of the argument before they make the final decision. Failure to do so, or failure to demonstrate to applicants, objectors or other interested parties that they have done so, can result in allegations of bias and/or predetermination which can lead to the validity of the decision being called into question. It is for this reason that councillors' minds must not be closed to the merits of any planning application or decision or even appear to be closed ie by giving a clear impression that they have already decided how they will vote at the meeting and that nothing will change their minds.

Example of predisposition

- I am very concerned about the impact of this proposal on the local highway network. It already takes 25 minutes to get through the crossroads at peak times. I want to see convincing evidence from the applicant that this proposal will not make matters even worse.
- This proposal is in Green Belt and the proposed extension would be inappropriate development. Its design doesn't seem to be particularly sympathetic to its surroundings. In such a prominent location there is real potential for such a development to have a very damaging effect on the open character of the area. Green Belt development needs to be handled particularly sensitively. Therefore, unless the applicant can convince me that this would be an appropriate development in the Green Belt or there are very special circumstances why it should be approved then I can't currently see how I will be able to support this application. The applicant needs to make a stronger case and provide more information.

Example of predetermination

- This proposal is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

3.4 Also, councillors cannot be seen to take part in any planning decision making processes where they have or may appear to have a vested interest in the outcome for eg. if they have a personal and/or a personal and prejudicial interest in a planning application. Taking part in these circumstances can lead to allegations of bias and the validity of the decision again being called into question. If councillors are shown to have been motivated by bias then, ultimately, the decision may be ruled by the courts as unlawful and quashed.

3.5 The basic legal position is that councillors may not be party to decisions in relation to which they are either actually biased (in the sense that they have a closed mind and have predetermined the outcome of the matter irrespective of the merits of any representations or arguments that may be put to them) or give an appearance of being biased.

The test that would be applied by the courts regarding apparent bias is:

Would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

(NB. An informed observer should be taken to be someone who understands the democratic context and realities of working in a political environment)

3.6 In order to guard against allegations of bias and/or predetermination members of planning committees are therefore advised to follow the guidance set out below:

(1) Members with personal/prejudicial interests

- At planning committee and sub-committee meetings, ensure that you always declare relevant personal and prejudicial interests in accordance with the Members' Code of Conduct.
- Remember that:
 - (a) a direct financial interest in the outcome of a planning decision will automatically lead to an appearance of bias;
 - (b) a family relationship or close friendship between a member of a planning committee and the beneficiary of the decision may, and usually will, give rise to an appearance of bias;
 - (c) mere membership of a particular charity or group will not normally give rise to an appearance of bias on the part of the decision maker.

(2) Predetermination/predisposition

- It is lawful for members of planning committees and sub-committees to have, and to have expressed, views on controversial local matters (such matters may often have been raised as election issues).
- Members of planning committees and sub-committees are entitled to be predisposed to certain views.
- Members must at all times retain an open mind (ie in making decisions they must consider all relevant matters and approach their task with no preconceptions) right up to the point of making the decision . But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their political manifestos.

- Members must be trusted to abide by the rules which the law lays down ie that, whatever their views, they must approach their decision making with an open mind and be prepared to change their views if persuaded that they should do so.
- Evidence of political affiliation or of the adoption of policies towards a planning proposal will not by itself amount to an appearance of predetermination or bias
- Unanimity of approach by all members of a single political group when voting on a planning application should not necessarily lead to a conclusion that all or any of those members had a closed mind. Members will obviously attach importance, to differing degrees, to group unity and conformity with group policy. This is perfectly acceptable provided they understand that the ultimate decision is for them alone as individuals.
- Leading members of the authority who have participated in the development of planning policies and proposals need not and should not normally exclude themselves from decision making meetings solely on the ground that they were involved in the decision of the Executive to promote or approve the policy or proposal.

3.7 The guidance above has been prepared having regard to the current law on bias and predetermination. The contents of this note demonstrate that members responsible for making planning decisions do have considerable freedom to express views on applications and, in formulating such a view or predisposition, to be influenced by a number of factors including the policies of their political group and issues that they supported during an election campaign. However, members must at all times retain an open mind as to the merits of an application or proposal and demonstrate that they are willing (right up to the point of the decision) to take into account all material planning considerations.

3.8 Members who speak vociferously for or against a proposal thereby giving the impression that they have unequivocally and irrevocably made up their mind prior to the planning meeting may, therefore, find it more difficult to demonstrate that they have indeed retained an open mind. In these circumstances such members may consider that it would be prudent to step down from the committee and to speak at the meeting as ward councillor. Members can seek advice from the Acting Assistant Director – Legal & Governance regarding this matter or any of the issues raised above.

4. LOBBYING AND CONTACT WITH APPLICANTS AND OBJECTORS

4.1 Any councillor could be the subject of lobbying over planning issues. Lobbying occurs when an applicant, objector or supporter seeks to influence a councillor to change their mind or to adopt and support their point of view. This includes contact by letter, e-mail, 'phone or in person to discuss or put forward specific points of view regarding forthcoming planning decisions.

4.2 Lobbying is a normal and perfectly proper part of the political process. However, you need to understand and accept that where you are making a decision on a planning issue, you are acting in a different role from that of ward councillor. Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to your impartiality

and integrity being called into question. In order to avoid any such criticism or legal challenge and to preserve your right to vote on an application, you should follow the following advice.

4.2.1 Avoid organising support for or opposition to a planning application or involving yourself in such a process and avoid lobbying other councillors on the issue.

4.2.2 If applicants, potential applicants or objectors ask to meet you about a proposal ideally you should refer them to another councillor who does not serve on the planning sub-committee and will not be involved in the decision; alternatively refer them to an officer. If however, the proposal is complex, controversial or of major local significance, eg a new supermarket, landfill site, large housing estate, then you may consider that the process would benefit from engaging councillors in pre-application/determination discussions. In such a situation it will be important for you to follow the guidance set out in section 5 of this Protocol about pre-application/determination discussions.

4.2.3 If any one (including another councillor) does lobby you or raise issues about a particular proposal, refer them to officers for advice on procedure and suggest that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why, even though you are more than happy to listen to their views/concerns, you have to remain completely impartial until the final decision has been made.

4.2.4 Keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each sub-committee meeting - but note that this is a separate process from that which relates to declaration of personal or prejudicial interests under the members' code of conduct.

4.2.5 Minimise social contacts with known developers and agents and refrain altogether from such contacts when pre-application work is under way or a planning application has been received and is being considered by the authority;

4.2.6 When approached by anybody (including the press) regarding a particular application, take care to avoid expressing an opinion which others might regard as clearly indicating that you have already made up your mind on the issue before hearing all the information and arguments presented at the subcommittee meeting. You can, if pressed, perhaps, indicate the sort of concerns or issues which you think you'll need to consider when making the decision, but remember that if you cannot clearly demonstrate that at the meeting you have an open mind and are balancing all the various issues and arguments, you run the risk of potentially invalidating the decision and making the Council subject to legal challenge. So make sure that you also say that you will not be making a final decision until the meeting.

4.2.7 If you cannot avoid expressing an unequivocal opinion on the decision beforehand, which could be construed by others as clearly indicating that you have a closed mind as to the merits of the application, then you should disclose this at the committee (as part of the disclosure of lobbying). You should not then vote on the item unless you made it clear when expressing the opinion that your views were preliminary only and that a final decision would be made at the sub-committee meeting when you had the opportunity to review all the issues and arguments. If you do have to drop out of a particular decision, you should not take part in the discussion on the item, but may, if you wish to speak, move away from the

other members of the committee to the public area and comment when invited to do so as with other non-committee members and the public.

4.2.8 Remember that your overriding duty in this role is to the whole community not just to the people in your ward and, taking into account the need to make decisions impartially, you should not improperly favour any person, company, group or locality or appear to do so. If local people put you under pressure, or you want to try to be as helpful as possible, try to explain the reasons why you can't favour one side or the other, tell them the best way to get their views across, tell them how to contact another councillor who can be more proactive in supporting/helping them, or refer them to officers who can explain the issues and reasons.

4.3 Public Meetings are unlikely to be necessary or appropriate in most cases, since the process was adopted of allowing applicants and objectors to attend and make comments at planning sub-committee meetings. Nevertheless, on occasion they may be appropriate where there is a need for a forum to allow clear expression of a volume of concern on a controversial proposal. It may also very occasionally be necessary and beneficial in order to assist in the determination of a planning issue. If so it is vital that you avoid acting in a way which could lead to an appearance of pre-judgement or bias. So, if anyone asks you to organise or attend a public meeting about a specific application, you should try to avoid doing so, and you should instead refer the request to officers. Wherever possible you should avoid attending any public meeting at which officers are not present - otherwise you may be accused (rightly or wrongly) of having done so because you favour one side or the other and it might well be difficult to avoid giving that impression. If you do attend, you should do so bearing in mind all the comments set out above and should ensure that it is made clear that you are unable to form or express any clear and unequivocal view before the committee meeting- but that obviously doesn't stop you from listening to what is said or making it clear that you are listening and highlighting the areas that are of most concern to you. Don't forget, though that you need to be able to differentiate, when you do make the decision, between issues which are relevant to planning decisions and those which are not. Officers will be able to assist by answering technical questions and helping to explain why you are unable to favour either side. The same advice as above applies to avoiding expressing any opinion, which would clearly indicate that you no longer had an open mind on the ultimate decision, at such a meeting.

The public meetings referred to here should be distinguished from briefings, developer presentations etc that are organised by officers as part of any pre-application/determination discussion process with councillors/members of the planning committee in relation to applications of major impact or significance (see section 5 below).

5. DISCUSSIONS BETWEEN POTENTIAL/CURRENT APPLICANTS AND THE COUNCIL RELATING TO MAJOR DEVELOPMENT PROPOSALS

5.1 Discussions between potential applicants/applicants and the council prior to the submission or determination of an application can always be helpful. However, they can be of considerable benefit to both parties in relation to development proposals that are complex, controversial or of major local significance eg large housing estates, waste disposal sites, wind farms, industrial estates/business parks and supermarkets. Unfortunately, it would be easy for such discussions to become, or be seen by objectors to become part of the lobbying process on the part of the applicant.

5.2 It is therefore essential that where any discussions are held in relation to such major development proposals it is done within carefully established guidelines (as set out below) to protect the council and councillors from allegations of bias, pre-determination etc.

5.3 All arrangements relating to pre-application/determination discussions for major development proposals should be made by officers. Where councillors receive a request to engage in such pre-application/determination discussions from an applicant or potential applicant they should refer such request to the Planning Case Officer who will consult the Chair of the relevant committee or sub-committee as to whether pre-application discussions are considered appropriate in the circumstances and, if so, the form that such discussions will take. **NB. This will not preclude councillors attending informal consultation events where there is no officer present.**

The most appropriate methods of engaging councillors in pre-application/determination discussions are:

- Interim committee reports on pre-application discussions (at the request of a councillor, subject to the approval of the Chair of the relevant committee or sub-committee and the Assistant Director Strategic Investment);
- Public developer presentations to committee;
- Development control forums.

Informal private briefings or private developer committee presentations may occasionally be appropriate but must be handled carefully to avoid third parties becoming suspicious of the process and the reasons for a private meeting.

5.4 Whatever method of pre-application/determination discussion is adopted, the following guidance will apply:

5.4.1 The purposes of councillors becoming engaged at that stage should be made clear by the relevant committee/sub-committee Chair or planning case officer at the start of the discussions. The purposes can be summarised as:

- Keeping councillors better informed on major applications and helping them to learn more about emerging proposals;
- Engaging members on issues to be dealt with in a formal submission;
- Taking account of emerging or existing community concerns at a formative stage;
- Obtaining initial member guidance for officer negotiations on major applications;
- Identifying issues to be dealt with in any further submissions;
- Reinforcing Councillors' roles in their communities.

5.4.2 The Chair or planning case officer will also make clear from the outset that the discussions will not bind the council to make a particular decision and that any views expressed are personal and provisional.

5.4.3 Officers should always be present with councillors at any such pre-application/determination discussions. They will be responsible for advising impartially on all planning issues including the development plan, the interpretation of relevant policies

and any material planning considerations. Councillors should avoid giving separate planning advice during such discussions as this could result in inconsistent information being given. Neither should councillors become drawn into negotiations with applicants or potential applicants.

5.4.4 A written record of all pre-application/determination discussions should always be made by the officer present. This note will be placed on the public planning case file to ensure transparency.

5.4.5 Discussions with councillors at pre-application/determination stage should not be seen as:

- A means by which to find out councillors' views on a proposal. Councillors may be in a position to give a preliminary view on a proposal but any members of the planning committee (who are likely to be determining the application when it is submitted) will be advised that they should not express a view which could give the impression that they have pre-determined their position;
- An opportunity to conduct negotiations on the application in public;
- Any substitute for the formal consultation and processing of an application;
- A means by which potential applicants can seek to hold confidential discussions with councillors on the merits of the proposal.

5.4.6 Any member of the planning committee who elects, at such discussions, to voice a clear and strong view for or against the proposal being discussed in pursuit of their community champion role could be considered to have pre-determined their position and prejudiced their ability to vote in relation to any forthcoming planning application. They should therefore seek advice from the Assistant Director Legal & Governance as to their future participation in the decision making process.

6. GUIDANCE TO COUNCILLORS WHO ARE ALSO MEMBERS OF A PARISH OR TOWN COUNCIL

6.1 The potential problem is that if you are involved in a meeting of the parish council or its planning committee which decides on the recommendations or comments which are to be given to KMC on particular planning applications and then are also a member of the planning subcommittee which makes the final decision on those applications, you are at risk of being considered to have already made up your mind before coming to that subcommittee and therefore being biased, in legal terms, thus invalidating the subcommittee's decision.

6.2 To minimise this risk, therefore, if you are a member of the KMC planning subcommittee you should always:

- i. make it clear at any meetings of the parish/town council that any views you express and your vote, if you give one, are based solely on the limited information which is before you at that meeting;
- ii. make it clear that you are reserving your judgement and independence, when any application comes before the KC subcommittee, to make a fresh decision on each application on the basis of all the relevant information which is available to that meeting and based also on your overriding duty to the whole community and not just the people of the area, ward or parish;

- iii. not in any way commit yourself as to how you may vote when the proposal comes before the KC subcommittee;
- iv. ensure that the above, or something to that effect, is noted in the parish minutes.

6.3 In addition, any member of a parish council (whether or not on its planning committee) needs to declare a personal interest at the KC planning subcommittee when considering any application on which the parish council has expressed a view or made comments. Clearly, if the parish council has a greater interest than that (eg the application has been made by the parish council or significantly affects parish property), you should declare a prejudicial interest. That can be done, of course, at the start of the planning subcommittee meeting in the normal way.

6.4 While the process above is a way of minimising the risk of successful challenge, it does need to be remembered that the public and press can misunderstand or (innocently or otherwise) misrepresent your actions which could lead to unjustified criticism or misguided legal challenge. There is also, of course, inevitably the risk that on occasion for some reason something may go wrong and the proper procedure not be appropriately followed. In the light of the increasing tendency to litigation, therefore, although this Council has not so far experienced such a problem, the best advice is, where possible, to avoid playing the dual role and therefore to choose whether to go on the parish council's planning committee or the KC subcommittee, but not both. That would be the only way of clearly avoiding any of the potential risks and problems referred to above.

7. COUNCILLOR COUNCIL PARTNERSHIP DEVELOPMENT AND DEVELOPMENT ON COUNCIL LAND

7.1 Many of the Council's functions give rise to development which requires planning permission. Similarly, many of the activities carried out through partnerships require planning permission. From time to time the Council will also dispose of land for purposes requiring planning consent. It is important to ensure that particular care is taken with such applications to demonstrate that no preferential treatment is given to them as this could easily give rise to suspicion of bias or impropriety.

7.2 Such applications are dealt with in exactly the same way as any other planning application and members need to take care that they also treat them in the same way when making decisions. It's vital to demonstrate this split between promoting a scheme and making the planning decision; otherwise the latter will inevitably risk being challenged as biased.

7.3 If you were involved in a meeting which made a decision giving rise to the submission of such an application, you should avoid taking part in the decision making process unless you are confident that you can clearly demonstrate that you are able to approach the determination of the application with an entirely open mind. This will apply principally to members of the Cabinet, through meetings of either the Cabinet or a Cabinet committee. In addition, if you are a director on the board of a partnership company which is submitting an application then you will most probably be best advised to declare a prejudicial interest under the councillors' code of conduct and leave the meeting for the consideration of that item. Similarly, if the proposal is a major council-driven project of such significance to your ward or to the borough as a whole that you want to support it or express your clear views about it, you can do so, but then you will need to consider whether

or not it is appropriate for you to remove yourself from the decision-making on the planning application so that you do not expose yourself and the Council to allegations of bias or predetermination.

8. SITE VISITS

8.1 The purpose of a site visit is to enable committee members to see the physical attributes of the site and its setting which are part of the material considerations in cases where these are not readily capable of being appreciated from documentary material. Officers may arrange a site visit where they consider it to be appropriate.

8.2 You, as a ward councillor, may also request a site visit on any application being considered by committee within your ward, provided that the request is made in writing to the planning officer with a reason which relates to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 below to help you to formulate appropriate reasons in support of your site visit request) and takes account of the purpose of site visits mentioned above and which can be incorporated in the officer's report to committee; and the request is lodged as soon as possible and in any event before the finalisation of the agenda for the sub-committee at which the application is due to be considered in order to allow it to be included on the agenda and the itinerary. Remember, however, that if in that written request you express a strong opinion on the merits of the application, you may well disqualify yourself from taking part in the decision. Try to limit your comments to identifying issues which you think the site visit will help to clarify. This advice also applies if you request that a decision is referred to committee rather than being made by officers.

8.3 Alternatively, the committee may itself decide to defer an application for a site visit through the normal course of debate and vote.

8.4 On a site visit, councillors will have the opportunity to view the site and officers can point out significant features. You should try to avoid being lobbied by the public, but if this is unavoidable, you should react as in the guidance on lobbying above and declare the fact on return to the committee meeting room.

8.5 If other ward councillors attend a site visit, they should not carry out any lobbying of their own and should not join members of the planning committee on the site visit bus.

8.6 Anyone (public or ward member) who is unable to attend the meeting to present their views will not be able to use the site visit for that purpose and should, therefore, be encouraged to put their views in writing to the planning officers beforehand.

8.7 All members of the committee should attend site visits since they are an integral part of the committee decision-making process. However, since this does not always happen you should try to avoid asking officers for additional information until you get back to the meeting room. Nevertheless, to ensure that all councillors at the meeting have, as far as possible, the same information before them, officers will provide at the meeting a summary of any significant additional information provided or issues raised on the site visit.

9. CONDUCT AT THE COMMITTEE MEETING

9.1 Separate guidance set out in The Public Speaking Protocol is available for members of the public on the process allowing them to put their views in the course of the debate on

any particular application. Bear in mind that many of them will not be familiar with planning procedures or with what is or is not a material consideration. Nevertheless, they should obviously be treated with respect. It is also vital that the procedure for public comment is closely followed in every case, to avoid complaints that some individuals are being treated differently from others.

9.2 Councillors who attend the committee or sub-committee as observer in accordance with Council Procedure Rule 36 (CPR 36) together with any member of the committee who has indicated that because, for instance, they can no longer demonstrate that they retain an open mind as to the merits of an application, he/she will not be voting, but still intends to contribute to the debate, will be bound by the 5 minute time restriction specified in CPR 36.

9.3 Every effort will be made to ensure that the seating arrangements make it clear who are the members of the committee. Wherever possible, therefore, the public will be kept separate from the committee members and other members of the Council should also avoid sitting with the members of the committee.

9.4 If you are a member of the committee, you should, as far as possible, avoid contact with members of the public. This will ensure that you are not subject to last minute lobbying, or provision of information which is not available to the rest of the meeting, and it will also protect you from appearing to favour or have a relationship with one side or the other on a particular application. This applies before, during and immediately after the meeting. Only the chair should speak to members of the public during the meeting or ask questions (e.g. for clarification). If any other councillor needs clarification, they should raise the issue with the chair, who will decide how to deal with it.

9.5 Remember that you must be able to justify any decision on planning grounds. If you wish therefore to vote on a decision in a way which is different from the officers' recommendation, you should be clear what your reasons are for that.

9.6 Relevant planning issues, which you can take into account, include:

- The Development Plan and the various policies which it contains;
- National or regional guidance;
- The Council's supplementary planning guidance/documents [Remember that if you are proposing not to follow any one of the above three, then you'll need reasons for that too.];
- The planning history of the site;
- The visual impact of the development;
- Effect on public amenity;
- Access, traffic and highway considerations;
- Impact on listed buildings, conservation areas or protected trees;
- The views of local people insofar as they are based on relevant planning issues.

When formulating reasons which you consider will justify a decision contrary to the officer's original recommendation you should always have regard to the principles set out in paragraph 1.3 above.

Matters which are not material planning considerations and which, therefore, cannot be taken into account include:

- Effect on property values;
- The character, identity or personal circumstances of the applicant or objectors;
- Boundary or property disputes;
- How the application affects a view (as opposed to the wider effect on public amenity);
- Issues of commercial competition;
- Land or property values;
- Moral or ethical issues or judgments;
- Weight of numbers of public opposition or support in itself - as opposed to relevant planning basis for such views;
- Political manifesto commitments.

9.7 Officers will ensure that the practice of seeking clarification when councillors' reasons are in doubt is always pursued and sub-committee chairs, before putting to the vote a proposition or amendment differing from the recommendation should expressly obtain clarification of reasons. If councillors differ as to choice of reasons, then that should itself be the subject of separate amendments. Reasons will be particularly important where officers' advice is strong. Officers will normally indicate where a decision is a close call and the recommendation is therefore on balance. In those circumstances you may simply take a different view of the balance. Where the officer view is unequivocal you need first to be clear in your own mind why you disagree. Officers are professional and experienced and while they are no less fallible than anyone else, their views should be properly considered. It's unreasonable and won't achieve what you want if you simply disagree and then expect officers to work out why. It's your decision and they must be your reasons.

9.8 Similarly, if your view is that a policy, such as green belt, for instance, shouldn't be applied, you need to have a clear reason for that, relevant to the way the policy is expressed. Officers can help with those sorts of issues if you are clear yourself what the problem is. On the other hand, if you are clear in your reasons and clear that they are proper planning reasons, that will make it very much easier for officers (or indeed, you yourself) to defend and explain them if they are challenged on appeal or by judicial review. Ideally there should be a partnership here. Officers are professionals; councillors have democratic accountability. But both have to follow the rules.

9.9 It is the role of the Committee Chair (or Vice Chair if substituting) to guide, manage and control the meeting so that procedures are properly followed, everyone gets a fair chance to have their say, the debate remains focused and relevant, proper standards are maintained and the process is as efficient as possible leading to a clear and rational decision. Councillors (and officers) should do everything possible to co-operate and assist with that. As part of that role, the Chair (or Vice-Chair if substituting) may request that a recorded vote is taken on a particular application for eg. if the application is particularly controversial, there is considerable public interest in the proposal or the decision would be contrary to the officer recommendation or the development plan. It is also the role of the Chair (or Vice Chair if substituting) to summarise and clarify the decision of the committee for the benefit of members of the public so that there is no doubt as to the outcome of the debate.

10. TRAINING

10.1 Making good, justifiable planning decisions is not something which can be done by instinct.

10.2 Before serving on any committee making planning decisions (whether as a full member or as a substitute) any councillor must have undergone satisfactory training, as referred to in this section, in both the procedural issues outlined in this protocol and in the basic principles of planning, so that you can understand the basis on which decisions need to be made and on which officers prepare reports. It will also help you to take a rational approach to the issues discussed in 9.7 above. -This requirement will also apply to training required to refresh and update knowledge and understanding.

10.3 Suitable training will be provided sufficient to ensure that councillors who wish to be involved in planning decisions can do so, but you do need to make an effort to attend, since it is not possible to make arrangements which are totally convenient for everybody.

10.4 Groups must not nominate anyone for membership of any committee which will be making planning decisions unless that councillor has either undergone training or is prepared to do so before taking part in the relevant committee meetings. Councillors should also be prepared to attend annual updating training. It is necessary for groups to identify and select the appropriate number of members from their group who fulfil these conditions.

10.5 Annual updating training will be provided. It is necessary that, in order to continue to sit on a planning committee or subcommittee, you will take part in this refresher training.

11. ADVICE TO ALL COUNCILLORS

General

11.1 Any councillor, whether or not involved in decision making on planning issues, could benefit from reading this protocol as it may assist from time to time in explaining issues to constituents who are puzzled by the planning process. All councillors also need to understand how best to represent their constituents when not involved in the decision making process.

11.2 You may well be lobbied by individuals in favour of or opposed to any application, or, indeed, you may have views of your own as the local ward councillor. If so, those views should be expressed to officers. You should avoid lobbying or trying to persuade members

of the decision making committee to come to a view beforehand. Doing so will only put at risk that member's ability to take part in the decision.

11.3 You should not, however, exert any improper pressure on officers to make a decision or recommendation contrary to their professional judgement. If you disagree with that judgement you can, of course, raise the issue with a more senior officer. Nor should you lobby members of the sub-committee - in particular make sure you avoid the temptation to seek the support of your ward or group colleagues on the planning sub-committees. Doing so could make any decision susceptible to challenge.

11.4 Please also note the advice on requesting site visits in section 8 which applies to all ward members.

11.5 Local ward councillors may attend site visits, but will not be able to carry out any lobbying on the merits of an application on such occasions.

11.6 Ward councillors may also attend the sub-committee meeting at which decisions are taken. If you do so, you should sit apart from the committee members, with those attending from the public. If you wish to speak on a particular application, you should do so only when specifically invited by the Chair and should act in accordance with the Public Speaking Protocol.

11.7 If you are unable to get to the meeting, then any views which you wish to express should be put in writing to the Planning Officer.

11.8 You should remember that officers have a duty to give impartial advice on planning applications and other planning matters and to make recommendations (or decisions on delegated matters) in the light of all the relevant planning issues using their professional judgement. Where there are disagreements between councillors and officers, these should be approached with mutual respect and while you may obviously express your disagreement, that should be on a rational basis and you should avoid personal criticism or abuse.

11.9 You will be informed when training in planning matters is being provided. While training is extremely important for councillors who will be making decisions, it is open to all and any councillor could benefit from the information which is provided.

Referring applications to committee

11.10 Under the officer delegation scheme, a ward member is able to refer for committee decision any application which would otherwise be determined by officers. Any such request must be made in writing and must specify their reasons for making the request which must reasonably relate to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 above to help you to formulate appropriate reasons in support of your request for referral to Committee). To be a valid request the Chair of the relevant committee or sub-committee must have confirmed that the ward member's reasons for making the request are acceptable. Requests should ideally be received before the earliest date for decision - i.e. three weeks after receipt of the application. However, requests received later than this will still be valid provided appropriate reasons are given in support of the request and the Chair is prepared to exercise his/her discretion to consider the late request.

11.11 Ward members who are also members of the committee (or substitutes) should remember that if, in your written request for referral of an application to committee, you express a strong opinion on the application which gives a clear impression that you have a closed mind as to the merits of the proposed development, you may well disqualify yourself from taking part in the decision.

Planning applications submitted by councillors and members of their families.

11.12 Planning applications that are submitted to the LPA by serving councillors, their close associates and relatives, can easily give rise to suspicions of impropriety. Nevertheless, it is perfectly legitimate for such applications to be submitted to the authority for determination. However, it is vital to ensure that these applications are handled in such a way that gives no grounds for accusations of bias or preferential treatment.

11.13 The officer delegation scheme requires that all planning applications submitted by or on behalf of any elected member of the council (in their personal capacity) or any member of their family shall be referred to committee for decision.

11.14 A councillor who has submitted a planning application in their personal capacity will be considered to have a prejudicial interest in that application. You will also be considered to have a prejudicial interest in any application submitted by a member of your family or a close associate. Accordingly, if you are a member of the planning committee (or sitting as a substitute), you should not take part in the decision making process relating to the application and must leave the room. You may, however, prior to leaving the room, take the opportunity to make a statement to the committee to explain and justify your proposal. As the applicant always addresses the committee last, you will have the opportunity to hear the planning officer's presentation and the representations of objectors and any other interested parties before making your statement and then leaving the room.

11.15 It is important to remember that councillors must not seek improperly to influence the decision on their application. Some councillors may therefore, in this situation, consider it unwise to make a statement to the committee and instead may prefer to rely on a third party or planning agent to make their case to the committee for them. However, councillors who do choose to make a statement to the committee personally should observe the same 3 minute time limit set out in the Public Speaking Protocol that applies to members of the public when addressing the committee.

11.16 This advice also applies to all councillors who are not members of the committee or acting as substitute but who choose to attend the committee at which their planning application (or that of their family member) is due to be determined.

KIRKLEES COUNCIL

**PROTOCOL FOR PLANNING COMMITTEES
AND SUB-COMMITTEES**

(Approved by Full Council on XXXX)

1. BACKGROUND AND INTRODUCTION

1.1 This protocol replaces and updates that which was approved by Full Council on 8th December 2010.

1.2 The aim of this protocol is to ensure that the planning process operates properly, legally and effectively and that there are no grounds for suggesting that a decision has been biased, partial or not properly considered and made in any way. It is also intended to help councillors work effectively and seek to achieve their aims within the regimes which govern development control.

1.3 Your role as a member of the planning authority is to make planning decisions in accordance with the relevant statutory tests, as well as openly, impartially, with sound judgment and for justifiable, properly balanced reasons which must be relevant to planning issues. If for any reason you would have difficulty in complying with this protocol or if you would usually prefer to be able to champion your constituents' point of view, you should not accept appointment to the committee or sub-committee, nor attend as a substitute.

1.4 When the protocol applies: This protocol applies to councillors at all times when involved in the planning process. This includes taking part in decision making meetings of a planning committee or sub-committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or to policy issues relating to a specific site as to planning applications. Part 11 of the protocol draws attention to issues affecting all councillors, whether or not involved in decision-making.

1.5 If you have any doubts about the application of this protocol to your own circumstances, you should seek early advice from the Assistant Director Legal & Governance or one of their staff, preferably well before any meeting takes place. Senior Planning Officers and Decision Support Officers are also able to assist.

2. RELATIONSHIP TO THE COUNCILLORS' CODE OF CONDUCT:

2.1 This protocol is additional to the councillors' code of conduct. You should always apply that code first to any issue arising and declare any personal or prejudicial interests which you may have and, in the case of a prejudicial interest, leave the meeting during the consideration of the item (unless you have been allowed to stay to make a statement as permitted by the revised code of conduct, in which case you should leave as soon as you have made that statement). As with all other matters, the duty to declare an interest also applies where it is a member of your family, a close associate of yours or your employer etc, who has an interest as defined in the code of conduct. It would be helpful if you could avoid confusing that sort of interest with the other issues raised under this protocol, especially those in part 3 below.

3. LEGISLATION AND GUIDANCE REGARDING ISSUES OF BIAS, PREDETERMINATION AND PREDISPOSITION

3.1 Planning is not a quasi-judicial process. It is an administrative decision making process, which must be carried out in accordance with relevant statutory requirements. Councillors who sit on planning committees cannot therefore be expected to have the same

strict level of independence and impartiality as judges or quasi-judges who make decisions in courts and tribunals.

3.2 Councillors are elected to provide and pursue policies in a situation of democratic accountability. Accordingly, members of planning committees are entitled and indeed expected, by those who have elected them, to have and to express views on planning issues. They will have political allegiances and publicly known policies although Councillors must always remember that planning decisions are not political decisions.

3.3 It is therefore perfectly permissible for members of a planning committee to be predisposed towards a view that is in favour of or against a planning application or development proposal. Notwithstanding their predisposition, Members should retain an open mind as to the merits of the argument before they make the final decision. Failure to do so, or failure to demonstrate to applicants, objectors or other interested parties that they have done so, can result in allegations of bias and/or predetermination which can lead to the validity of the decision being called into question. It is for this reason that councillors' minds must not be closed to the merits of any planning application or decision or even appear to be closed ie by giving a clear impression that they have already decided how they will vote at the meeting and that nothing will change their minds.

Example of predisposition

- I am very concerned about the impact of this proposal on the local highway network. It already takes 25 minutes to get through the crossroads at peak times. I want to see convincing evidence from the applicant that this proposal will not make matters even worse.
- This proposal is in Green Belt and the proposed extension would be inappropriate development. Its design doesn't seem to be particularly sympathetic to its surroundings. In such a prominent location there is real potential for such a development to have a very damaging effect on the open character of the area. Green Belt development needs to be handled particularly sensitively. Therefore, unless the applicant can convince me that this would be an appropriate development in the Green Belt or there are very special circumstances why it should be approved then I can't currently see how I will be able to support this application. The applicant needs to make a stronger case and provide more information.

Example of predetermination

- This proposal is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

3.4 Also, councillors cannot be seen to take part in any planning decision making processes where they have or may appear to have a vested interest in the outcome for eg. if they have a personal and/or a personal and prejudicial interest in a planning application. Taking part in these circumstances can lead to allegations of bias and the validity of the decision again being called into question. If councillors are shown to have been motivated by bias then, ultimately, the decision may be ruled by the courts as unlawful and quashed.

3.5 The basic legal position is that councillors may not be party to decisions in relation to which they are either actually biased (in the sense that they have a closed mind and have predetermined the outcome of the matter irrespective of the merits of any representations or arguments that may be put to them) or give an appearance of being biased.

The test that would be applied by the courts regarding apparent bias is:

Would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

(NB. An informed observer should be taken to be someone who understands the democratic context and realities of working in a political environment)

3.6 However, the Courts will not consider a Councillor making a decision to have had a "closed mind" when making that decision just because the Councillor had previously done anything that (directly or indirectly) indicated the view that would (or might) be taken in relation to a given matter (provided the matter was relevant to the decision).¹

3.7 In order to guard against allegations of bias and/or predetermination members of planning committees are therefore advised to follow the guidance set out below:

(1) Members with personal/prejudicial interests

- At planning committee and sub-committee meetings, ensure that you always declare relevant personal and prejudicial interests in accordance with the Members' Code of Conduct.
- Remember that:
 - (a) a direct financial interest in the outcome of a planning decision will automatically lead to an appearance of bias;
 - (b) a family relationship or close friendship between a member of a planning committee and the beneficiary of the decision may, and usually will, give rise to an appearance of bias;
 - (c) mere membership of a particular charity or group will not normally give rise to an appearance of bias on the part of the decision maker.

(2) Predetermination/predisposition

- It is lawful for members of planning committees and sub-committees to have, and to have expressed, views on controversial local matters (such matters may often have been raised as election issues).
- Members of planning committees and sub-committees are entitled to be predisposed to certain views. However, such views must be relevant to the decision, in order to influence the decision.

¹ See s.25 Localism Act 2011

- Members must at all times retain an open mind (ie in making decisions they must consider all relevant matters) right up to the point of making the decision . But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their political manifestos.
- Members must be trusted to abide by the rules which the law lays down ie that, whatever their views, they must approach their decision making with an open mind and be prepared to change their views if persuaded that they should do so.
- Evidence of political affiliation or of the adoption of policies towards a planning proposal will not by itself amount to an appearance of predetermination or bias
- Unanimity of approach by all members of a single political group when voting on a planning application should not necessarily lead to a conclusion that all or any of those members had a closed mind. Members will obviously attach importance, to differing degrees, to group unity and conformity with group policy. This is perfectly acceptable provided they understand that the ultimate decision is for them alone as individuals.
- Leading members of the authority who have participated in the development of planning policies and proposals need not and should not normally exclude themselves from decision making meetings solely on the ground that they were involved in the decision of the Executive to promote or approve the policy or proposal.

3.8 The guidance above has been prepared having regard to the current law on bias and predetermination. The contents of this note demonstrate that members responsible for making planning decisions do have considerable freedom to express views on applications and, in formulating such a view or predisposition, to be influenced by a number of factors including the policies of their political group and issues that they supported during an election campaign. However, members must at all times retain an open mind as to the merits of an application or proposal and demonstrate that they are willing (right up to the point of the decision) to take into account all material planning considerations.

3.9 The application of such guidance to a specific case may not always be straight forward. Accordingly, Members can and should seek advice from the Acting Assistant Director – Legal & Governance. This should minimise the risk of administrative decisions being the subject of time consuming and costly legal challenges.

4. LOBBYING AND CONTACT WITH APPLICANTS AND OBJECTORS

4.1 Any councillor could be the subject of lobbying over planning issues. Lobbying occurs when an applicant, objector or supporter seeks to influence a councillor to change their mind or to adopt and support their point of view. This includes contact by letter, e-mail, 'phone or in person to discuss or put forward specific points of view regarding forthcoming planning decisions.

4.2 Lobbying is a normal and perfectly proper part of the political process. However, you need to understand and accept that where you are making a decision on a planning issue,

you are acting in a different role from that of ward councillor. Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to your impartiality and integrity being called into question. In order to avoid any such criticism or legal challenge and to preserve your right to vote on an application, you should follow the following advice.

4.2.1 If applicants, potential applicants or objectors ask to meet you about a proposal, you should consider referring them to another councillor who does not serve on the planning sub-committee and will not be involved in the decision; alternatively refer them to an officer. If however, the proposal is complex, controversial or of major local significance, eg a new supermarket, landfill site, large housing estate, then you may consider that the process would benefit from engaging councillors in pre-application/determination discussions. In such a situation it will be important for you to follow the guidance set out in section 5 of this Protocol about pre-application/determination discussions.

4.2.2 If any one (including another councillor) does lobby you or raise issues about a particular proposal, refer them to officers for advice on procedure and suggest that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why, even though you are more than happy to listen to their views/concerns, you have to remain impartial until the final decision has been made.

4.2.3 Keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each sub-committee meeting - but note that this is a separate process from that which relates to declaration of personal or prejudicial interests under the members' code of conduct.

4.2.4 Minimise social contacts with known developers and agents and refrain altogether from such contacts when pre-application work is under way or a planning application has been received and is being considered by the authority;

4.2.5 When approached by anybody (including the press) regarding a particular application, take care to avoid expressing an opinion which others might regard as clearly indicating that you have already made up your mind on the issue before hearing all the information and arguments presented at the subcommittee meeting. So make sure that you say that you will not be making a final decision until the meeting.

4.2.6 If you have done or said anything which (directly or indirectly) indicated the view you would (or might) take in relation to a specific matter: it is good practice to disclose this at the committee meeting (as part of the disclosure of lobbying). You will be entitled to vote on the item but you should: (i) explain how your view is relevant to the decision and (ii) make it clear that your view was based on the evidence you had available at that time and (iii) that your final decision will be based on the final evidence and submissions available at the time of the decision.

4.2.7 Remember that your overriding duty in this role is to the whole community not just to the people in your ward and, taking into account the need to make decisions impartially, you should not improperly favour any person, company, group or locality or appear to do so. If local people put you under pressure, or you want to try to be as helpful as possible, try to explain the reasons why you can't favour one side or the other, tell them the best way to

get their views across, tell them how to contact another councillor who can be more proactive in supporting/helping them, or refer them to officers who can explain the issues and reasons. However, local opposition or support for a proposal is not in itself a valid reason for granting or refusing a planning permission, unless it is founded on valid planning reasons.

4.3 Public Meetings are unlikely to be necessary or appropriate in most cases, since the process was adopted of allowing applicants and objectors to attend and make comments at planning sub-committee meetings. Nevertheless, on occasion they may be appropriate where there is a need for a forum to allow clear expression of a volume of concern on a controversial proposal. It may also very occasionally be necessary and beneficial in order to assist in the determination of a planning issue. If anyone asks you to organise or attend a public meeting about a specific application, you should refer the request to officers. Wherever possible you should avoid attending any public meeting at which officers are not present. If you do attend, you should do so bearing in mind all the comments set out above.

4.4 The public meetings referred to here should be distinguished from briefings, developer presentations etc that are organised by officers as part of any pre-application/determination discussion process with councillors/members of the planning committee in relation to applications of major impact or significance (see section 5 below).

5. DISCUSSIONS BETWEEN POTENTIAL/CURRENT APPLICANTS AND THE COUNCIL RELATING TO MAJOR DEVELOPMENT PROPOSALS

5.1 Discussions between potential applicants/applicants and the council prior to the submission or determination of an application can always be helpful. However, they can be of particular benefit to both parties in relation to development proposals that are complex, controversial or of major local significance eg large housing estates, waste disposal sites, wind farms, industrial estates/business parks and supermarkets. Unfortunately, it would be easy for such discussions to become, or be seen by objectors to become, part of the lobbying process on the part of the applicant.

5.2 It is therefore essential that where any discussions are held in relation to such major development proposals it is done within carefully established guidelines (as set out below) to protect the council and councillors from allegations of bias, pre-determination etc.

5.3 All arrangements relating to pre-application/determination discussions for major development proposals should be made by officers. Where councillors receive a request to engage in such pre-application/determination discussions from an applicant or potential applicant they should refer such request to the Planning Case Officer who will consult the Chair of the relevant committee or sub-committee as to whether pre-application discussions are considered appropriate in the circumstances and, if so, the form that such discussions will take. **NB. This will not preclude councillors attending informal consultation events where there is no officer present.**

The most appropriate methods of engaging councillors in pre-application/determination discussions are:

- Interim committee reports on pre-application discussions (at the request of a councillor, subject to the approval of the Chair of the relevant committee or sub-committee and the Assistant Director Strategic Investment);

- Public developer presentations to committee;
- Development control forums.

Informal private briefings or private developer committee presentations may occasionally be appropriate but must be handled carefully to avoid third parties becoming suspicious of the process and the reasons for a private meeting.

5.4 Whatever method of pre-application/determination discussion is adopted, the following guidance will apply:

5.4.1 The purposes of councillors becoming engaged at that stage should be made clear by the relevant committee/sub-committee Chair or planning case officer at the start of the discussions. The purposes can be summarised as:

- Keeping councillors better informed on major applications and helping them to learn more about emerging proposals;
- Engaging members on issues to be dealt with in a formal submission;
- Taking account of emerging or existing community concerns at a formative stage;
- Obtaining initial member guidance for officer negotiations on major applications;
- Identifying issues to be dealt with in any further submissions;
- Reinforcing Councillors' roles in their communities.

5.4.2 The Chair or planning case officer will also make clear from the outset that the discussions will not bind the council to make a particular decision and that any views expressed are personal and provisional.

5.4.3 Officers should always be present with councillors at any such pre-application/determination discussions. They will be responsible for advising impartially on all planning issues including the development plan, the interpretation of relevant policies and any material planning considerations. Councillors should avoid giving separate planning advice during such discussions as this could result in inconsistent information being given. Neither should councillors become drawn into negotiations with applicants or potential applicants.

5.4.4 A written record of all pre-application/determination discussions should always be made by the officer present. This note will be placed on the public planning case file to ensure transparency.

5.4.5 Discussions with councillors at pre-application/determination stage should not be seen as:

- A means by which to find out councillors' views on a proposal. Councillors may be in a position to give a preliminary view on a proposal but any members of the planning committee (who are likely to be determining the application when it is submitted) will be advised that they should not express a view which could give the impression that they have finally determined their position (as they will not have all the relevant evidence and submissions at that time);

- An opportunity to conduct negotiations on the application in public;
- Any substitute for the formal consultation and processing of an application;
- A means by which potential applicants can seek to hold confidential discussions with councillors on the merits of the proposal.

5.4.6 Any member of the planning committee who elects, at such discussions, to voice a clear and strong view for or against the proposal being discussed in pursuit of their community champion role should seek advice from the Assistant Director Legal & Governance as to their future participation in the decision making process.

6. GUIDANCE TO COUNCILLORS WHO ARE ALSO MEMBERS OF A PARISH OR TOWN COUNCIL

6.1 The potential problem is that if you are involved in a meeting of the parish council or its planning committee which decides on the recommendations or comments which are to be given to KMC on particular planning applications and then are also a member of the planning subcommittee which makes the final decision on those applications, you are at risk of being considered to have already made up your mind before coming to that subcommittee.

6.2 To minimise this risk, therefore, if you are a member of the KMC planning subcommittee you should always:

- make it clear at any meetings of the parish/town council that any views you express and your vote, if you give one, are based solely on the information which is before you at that meeting;
- make it clear that you are reserving your judgement and independence, when any application comes before the KC subcommittee, to make a fresh decision on each application on the basis of all the relevant information which is available to that meeting and based also on your overriding duty to the whole community and not just the people of the area, ward or parish;
- not in any way commit yourself as to how you may vote when the proposal comes before the KC subcommittee;
- ensure that the above, or something to that effect, is noted in the parish minutes.

6.3 In addition, any member of a parish council (whether or not on its planning committee) needs to declare a personal interest at the KC planning subcommittee when considering any application on which the parish council has expressed a view or made comments. Clearly, if the parish council has a greater interest than that (eg the application has been made by the parish council or significantly affects parish property), you should declare a prejudicial interest. That can be done, of course, at the start of the planning subcommittee meeting in the normal way.

6.4 While the process above is a way of minimising the risk of successful challenge, it does need to be remembered that the public and press can misunderstand or (innocently or otherwise) misrepresent your actions which could lead to unjustified criticism or misguided legal challenge. There is also, of course, inevitably the risk that on occasion for some reason something may go wrong and the proper procedure may not be appropriately followed. In the light of the increasing tendency to litigation, therefore, although this Council

has not so far experienced such a problem, the best advice is, where possible, to avoid playing the dual role and therefore to choose whether to go on the parish council's planning committee or the KC subcommittee, but not both. That would be the only way of clearly avoiding any of the potential risks and problems referred to above.

7. COUNCILLOR COUNCIL PARTNERSHIP DEVELOPMENT AND DEVELOPMENT ON COUNCIL LAND

7.1 Many of the Council's functions give rise to development which requires planning permission. Similarly, many of the activities carried out through partnerships require planning permission. From time to time the Council will also dispose of land for purposes requiring planning consent. It is important to ensure that particular care is taken with such applications to demonstrate that no preferential treatment is given to them as this could easily give rise to suspicion of bias or impropriety.

7.2 Such applications are dealt with in exactly the same way as any other planning application and members need to take care that they also treat them in the same way when making decisions. It's vital to demonstrate this split between promoting a scheme and making the planning decision; otherwise the latter will inevitably risk being challenged.

7.3 If you were involved in a meeting which made a decision giving rise to the submission of such an application, you should avoid taking part in the decision making process unless you are confident that you can clearly demonstrate that you are able to approach the determination of the application with an open mind. This will apply principally to members of the Cabinet, through meetings of either the Cabinet or a Cabinet committee. In addition, if you are a director on the board of a partnership company which is submitting an application then you will most probably be best advised to declare a prejudicial interest under the councillors' code of conduct and leave the meeting for the consideration of that item. Similarly, if the proposal is a major council-driven project of such significance to your ward or to the borough as a whole that you want to support it or express your clear views about it, you can do so, but then you will need to consider whether or not it is appropriate for you to remove yourself from the decision-making on the planning application so that you do not expose yourself and the Council to allegations of bias or predetermination.

8. SITE VISITS

8.1 The purpose of a site visit is to enable committee members to see the physical attributes of the site and its setting which are part of the material considerations in cases where these are not readily capable of being appreciated from documentary material. Officers may arrange a site visit where they consider it to be appropriate.

8.2 You, as a ward councillor, may also request a site visit on any application being considered by committee within your ward, provided that the request is made in writing to the planning officer with a reason which relates to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 below to help you to formulate appropriate reasons in support of your site visit request) and takes account of the purpose of site visits mentioned above and which can be incorporated in the officer's report to committee; and the request is lodged as soon as possible and in any event before the finalisation of the agenda for the sub-committee at which the application is due to be considered in order to allow it to be included on the agenda and the itinerary. Try to limit your comments to identifying issues which you think the site visit will help to clarify. This

advice also applies if you request that a decision is referred to committee rather than being made by officers.

8.3 Alternatively, the committee may itself decide to defer an application for a site visit through the normal course of debate and vote.

8.4 On a site visit, councillors will have the opportunity to view the site and officers can point out significant features. You should try to avoid being lobbied by the public, but if this is unavoidable, you should react as in the guidance on lobbying above and declare the fact on return to the committee meeting room.

8.5 If other ward councillors attend a site visit, they should not carry out any lobbying of their own and should not join members of the planning committee on the site visit bus.

8.6 Anyone (public or ward member) who is unable to attend the meeting to present their views will not be able to use the site visit for that purpose and should, therefore, be encouraged to put their views in writing to the planning officers beforehand.

8.7 All members of the committee should attend site visits since they are an integral part of the committee decision- making process. However, since this does not always happen you should try to avoid asking officers for additional information until you get back to the meeting room. Nevertheless, to ensure that all councillors at the meeting have, as far as possible, the same information before them, officers will provide at the meeting a summary of any significant additional information provided or issues raised on the site visit.

9. CONDUCT AT THE COMMITTEE MEETING

9.1 Separate guidance set out in The Public Speaking Protocol is available for members of the public on the process allowing them to put their views in the course of the debate on any particular application. Bear in mind that many of them will not be familiar with planning procedures or with what is or is not a material consideration. Nevertheless, they should obviously be treated with respect. It is also vital that the procedure for public comment is closely followed in every case, to avoid complaints that some individuals are being treated differently from others.

9.2 Councillors who attend the committee or sub-committee as observers in accordance with Council Procedure Rule 36 (CPR 36) together with any member of the committee who has indicated that because, for instance, they can no longer demonstrate that they retain an open mind as to the merits of an application, he/she will not be voting, but still intends to contribute to the debate, will be bound by the 5 minute time restriction specified in CPR 36.

9.3 Every effort will be made to ensure that the seating arrangements make it clear who are the members of the committee. Wherever possible, therefore, the public will be kept separate from the committee members and other members of the Council should also avoid sitting with the members of the committee.

9.4 If you are a member of the committee, you should, as far as possible, avoid contact with members of the public. This will ensure that you are not subject to last minute lobbying, or provision of information which is not available to the rest of the meeting, and it will also protect you from appearing to favour or have a relationship with one side or the other on a particular application. This applies before, during and immediately after the meeting. Only the chair should speak to members of the public during the meeting or ask questions (e.g.

for clarification). If any other councillor needs clarification, they should raise the issue with the chair, who will decide how to deal with it.

9.5 Remember that you must be able to justify any decision on planning grounds. If you wish therefore to vote on a decision in a way which is different from the officers' recommendation, you should be clear what your reasons are for that.

9.6 Relevant planning issues, which you can take into account, include:

- The Development Plan and the various policies which it contains;
- National or regional guidance;
- The Council's supplementary planning guidance/documents [Remember that if you are proposing not to follow any one of the above three, then you'll need reasons for that too.];
- The planning history of the site;
- The visual impact of the development;
- Effect on public amenity;
- Access, traffic and highway considerations;
- Impact on listed buildings, conservation areas or protected trees;
- The views of local people insofar as they are based on relevant planning issues.

When formulating reasons which you consider will justify a decision contrary to the officer's original recommendation you should always have regard to the principles set out in paragraph 1.3 above.

Matters which are not material planning considerations and which, therefore, cannot be taken into account include:

- Effect on property values;
- The character, identity or personal circumstances of the applicant or objectors;
- Boundary or property disputes;
- How the application affects a view (as opposed to the wider effect on public amenity);
-
- Land or property values;

- Moral or ethical issues or judgments;
- Weight of numbers of public opposition or support in itself - as opposed to relevant planning basis for such views;
- Political manifesto commitments.

9.7 Officers will ensure that the practice of seeking clarification when councillors' reasons are in doubt is always pursued and sub-committee chairs, before putting to the vote a proposition or amendment differing from the recommendation should expressly obtain clarification of reasons. If councillors differ as to choice of reasons, then that should itself be the subject of separate amendments. Reasons will be particularly important where officers' advice is strong. Officers will normally indicate where a decision is a close call and the recommendation is therefore on balance. In those circumstances you may simply take a different view of the balance. Where the officer view is unequivocal you need first to be clear in your own mind why you disagree. Officers are professional and experienced and while they are no less fallible than anyone else, their views should be properly considered. It's unreasonable and won't achieve what you want if you simply disagree and then expect officers to work out why. It's your decision and they must be your reasons.

9.8 Similarly, if your view is that a policy, such as green belt, for instance, shouldn't be applied, you need to have a clear reason for that, relevant to the way the policy is expressed. Officers can help with those sorts of issues if you are clear yourself what the problem is. On the other hand, if you are clear in your reasons and clear that they are proper planning reasons, that will make it very much easier for officers (or indeed, you yourself) to defend and explain them if they are challenged on appeal or by judicial review. Ideally there should be a partnership here. Officers are professionals; councillors have democratic accountability. But both have to follow the rules.

9.9 It is the role of the Committee Chair (or Vice Chair if substituting) to guide, manage and control the meeting so that procedures are properly followed, everyone gets a fair chance to have their say, the debate remains focused and relevant, proper standards are maintained and the process is as efficient as possible leading to a clear and rational decision. Councillors (and officers) should do everything possible to co-operate and assist with that. As part of that role, the Chair (or Vice-Chair if substituting) may request that a recorded vote is taken on a particular application for eg. if the application is particularly controversial, there is considerable public interest in the proposal or the decision would be contrary to the officer recommendation or the development plan. It is also the role of the Chair (or Vice Chair if substituting) to summarise and clarify the decision of the committee for the benefit of members of the public so that there is no doubt as to the outcome of the debate.

10. TRAINING

10.1 Making good, justifiable planning decisions is not something which can be done by instinct.

10.2 Before serving on any committee making planning decisions (whether as a full member or as a substitute) any councillor must have undergone satisfactory training, as referred to in this section, in both the procedural issues outlined in this protocol and in the basic principles of planning, so that you can understand the basis on which decisions need to be made and on which officers prepare reports. It will also help you to take a rational

approach to the issues discussed in 9.7 above. -This requirement will also apply to training required to refresh and update knowledge and understanding.

10.3 Suitable training will be provided sufficient to ensure that councillors who wish to be involved in planning decisions can do so, but you do need to make an effort to attend, since it is not possible to make arrangements which are totally convenient for everybody.

10.4 Groups must not nominate anyone for membership of any committee which will be making planning decisions unless that councillor has either undergone training or is prepared to do so before taking part in the relevant committee meetings. Councillors should also be prepared to attend annual updating training. It is necessary for groups to identify and select the appropriate number of members from their group who fulfill these conditions.

10.5 Annual updating training will be provided. It is necessary that, in order to continue to sit on a planning committee or subcommittee, you will take part in this refresher training.

11. ADVICE TO ALL COUNCILLORS

General

11.1 Any councillor, whether or not involved in decision making on planning issues, could benefit from reading this protocol as it may assist from time to time in explaining issues to constituents who are puzzled by the planning process. All councillors also need to understand how best to represent their constituents when not involved in the decision making process.

11.2 You may well be lobbied by individuals in favour of or opposed to any application, or, indeed, you may have views of your own as the local ward councillor. If so, those views should be expressed to officers. You should avoid lobbying or trying to persuade members of the decision making committee to come to a view beforehand. Doing so will only put at risk that member's ability to take part in the decision.

11.3 You should not, however, exert any improper pressure on officers to make a decision or recommendation contrary to their professional judgement. If you disagree with that judgement you can, of course, raise the issue with a more senior officer. Nor should you lobby members of the sub-committee - in particular make sure you avoid the temptation to seek the support of your ward or group colleagues on the planning sub-committees. Doing so could make any decision susceptible to challenge.

11.4 Please also note the advice on requesting site visits in section 8 which applies to all ward members.

11.5 Local ward councillors may attend site visits, but will not be able to carry out any lobbying on the merits of an application on such occasions.

11.6 Ward councillors may also attend the sub-committee meeting at which decisions are taken. If you do so, you should sit apart from the committee members, with those attending from the public. If you wish to speak on a particular application, you should do so only when specifically invited by the Chair and should act in accordance with the Public Speaking Protocol.

11.7 If you are unable to get to the meeting, then any views which you wish to express should be put in writing to the Planning Officer.

11.8 You should remember that officers have a duty to give impartial advice on planning applications and other planning matters and to make recommendations (or decisions on delegated matters) in the light of all the relevant planning issues using their professional judgement. Where there are disagreements between councillors and officers, these should be approached with mutual respect and while you may obviously express your disagreement, that should be on a rational basis and you should avoid personal criticism or abuse.

11.9 You will be informed when training in planning matters is being provided. While training is extremely important for councillors who will be making decisions, it is open to all and any councillor could benefit from the information which is provided.

Referring applications to committee

11.10 Under the officer delegation scheme, a ward member is able to refer for committee decision any application which would otherwise be determined by officers. Any such request must be made in writing and must specify their reasons for making the request which must reasonably relate to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 above to help you to formulate appropriate reasons in support of your request for referral to Committee). To be a valid request the Chair of the relevant committee or sub-committee must have confirmed that the ward member's reasons for making the request are acceptable. Requests should ideally be received before the earliest date for decision - i.e. three weeks after receipt of the application. However, requests received later than this will still be valid provided appropriate reasons are given in support of the request and the Chair is prepared to exercise his/her discretion to consider the late request.

11.11 Ward members who are also members of the committee (or substitutes) should remember that if, in your written request for referral of an application to committee, you express a strong opinion on the application which gives a clear impression that you have a closed mind as to the merits of the proposed development, you may well disqualify yourself from taking part in the decision.

Planning applications submitted by councillors and members of their families.

11.12 Planning applications that are submitted to the LPA by serving councillors, their close associates and relatives, can easily give rise to suspicions of impropriety. Nevertheless, it is perfectly legitimate for such applications to be submitted to the authority for determination. However, it is vital to ensure that these applications are handled in such a way that gives no grounds for accusations of bias or preferential treatment. Indeed, this should be the case with all applications.

11.13 The officer delegation scheme requires that all planning applications submitted by or on behalf of any elected member of the council (in their personal capacity) or any member of their family shall be referred to committee for decision.

11.14 A councillor who has submitted a planning application in their personal capacity will be considered to have a prejudicial interest in that application. You will also be considered to have a prejudicial interest in any application submitted by a member of your family or a

close associate. Accordingly, if you are a member of the planning committee (or sitting as a substitute), you should not take part in the decision making process relating to the application and must leave the room. You may, however, prior to leaving the room, take the opportunity to make a statement to the committee to explain and justify your proposal. As the applicant always addresses the committee last, you will have the opportunity to hear the planning officer's presentation and the representations of objectors and any other interested parties before making your statement and then leaving the room.

11.15 It is important to remember that councillors must not seek improperly to influence the decision on their application. Some councillors may therefore, in this situation, consider it unwise to make a statement to the committee and instead may prefer to rely on a third party or planning agent to make their case to the committee for them. However, councillors who do choose to make a statement to the committee personally should observe the same 3 minute time limit set out in the Public Speaking Protocol that applies to members of the public when addressing the committee.

11.16 This advice also applies to all councillors who are not members of the committee or acting as substitute but who choose to attend the committee at which their planning application (or that of their family member) is due to be determined.



CORPORATE GOVERNANCE & AUDIT COMMITTEE: 11 MAY 2012

Title of report: Proposed changes to the Council's Constitution

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Date signed off by <u>Director</u> & name Is it signed off by the Director of Resources? Is it signed off by the Acting Assistant Director - Legal & Governance?	David Smith, Director of Resources, 9 May 2012 No financial implications Yes – 8 May 2012
Cabinet member portfolio	Resources

Electoral wards affected: All

Ward Councillors consulted: N/A

Public or private: Public

1. Purpose of Report

To consider and recommend to Council approval of proposed amendments to the Council's Constitution.

2. Key Points

The Constitution requires that any changes to the Articles of the Constitution, the Council Procedure Rules and the Overview & Scrutiny Procedure Rules must be made by Council following a recommendation from the Corporate Governance & Audit Committee. This Committee is therefore asked to approve the following proposed amendments to the Articles & Procedure Rules set out below and recommend approval to Council. The proposed amendments referred to in paragraphs 21, 23 and 24 are not required by the Constitution to be considered by this Committee prior to consideration by Council. However, full details are included in this report in the interests of good governance and for completeness. The amendments set out in paragraph 22 and some of the proposed amendments referred to in paragraphs 23 & 24 are the responsibility of the Executive but details are again included for completeness. The proposed changes are shown underlined within this report and the appendices.

Proposed Changes

Council Procedure Rules (Appendix A)

1. 9. Presentation of Petitions by Members of the Council

- Include additional wording in CPR 9(1)

“Presentation of Petitions

- (1) Petitions on issues on which the Council has powers or duties or which affect the area of Kirklees may be presented by a Member or any member of the public to any meeting of the Council (except the Annual Council meeting or the Budget Meeting) or an appropriate Committee, sub-committee or Panel meeting.”

Reason – To provide an opportunity for members of the public to present petitions to Council personally.
To ensure consistency with CPR 10(1)

2. 10. Deputations

- Insert new paragraphs (4) and (5) into CPR 10 and renumber existing paragraphs (4) to (7) inclusive.

“Deputations which will not be received

- (4) A deputation will not be received if the Chief Executive considers that it includes references to the following:

- (a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.
 - (b) Information relating to complaints made under statutory provisions which have not been finally dealt with.
 - (c) Information concerning the merit of applications or other matters currently before the Council, Cabinet or a Committee, sub-committee, Panel or Officers for determination in respect of which the Council is under a duty to act quasi judicially.
 - (d) Information of a personal nature which is defamatory, offensive, frivolous, repetitive or vexatious.
- (5) Deputations with the sole purpose of promoting any company's or individual's own business interests or financial position will not be permitted."

Reason - For consistency with CPR 11(3) and to ensure that the process is not misused.

3. 11. Questions by Members of the Public at Council, Committee, Sub-Committee and Panel meetings

- Include additional wording in the fifth sentence of CPR 11(5)

"Time allowed for questions

- (5) The period allowed for the asking and answering of questions at any one meeting shall not exceed 15 minutes. Any Member of the Council may move an extension of this period should there be questions unanswered. Such a motion shall be moved and seconded and be put without discussion. At any one meeting no person may ask more than two questions and no more than two questions may be asked on behalf of one organisation. A questioner may also put one supplementary question to the Member for each original question asked. Any question which cannot be dealt with during public question time will be dealt with by a written answer."

Reason - For clarity and to reflect current practice.

4. 13. Procedure at Council Meetings in Relation to Reports and/or Minutes of Cabinet and Committees

- (2) Questions/comments on Cabinet Minutes

- Include additional wording in the first sentence of CPR 13(2)(ii).

"(ii) Prior to the start of questions to Cabinet Members, a Portfolio Holder may make a report, not exceeding 10 minutes in length, setting out his / her Portfolio Plan for the municipal year, or on progress against that Plan. All Cabinet Members will be required to make Council aware of

their Portfolio Plan at the start of the municipal year either verbally or in writing circulated to all Members and to report on progress against that Plan at least once in the municipal year.”

Reason - In the interests of the efficient running of Council meetings.

- Include additional wording at the end of CPR 13(2)(iii)

“(iii) Questions may be asked by any Member of any Cabinet Members whether on a specific matter contained within the minutes or any matter generally which is in the portfolio of the Cabinet Member. There is no restriction on the number of questions any Member may ask within the allotted time but each Member is only permitted to ask one question together with one supplementary question at any one time.”

Reason - For clarity and to reflect current practice.

- Include new paragraph (vii) into CPR 13(2)

“(vii) In circumstances where the Leader has no specific portfolio allocated to him/her the Agenda will provide that he/she heads the list of Cabinet Members for the purpose of Rule 13(2)(v). Once questions to the Leader have been completed he/she will fall to the bottom of the list and questions to Cabinet Members with specific portfolios will proceed in accordance with the provisions of Rule 13(2)(v).”

Reason - To ensure that an opportunity is provided for the Leader to be held to account in circumstances where no specific portfolio is allocated to him/her.

5. 14. Notices of Motion

- Amend CPR 14(1) as follows:

“Submission of Motions

- (1) Every notice of motion (with the exception of those proposed in accordance with Rules 15 and 19) shall be submitted in writing and delivered to the Assistant Director - Legal, Governance and Monitoring by 9.00 a.m. on the sixth working day before the date of the Council meeting. Each motion must be signed by not less than two Members of the Council.”

Reason - Administrative correction and to allow an additional hour of processing time to ensure that publication deadlines are met.

- Delete CPR 14(5) in its entirety and renumber CPR 14(6) to (13) (inclusive) accordingly.

Reason - Five Minute Motions serve no useful purpose as they provide no opportunity for constructive discussion or debate.

If deletion of CPR 14(5) is approved by Members, the following consequential amendments will be necessary:

- Delete existing CPR 5(2)(m) and replace with “To consider motions issued under Rule 14, if any, in the order which they have been received by the Assistant Director – Legal, Governance and Monitoring.”
- Delete the words “but not rule 14(5)” from CPR 5(3)(r)
- Delete the words “(with the exception of Rule 14(5))” from CPR 18(6)
- Delete the words “and for motions made under Rule 14(5)” from CPR 18(12)
- Delete the words “Except as provided in Rule 14(5)” from CPR 18(15)

Reason - All consequential amendments

- Amend CPR 14(10) as follows:

“Receipt of Amendments

- (10) Any proposed amendment to a motion which has been included in the summons for a meeting, shall be delivered to the Assistant Director - Legal, Governance and Monitoring in accordance with the following timescales:-
- (a) by 10.00am on the day of Council if the meeting is to start at 5.00 p.m.
or
- (b) by 2.00 p.m. on the day before a Council meeting which is to start in a morning”

Reason - To allow additional processing time to ensure that amendments can be checked for legal validity and that changes can be made if necessary.

- Renumber all sub paragraphs of CPR 14 as necessary

Reason - Consequential amendments.

6. 18. Rules of Debate

- Amend CPR 18(4) to read as follows:

“List of Names of Those Wishing to Speak

- (4) During the debate Members should indicate their wish to speak by use of their individual voting console. The Mayor shall have absolute discretion to alter the order of those wishing to speak and may close the list at any time."

Reason - For clarity. The technology only allows the names of up to ten members to be displayed at any one time.

- Include additional wording at the end of CPR 18(15) as follows:

“Right of Reply

- (15) Except as provided in Rule 14(5) the proposer of a motion shall have the right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the proposer of the original motion shall have also the right to reply at the close of such debate on the amendment, and shall not otherwise speak on the amendment. Such a reply shall be confined to matters raised in the debate on the motion or amendment, as the case may be. The proposer of an amendment shall have no right to reply to the debate on the amendment. However where an amendment is carried the proposer of that amendment (now the substantive motion) shall have a right of reply at the close of the debate on any subsequent amendment.”

Reason - For clarity and to reflect current practice.

- Include the following additional wording as CPR 18(25)

“Mayor’s Casting Vote

- (25) The Mayor, or in their absence, the person presiding at the Council meeting, shall have a second or casting vote in the case of an equality of votes.”

Reason - For clarity.

7. 19. Motion to Make Statutory Calculations and to set Amounts of Council Tax

- Substitute the reference to “Director of Finance” in CPR 19(3) with “Director of Resources”

Reason - Housekeeping amendment.

8. 38. Appointment of Chairs and Deputy Chairs of Committees, Sub-Committees, and Panels and Appointments to Outside Bodies, etc.

- Amend CPR 38(9) as follows:

“(9) No Member of the Cabinet may be appointed as Chair of an Appeals Panel, the Licensing and Safety Committee, a Planning Area Sub-Committee, the Standards Committee, Overview and Scrutiny Committee, Overview and Scrutiny Management Committee or the Overview and Scrutiny Panels.”

Reason - Housekeeping amendment.

9. 42. Voting in Committees, Sub-Committees or Panels

- Amend CPR 42(2) to read:

“(2) The Chair at a Committee, Sub-Committee or Panel meeting shall have a second or casting vote in the case of an equality of votes.”

Reason - For clarity.

- Delete the words “to record how each Member present at the meeting intended or decided to vote” from CPR 42(5).

Reason - Superfluous wording and for clarity.

Articles of the Constitution

10. Article 6 – The Overview of Scrutiny Function

Article 6.2 Standing Scrutiny Panels

- Amend the table set out in Article 6.2.1 to provide that the statutory responsibility for scrutiny of crime and disorder issues is moved from the Well-being and Communities Scrutiny Panel to the Development and Environment Panel.

Reason - The Well-being and Communities Panel currently has a large number of strategic changes on its agenda.

- Amend the table set out in Article 6.2.1 to remove the reference to the Kirklees Partnership Executive from the scope of Resources Panel.

Reason – Not continuing.

- Amend Article 6.2.4 by substituting the words “Local Strategic Partnership body” with the words “partnership bodies”.

Reason - The Local Strategic Partnership no longer exists.

- Amend Article 6.5(e) by deleting the words “Local Strategic Partnership or” and replacing with the word “partnership”.

Reason - The Local Strategic Partnership no longer exists.

11. Article 12 – Officers

C. Statutory Officers

- Delete all of the provisions relating to the designation of a Statutory Scrutiny Officer.

Reason - The legislation that required this designation has been repealed by the Localism Act 2011.

12. Article 14 – Finance, Contracts & Legal Matters

14.4 Authentication of documents

- Delete the second paragraph of Article 14.4 and replace with the following wording:

“Any contracts (other than those relating to Land Assets as defined in the Council’s Contract Procedure Rules) with a value exceeding £80,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two duly authorised officers of the authority or made under the corporate common seal of the council attested by at least one officer (as provided in Article 14.5 below).

Subject to CPR 14.7 any contracts for the sale or acquisition of Land Assets and any other deeds or documents relating to Land Assets transactions shall as appropriate be signed by the Assistant Director – Legal, Governance and Monitoring or other person duly authorised by him/her or have the corporate common seal of the council affixed and attested in his/her presence or in the presence of a duly authorised Principal Legal Officer or Senior Legal Officer as provided in Article 14.5 below”.

Overview and Scrutiny Procedure Rules

13. 2. Terms of Reference and Functions of Committees and Panels

- 2.1.1(xii) delete the reference to the “Local Strategic Partnership Structures” and replace with “Partnership bodies”.

Reason - The Local Strategic Partnership no longer exists.

- 2.2.1(xi) delete the reference to “Local Strategic Partnership ” and replace with “Partnership bodies”.

Reason - The Local Strategic Partnership no longer exists.

- Replace the Note at the end of Section 2 with the following:

“NOTE: The role of the Well-being and Communities Panel will in addition include the specific responsibilities of the Council for the scrutiny of health. The role of the Development and Environment Panel will include the specific responsibilities of the Council for the scrutiny of crime and disorder issues.”

Reason - Consequential amendment.

14. 9. Work Programme

- 9.2 – delete the reference to “Local Strategic Partnership Structures” and replace with “Partnership bodies”.

Reason - The Local Strategic Partnership no longer exists.

15. 11. Policy review and development

- 11.1 – delete the reference to “Local Strategic Partnership Structures” and replace with “Partnership bodies”.

Reason - The Local Strategic Partnership no longer exists.

16. 12. Reports from Overview and Scrutiny Management Committee

- 12.2 – delete the reference to “Local Strategic Partnership Structures” and replace with “Partnership bodies”.

Reason - The Local Strategic Partnership no longer exists.

- Delete rules 12.3 to 12.7 inclusive and replace with the following:

“12.3 The Cabinet member (portfolio holder) / Cabinet / Cabinet Committee / partnership body / officers shall comment on any issues or factual inaccuracy within the report. Scrutiny shall consider the comments and make such changes to the report as it considers appropriate. The

Cabinet portfolio holder, in consultation with the relevant Director/ Asst Director(s) shall prepare a draft response to the scrutiny recommendations in the form of an action plan. For each recommendation that is accepted they shall state when and how it will be implemented. For those that are not accepted the relevant reasons must be set out. The draft response to the recommendations, set out in the form of an action plan, should be completed within three weeks of receipt of the Scrutiny report. During that time the portfolio holder, senior officers and the councillor who chaired the scrutiny investigation, may meet to discuss or clarify any aspects of the report.

12.4 The report, together with the portfolio holder's draft response will be submitted to Cabinet for debate and approval of the action plan response to the recommendations. Once the response to the report is approved the report is considered final and may be submitted to Council and /or any appropriate Committee or partnership body for information or debate , particularly on issues of difference.

12.5 The reports of Overview and Scrutiny referred to the Cabinet shall be given consideration as soon as practicable following the receipt of the draft portfolio response. If the Cabinet does not consider the report and reach a final agreement on the response to the recommendations within one month, the Overview and Scrutiny Management Committee will have the right to refer the report direct to Council without following the procedure set out above.

12.6 If any recommendations would require a departure from or a change to the agreed Budget and Policy Framework these must be considered by Council. (former section 12.5)

12.7 If a significant minority of a Scrutiny Management Committee/Panel cannot agree on the final recommendations of the report to the Cabinet/Cabinet Committee/Council as appropriate, then the report will indicate where the major differences lie. Minority reports will not be accepted."

Reason - To clarify the process.

17. 13. Making sure that Overview and Scrutiny reports are considered by the Cabinet.

- Delete rules 13.1 and 13.2

Reason – Incorporated within the changes to rule 12 set out above.

18. 15. Members and Officers giving account

- Include the following wording as rule 15.6:

“Where a Cabinet Member in response to a request from the Overview and Scrutiny Management Committee/Panels refuses to attend or fails to confirm that they will be present, the Leader will attend to explain the reasons for the Cabinet Member’s absence.”

Reason – To ensure that Cabinet Members can be held to account by Scrutiny.

19. 16. Attendance by others

- 16.2 – Replace the reference to “Town and Valley Committees” with “Area Committees”.

Reason – General housekeeping.

20. 18. Notice of Concern – Procedure

- 18.1 – Delete the final sentence and replace with:

“This must be sent to the Assistant Director – Legal, Governance and Monitoring, the main recipient and also for information to the Cabinet Member and, if appropriate, the Chair of Overview and Scrutiny Management Committee within 3 working days starting the day after the Cabinet/Cabinet Committee agenda is published and finishing at 5.30pm on the third day.”

Reason – For clarity.

- 18.2 – Delete and replace with:

“If possible all efforts should be made by a Lead member to consult with panel members before issuing a notice of concern. If not possible there must at least be consultation with the Chair of Overview and Scrutiny Management Committee.”

Reason – For clarity.

21. Section B of Part 3 of the Constitution – Responsibility for Council (Non Executive) Functions

- Replace all references to “Town & Valley Committees” with “Area Committees”

Reason - General housekeeping.

- Amend the Terms of Reference for the Corporate Governance & Audit Committee to include:

“To determine appointments of individuals to outside bodies (except school governing bodies) and revocation of such appointments”.
(Local choice function)

“To determine nominations for charitable trustees in cases where Area Committees fail to reach agreement”.

- Include details of Membership and Terms of Reference of the Employee Relations Sub-Committee as follows:

“Employee Relations Sub-Committee
(Sub-Committee of the Personnel Committee)

Membership

8 members of the Council on a ratio of 3:3:2.

Quorum

3 members (providing that these are not all from the same political group)

Terms of Reference

Delegated responsibility for:

1. Following a referral from the Assistant Director Support Services, to review decisions of an Officer Appeal Panel relating to employment matters in situations where it is alleged that:

(a) The findings of an Officer Appeal Panel are based on a judgement that is considered perverse ie the rationale for the decision of the panel is not supported by the evidence submitted and there is evidence that is contrary to the findings; or

(b) Due process has not been followed.

2. Following the review, to make one of the following recommendations:

(a) To confirm that the process followed by the panel and/or the judgement reached by the panel was appropriate and reasonable and that the final decision should stand;

(b) To determine that the process followed by the panel and/or the judgement reached by the panel was not appropriate and that either:

(i) The panel should reconsider its findings in the light of the comments of the Sub Committee; or

(ii) A new Officer Appeal Panel should be convened to re-hear the appeal.

(c) To determine whether the process followed and/or judgement of the original service hearing was inappropriate and/or unreasonable and whether this had been taken into consideration by the Officer Appeal Panel and, if so:

(i) To ask the panel to reconsider the case taking these views into account; or

(ii) If feasible, ask for the case to be re-investigated/re-heard with a new commissioning manager etc.

3. To hear disputes that have previously been presented to the Central Negotiating Team and which result in either or both parties disagreeing with the outcome.

Reason - General housekeeping. Changes approved by the Personnel Committee on 27 October 2011

22. Section C of part 3 of the Constitution – Responsibility for Executive Functions

Delegations

- Replace the Terms of Reference for the Cabinet Committee – Local Issues with the following:
 - “(i) To consider and ultimately determine whether to uphold or overrule objections to the establishment of pedestrian crossings, the installation of road humps and other traffic calming measures, the making of speed limit orders, traffic regulation orders or on-street or off-street parking places orders;
 - (ii) To consider all highways petitions including those referred for consideration and/or decision from Council following a Council debate;
 - (iii) To consider reports on disposals of Council assets, with a capital value not exceeding £500,000, that have previously been approved by officers;
 - (iv) To consider and determine requests for the alleygating of footpaths under section 129A to 129G of the Highways Act 1980.”

Reason - General housekeeping. Changes previously approved by the Leader.

23. Section F of Part 3 of the Constitution – Scheme of Delegation to Officers

- Amend the delegated powers of the Director of Resources in relation to Section E. Governance & Democratic Services Matters to include:

“Without prejudice to the generality of the above, such functions and responsibilities referred to in E1 and E2 above include but are not limited to :

- a) The determination (in consultation with Group Business Managers) of nominations to outside bodies in circumstances where the Council or, in default, the Corporate Governance & Audit Committee have agreed in principle to nominate representatives and the political ratios.
- b) The acceptance of nominations for charitable trustees agreed by Area Committees.

All such nominations will be reported for information to the Corporate Governance & Audit Committee.”

24. Section H of Part 3 of the Constitution – Boards of Council Officers

- Delete the wording “In 2011/12, the four main Officer working groups that report in to the Director Group and Management Board are set out below” from the third paragraph and replace with “Director Group and Management Board are supported by such panels, comprising individual directors and assistant directors, as are necessary to discharge the business of these groups. The panels include a focus on the achievement of savings across the whole budget, people management, organisational development and communications.”
- Delete the details of the four officer working groups currently set out in (i) to (iv) inclusive.

Reason – To allow for greater flexibility.

25. Implications for the Council

It is essential that the Council's Constitution is regularly reviewed and updated to ensure that it reflects legislative changes, remains fit for purpose and to enable Council meetings to be conducted in a fair, businesslike and effective manner. Failure to do so could lead to unnecessary procedural delays, legal challenges and less transparency in the Council's democratic process.

26. Consultees and their Opinions

Various officers in the Legal, Governance and Monitoring Service have been involved in discussions regarding these proposed revisions.

27. Officer recommendations & reasons

That Corporate Governance & Audit Committee approve the proposed changes referred to in this report (save for those that are the responsibility of the Executive) and recommend approval of the amendments to the Annual Council meeting.

28. Cabinet portfolio holder recommendation

Not applicable

29. Next Steps

If approved by this Committee, the proposed amendments will be referred to the Annual Council meeting on 23 May 2012 for formal approval.

30. Contact Officer & relevant papers

Vanessa Redfern
Assistant Director – Legal, Governance & Monitoring

Tel: 01484 221720
Internal: 860 1720
Email: vanessa.redfern@kirklees.gov.uk

Background Papers:

Kirklees Council's Constitution

APPENDIX A

COUNCIL PROCEDURE RULES (Approved by Annual Council on.....)

(A) Meetings of the Council

1. Annual Meeting of the Council

(1) 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 take place in May. Within those limits the date, time and venue may be proposed by the Corporate Governance and Audit Committee and will be determined by the Council.

At the Annual Meeting the agenda will be as follows:

CIVIC AND PROCEDURAL

- (a) choose a person to preside if the Mayor and Deputy Mayor are absent;
- (b) elect the Mayor;
- (c) appoint the Deputy Mayor;
- (d) approve as a correct record the Minutes of the previous meeting of the Council;
- (e) receive any announcements from the Mayor and the Chief Executive
- (f) following a local election (other than a bye-election) receive the report of the Chief Executive upon:
 - a) The result of the elections of Councillors to the Wards of the Council
 - b) The acceptance of office of Councillors elected

ELECTION OF THE EXECUTIVE

- (g) elect the Leader of the Council (as necessary);
- (h) agree the number of Members to be appointed to the Cabinet, appoint those Members, determine their portfolios and appoint one Member to be Deputy Leader;

CONSTITUTIONAL BUSINESS

- (i) appoint, in accordance with paragraph (2) of this Rule the Overview and Scrutiny Management Committee, the Standards 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, of this Constitution);

- (j) agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree (as set out in Part 3 of this Constitution);
- (k) approve a programme of ordinary meetings of the Council for the year; and
- (l) consider any business set out in the notice convening the meeting.

(2) Selection of Councillors on Committees

At the Annual Meeting, the Council will:

- (i) decide the size and terms of reference for those Committees to be established for the municipal year;
- (ii) decide, when relevant, the allocation of seats and substitutes to political groups in accordance with the political balance rules;
- (iii) receive nominations from Group Business Managers of Councillors to serve on each Committee
- (iv) to determine representation on outside bodies and where appropriate political ratios
- (v) elect Chairs and appoint Deputy Chairs (where appropriate) of the Council's Committees for the ensuing municipal year. If the Council does not make these appointments, Committees may appoint their own Chair and Deputy Chair (where appropriate) subject to confirmation at the next meeting of the Council
- (vi) appoint to those Committees and outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet.

2. Time and Place of Ordinary and Additional Meetings and Notice of and Summons to Meetings

Dates of Council Meetings

- (1) All meetings of the council, with the exception of any called as Extraordinary Meetings, shall be held on dates fixed by the Council at the Annual Meeting on the recommendation of the Corporate Governance and Audit Committee

Extraordinary Meetings

- (2) Those listed below may request the Assistant Director - Legal, Governance and Monitoring to call Council meetings in addition to ordinary meetings:
 - (a) the Council by resolution;

- (b) the Mayor, following consultation with the Chief Executive or following a written requisition signed by five Members of the Council;
- (c) the Chief Executive, the monitoring officer and section 151 officer;
- (d) 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; or

Venue and Start Time

- (3) All ordinary meetings of the Council will be held at 5.00 p.m. in the Town Hall, Huddersfield, or at such other times and places as may be agreed in respect of particular meetings by the Mayor and the Leader of the Council or on the recommendation of the Corporate Governance and Audit Committee.

Council Summons

- (4) The date, time and venue for each Council meeting will be shown in the summons for the meeting which will be issued by the Assistant Director - Legal, Governance and Monitoring at least 5 clear days before a meeting. The summons will specify the business to be transacted and will be accompanied by reports where appropriate.

Chair of Meeting

- (5) Any power or duty of the Mayor in relation to the conduct of a meeting shall be exercised by the Deputy Mayor or in their absence the person elected to preside at the meeting.

3. Budget Meeting

The Council may specify that one meeting will solely be the Council's budget meeting. At that meeting the only items will be to agree the budget, the capital programme and the level of Council tax for the following financial year, together with any issues connected with the budget and anything else which the Mayor in consultation with the Chief Executive considers appropriate for inclusion.

4. Quorum of Council

- (1) The quorum for a Council meeting shall be one quarter of the total number of the Members of the Council.
- (2) If there is not a quorum at a meeting, then consideration of any items of business not dealt with shall be adjourned to a date and time to be chosen by the Mayor at the time when the meeting is adjourned **or** to the next meeting of the Council.

5. Order of Business

- (1) There shall be two types of ordinary meeting of the Council, one which focuses on **Holding the Executive to Account** and one which focuses on Key Discussions. The designation of each Council meeting shall be set (and published) at the start of the municipal year by the Chief Executive in consultation with the Group Leaders, but may be changed during the course of the year by the Chief Executive in consultation with the Group Leaders if it is considered necessary for the efficient operation of the Council, provided that no less than four ordinary meetings are designated as Holding the Executive to Account. The content and running order of the business to be transacted at each ordinary meeting of Council may be altered in advance by the Chief Executive in consultation with the Mayor and Group Leaders if it is considered necessary or appropriate for the efficient operation of the Council.

The following items shall be included in all ordinary meetings of the Council in the order shown:

PROCEDURAL

- a) To choose a person to preside if the Mayor and Deputy Mayor are absent
- b) Announcements by the Mayor or the Chief Executive
- c) To receive apologies
- d) To approve as a correct record and sign the Minutes of the previous meeting of the Council
- e) To receive declarations of interest

PUBLIC

- f) To receive petitions (if any) and deputations (if any) pursuant to Rules 9 and 10
- g) To answer questions by members of the public (if any) asked under Rule 11

DECISION MAKING

- h) To deal with any matters expressly referred by Cabinet or a Committee to Council for approval

CABINET AND COMMITTEE

- i) To deal with written questions by members to Cabinet members under Rule 12
- (2) In addition to those items at (1) of this Rule, the following items shall be included in meetings designated as **Holding the Executive to Account** meetings (provided that there is sufficient such business at any one meeting), and such business shall follow on from that set out in (1) of this Rule as follows:

CABINET AND COMMITTEES

- j) To deal with written questions by Members to the following under Rule 12:
- Chairs of Committees
 - Spokespersons of Joint Authorities (as defined at Rule 13)
- k) To hear reports from Cabinet members in accordance with Rule 13
- l) To deal with questions to Cabinet members generally, or in relation to minutes of Cabinet put to Council for information or to hear statements from Cabinet members in accordance with Rule 13

m) →

To consider motions issued under Rule 14, if any, in the order which they have been received by the Assistant Director – Legal, Governance and Monitoring. **GENERAL**

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To consider five minute motions issued under Rule 14 (5), if any, in the order which they have been received by the Assistant Director - Legal, Governance and Monitoring

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- n) Other matters for consideration by Council including reports back on Resolutions from previous Council meetings and action regarding any deputations or petitions received by Council
- o) To deal with any business expressly required by statute to be dealt with by the Council
- (3) In addition to those items at (1) of this Rule, the following items shall be included in meetings designated as **Key Discussion Meetings** (provided that there is sufficient such business at any one meeting) and such business shall follow on from that set out in (1) of this Rule as follows:

KEY ISSUES

- p) To receive presentations and/or reports on key issues and debate the same in accordance with Rule 18 (23).

OVERVIEW & SCRUTINY

- q) To receive reports from Overview & Scrutiny Management Committee and its panels and to hold a debate in accordance with Rule (18 (22))

MEMBER MOTIONS

- r) To consider motions issued under Rule 14, if any, in the order which they have been received by the Assistant Director – Legal, Governance and Monitoring.

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GENERAL

- s) Other matters for consideration by Council including reports back on Resolutions from previous Council meetings and action regarding any deputations or petitions received by Council.

- t) To deal with any business expressly required by statute to be dealt with by the Council
- (4) The order of items (f) to (n) or (o) (as appropriate) may be changed or any of the items omitted at any one meeting:
 - a) by the meeting by means of a motion passed without discussion;
 - b) by the Chief Executive in consultation with the Mayor
- (5) Any discussion falling within (p) above shall begin at 6:00 pm irrespective of whether the business before it on the agenda has concluded, that other business shall resume once the key discussion issue is complete.

6. Limitation of Business

The items of business for consideration at the Council meeting will be limited to those set out in the agenda for the meeting, with the exception of:-

- (a) items of business required by these Rules to be dealt with at the meeting or
- (b) items of business for which the Mayor and Chief Executive shall have prior notice and which the Mayor in consultation with the Chief Executive considers appropriate for discussion at the meeting.

7. Minutes

Correct Record

- (1) The Mayor shall put the motion "that the Minutes of the previous meeting or meetings be approved and signed as a correct record."

Accuracy

- (2) No discussion shall take place on those Minutes except on their accuracy, and any questions on their accuracy shall be raised by motion. After any questions on the Minutes have been dealt with the Mayor shall sign the Minutes.

Submission to Council

- (3) The Minutes of each Council meeting (including extraordinary Council meetings convened in accordance with paragraph 3 of Schedule 12 to the Local Government Act 1972) shall be presented to the next scheduled Council meeting for approval.

8. Announcements by the Mayor, Leader of the Council, Cabinet Members and Chief Executive

- (1) No discussion shall take place on any announcement made by the Mayor or

Chief Executive.

- (2) Any Member may propose that the subject matter of any announcement be referred to Cabinet or an appropriate Committee, Sub-Committee, or Panel and such a motion, on being seconded, shall be put to the vote immediately.

9. Presentation of Petitions by Members of the Council

Presentation of Petitions

- (1) Petitions on issues on which the Council has powers or duties or which affect the area of Kirklees may be presented by a Member [or any member of the public](#) to any meeting of the Council (except the Annual Council meeting [or the Budget Meeting](#)) or an appropriate Committee, Sub-Committee or Panel meeting.
- (2) When a petition is received at a Council meeting no discussion shall take place on the item.

Referral of Subject Matter

- (3) The Mayor may direct that the subject matter of a petition be referred to an appropriate Assistant Director for investigation and report to Cabinet or an appropriate Committee.

10. Deputations

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Receiving of Deputations

- (1) Deputations on issues on which the Council has powers or duties or which affect the area of Kirklees may be received at any meeting of the Council (except the Annual Meeting or the Budget Meeting) or at any meeting of an appropriate Committee, or Sub-Committee. The Mayor/Chair in consultation with the Chief Executive shall have discretion to decide whether or not to hear the deputation.
- (2) Those wishing to make a deputation to the Council should give notice 24 hours prior to the start of the meeting to the Assistant Director – Legal, Governance and Monitoring indicating their intention to make the deputation and an outline of the substance of it.
- (3) The Mayor shall have the discretion to hear a deputation for which the appropriate notice has not been given. The Mayor shall also have the discretion to limit the number of deputations which may be received at an Ordinary Council meeting together with the time allowed for each deputation, particularly in relation to deputations concerning the same subject matter.

- (4) [A deputation will not be received if the Chief Executive considers that it includes references to the following:](#)

- (a) [Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.](#)
- (b) [Information relating to complaints made under statutory provisions which](#)

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- have not been finally dealt with.
- (c) Information concerning the merit of applications or other matters currently before the Council, Cabinet or a Committee, Sub-committee, Panel or Officers for determination in respect of which the Council is under a duty to act quasi judicially.
- (d) Information of a personal nature or which is defamatory, offensive, frivolous, repetitive or vexatious.
- (5) Deputations with the sole or predominant purpose of promoting any company's or individual's own business interests or financial position will not be permitted.

Size of Deputation and Speech

- (6) The deputation shall not exceed five persons. Only one person shall speak, and the speech shall not exceed five minutes. Deleted: 4
- (7) When a deputation is received at a Council meeting, no discussion shall take place on the item but the relevant Cabinet Member shall respond to the deputation. The Cabinet Member's response shall not exceed five minutes. Deleted: 5
- (8) The Mayor shall have the discretion to allow any other Member of the Council to respond to a deputation in exceptional circumstances. For example, in order to respond to personal attacks made during the course of a deputation. Such response shall not exceed five minutes. Deleted: 6

Referral of Subject Matter

- (9) The Mayor may direct that the subject matter of a deputation be referred to an appropriate Assistant Director for investigation and report to Cabinet or an appropriate Committee. Deleted: 7

11. Questions by Members of the Public at Council, Committee, Sub-Committee and Panel meetings

Who Can Ask A Question?

- (1) At a Council meeting any Member of the public resident in Kirklees may subject to the provisions of this Rule ask the Mayor, the Leader, any Members of Cabinet, any Chairs of a Committee or any joint authority spokesperson a question on any issue which comes within that individual's area of responsibility and which affects the area of Kirklees. At any committee, sub-committee or panel meeting, any such Member of the public may similarly ask the Chair of that body a question on any issue over which that body has any powers or duties.

When Questions Cannot Be Asked

- (2) Questions may not be asked:-
- (a) At the Annual Council Meeting

- (b) At the Budget Meeting
- (c) During the period from the announcement of a General Election to polling day (inclusive) and
- (d) During the period from the publication of the notice of ordinary elections for the Council to polling day (inclusive).

Questions Which Will Not Be Answered

- (3) Questions will not be answered if the Chief Executive considers that they include references to the following:-
 - (a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.
 - (b) Questions relating to complaints made under statutory provisions which have not been finally dealt with.
 - (c) Questions about the merit of applications or other matters currently before the Council, Cabinet or a Committee, Sub-Committee, Panel or Officers for determination in respect of which the Council is under a duty to act quasi judicially.
 - (d) Questions of a personal nature or which are defamatory, offensive, frivolous, repetitive or vexatious.

Questions To Be Within Terms of Reference

- (4) The Mayor/Chair or Leader may decline to answer a proposed question if in his or her opinion it is not within the terms of reference of the Cabinet, Committee, Sub-Committee or Panel concerned or is not relevant to the functions of the Cabinet, Committee, Sub-Committee or Panel concerned.

Time Allowed for Questions

- (5) The period allowed for the asking and answering of questions at any one meeting shall not exceed 15 minutes. Any Member of the Council may move an extension of this period should there be questions unanswered. Such a motion shall be moved and seconded and be put without discussion. At any one meeting no person may ask more than two questions and no more than two questions may be asked on behalf of one organisation. A questioner may also put one supplementary question to the Member [for each original question asked](#). Any question which cannot be dealt with during public question time will be dealt with by a written answer.

Answers to Questions

- (6) The Member to whom the question has been put may nominate another Member to answer (if that Member agrees).

The Member to whom the question has been put may not refuse to answer the question.

An answer may take the form of:

- (a) a direct oral answer; or
- (b) a reference to a publication, where the desired information is contained in a publication of the Council, the Cabinet or a Committee, Sub-Committee or Panel
- (c) a written answer where the reply to the question cannot conveniently be given orally.

Recording in Minutes

- (7) The Assistant Director - Legal, Governance and Monitoring shall record in the Minutes of the meeting the question(s) and the name of the respondent.

Questions Ruled Out of Order

- (8) If the Mayor is of the opinion that the question is of a personal nature, or that in the interests of the Council it is undesirable or is otherwise out of order, he or she shall not allow the question to be put. This right of refusal also applies to the Chair at a Committee, Sub-Committee or Panel meeting.

Referral of Subject Matter

- (9) In the case of questions presented to Council meetings there shall be no discussion on the question or the answer but a Member may propose that the subject matter of the question be placed on the Agenda for the next ordinary meeting of Cabinet or an appropriate Committee, Sub-Committee or Panel. Such a motion shall be moved and seconded and put without discussion.

Mayor's Discretion

- (10) The Mayor shall have the discretion not to allow public questions to be asked where they relate to the same subject matter as a deputation that has earlier been received at the same Ordinary Council meeting.

12. Written Questions by Members

(for procedure see Rule 5(1) (i) and 5(2) (j))

The following provisions shall apply to written questions by Members which must be received by the Assistant Director - Legal, Governance and Monitoring by 10.00 a.m. on the working day before the Council meeting.

- (1) Any member of Council may put a written question to the Leader of the Council, a member of the Cabinet, Chair of a Committee, Sub-Committee or Panel or a spokesperson of a Joint Committee or external body, as defined at Rule 13 (4).

- (2) The Mayor in consultation with the Chief Executive may determine that a question shall not be put where the question is substantially the same as a question put at a meeting of the Council within the preceding six months or the question appears defamatory, vexatious or requires the disclosure of confidential or exempt information.
- (3) Priority will be given to questions submitted previously to Cabinet or any Cabinet Committee which have not been answered at the relevant meeting due to time constraints.
- (4) Following consideration of any questions arising from (1) above, questions will be timetabled in the order which they are received by the Governance Team.
- (5) The Member to whom the question has been put shall give an oral answer at the Council meeting or may nominate another Member to answer if that Member agrees.
- (6) An answer may take the form of:
 - (a) a direct oral answer; or
 - (b) a reference to a publication of the Council which contains the desired information; or
 - (c) a written answer circulated to all Members within 7 days of the Council meeting.
- (7) The period allowed for written questions at any one meeting shall not exceed 30 minutes.
- (8) Where written questions are not addressed within the above timescale, then the question will be referred to the next relevant Cabinet / Committee / Sub-Committee / Panel meeting for reply. Any such questions will only be responded to if the Member who put forward the original question to the Council meeting is in attendance at the Cabinet / Committee / Sub-Committee / Panel meeting to ask the question or if the Member, within 7 days of the Council meeting, has requested a written response to his / her question. Written questions to spokespersons of Joint Authorities not dealt with within the above timescale will be answered by means of a written reply within 7 days of the meeting and be circulated to all Members of the Council.
- (9) When an answer to a written question has been given, the Member who asked it may ask one supplementary question relating to the same topic. Such a supplementary question must follow straight on from the Member's answer to the original question.
- (10) A written question must be relevant to the Terms of Reference or powers or duties of Cabinet or of the relevant Committee / Sub-Committee / Panel or affect the area of Kirklees.

- (11) The Assistant Director - Legal, Governance and Monitoring shall record in the Minutes of the meeting the question(s) and the name of the respondent. This will not include any supplementary question and the answer thereto. Supplementary questions and answers will be recorded and held by the Assistant Director - Legal, Governance and Monitoring until the time of the next Council meeting and made available for any Member who wishes to make a written record of a particular supplementary question and answer.

13. Procedure at Council Meetings in Relation to Reports and/or Minutes of Cabinet and Committees

- (1) *Minutes for Information / Reports which require approval*
- (i) Any matter expressly referred to Council by Cabinet or a Committee for determination shall be dealt with first.
 - (ii) Minutes of meetings of Cabinet and Committees shall be presented to Council meetings for information as a basis for questioning and comment. There shall be no need for any motion or vote to receive them. If the minutes are not considered due to lack of time they shall be deemed to have been presented to Council and will not, therefore, require resubmission.
- (2) *Questions / Comments on Cabinet Minutes*
- (i) The Minutes of Cabinet shall be submitted to Ordinary meetings of the Council followed by those of the Cabinet Committees in alphabetical order.
 - (ii) Prior to the start of questions to Cabinet Members, a Portfolio Holder may make a report, not exceeding 10 minutes in length, setting out his / her Portfolio Plan for the municipal year, or on progress against that Plan. All Cabinet Members will be required to make Council aware of their Portfolio Plan at the start of the municipal year either verbally or in writing circulated to all Members and to report on progress against that Plan at least once in the municipal year.
 - (iii) Questions may be asked by any Member of any Cabinet Members whether on a specific matter contained within the minutes or any matter generally which is in the portfolio of the Cabinet Member. There is no restriction on the number of questions any Member may ask within the allotted time but each Member is only permitted to ask one question together with one supplementary question at any one time.
 - (iv) Any member may, in addition to or instead of exercising their rights under Rule 13(2)(iii), comment once for a maximum of five minutes on any item within the Cabinet minutes presented to the meeting.
 - (v) The portfolios will appear in alphabetical order on the Agenda and questions will be addressed to the Cabinet Member whose portfolio is at the top of the list. Once questions to that Cabinet Member have been

completed, his or her portfolio will fall to the bottom of the list and questions will be addressed to the second, third etc., until the allotted time is completed whereupon the portfolio of the Cabinet Member being questioned will fall to the bottom of the list. At the next meeting the list will begin where it ended at the previous meeting, subject to the portfolio which is the subject of a progress report to the meeting being at the top of the list. During this item Members will have the opportunity to question Cabinet Members (and other Members appearing on the schedule) on meetings/discussions with external organisations. Any such question will be answered immediately in the manner provided for in Rule 13(4).

(vi) Subject to 5(i) of this Rule, Cabinet members will have a right of reply before questions are put to the Cabinet member next in alphabetical order.

(vii) In circumstances where the Leader has no specific portfolio allocated to him/her the Agenda will provide that he/she heads the list of Cabinet Members for the purposes of Rule 13(2)(v). Once questions to the Leader have been completed he/she will fall to the bottom of the list and questions to Cabinet Members with specific portfolios will proceed in accordance with the provisions of Rule 13(2)(v).

(3) *Questions / Comments on Committee Minutes*

- (i) The Minutes of other Committees submitted to Ordinary meetings of the Council shall be set out in alphabetical order.
- (ii) Any Member may comment on any item within the Committee minutes presented to the meeting
- (iii) Any Member may ask the chair of the relevant Committee a question upon any item within that Committee's Terms of Reference .
- (iv) The Chair of Cabinet, a Cabinet Committee or Cabinet Member or the Chair of a Committee may make a statement at the time that the report/Minutes is/are considered on any matter within the Terms of Reference or which is relevant to the function of Cabinet or that Committee, or which is a matter of importance.

(4) *Questions to Chairs of Sub-Committees / Panels and Spokespersons of Joint Committees and External Bodies*

- (i) Any Member may ask the Chair of the relevant Sub-Committee / Panel a question upon any item within the Terms of Reference of that Sub-Committee or Panel. Any Member may also ask a question of the relevant spokesperson for any of the Joint Committees or external bodies identified in Rule 13(4)(ii).
- (ii) For the purposes of this Rule, questions may be asked of spokespersons or representatives of the following Joint Committees or external bodies:

- (a) Kirklees Neighbourhood Housing
- (b) Kirklees Active Leisure
- (c) West Yorkshire Integrated Transport Authority
- (d) West Yorkshire Fire and Rescue Authority
- (e) West Yorkshire Police Authority
- (f) Joint Services Committee
- (g) Leeds City Region Leaders Board

(5) *Time Permitted*

- (i) The time permitted for consideration of comments and questions on Minutes to Cabinet members shall be a maximum of 60 minutes (such period to commence upon the conclusion of any Portfolio Holder's report made under Rule 13(2)(ii)) and for comments and questions to Chairs of Committees / Sub-Committees / Panels and representatives on outside bodies shall be a maximum of 30 minutes, provided that there is provision under Rule 5 for consideration of issues under Rule 13 at that meeting.

14. Notices of Motion

Submission of Motions

- (1) Every notice of motion (with the exception of those proposed in accordance with Rules 15 and 19) shall be submitted in writing and delivered to the Assistant Director - Legal, Governance and Monitoring by 9.00 a.m. on the sixth working day before the date of the Council meeting. Each motion must be signed by not less than two Members of the Council.

Recording of Motions

- (2) The Assistant Director - Legal, Governance and Monitoring will record the date and time of receipt of each motion in a register. This register shall be open to inspection to every Member of the Council.

Motions Which Have Revenue Effects

- (3) No Motion may have the effect of increasing the expenditure or reducing the revenue of the Council other than in the form of a reference to Cabinet or the appropriate Committee for consideration. (This provision does not apply for the setting of the Council Tax).

Relevance

- (4) Every motion shall be relevant to some matter in relation to which the Council has powers or duties and which affects the area of Kirklees.

Motions Not Accepted

- (5) If notice is given of any motion which, in the opinion of the Chief Executive is

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¶ (5) . Motions may be submitted which shall be dealt with as "Five Minute Motions" at the appropriate Council meeting. All the requirements of this Rule shall apply BUT at the meeting they will be considered as follows:¶

¶ (i) . The mover of the motion may speak for a maximum of three minutes¶

¶ (ii) . The relevant Cabinet member or representative of a body identified in Rule 13(4) may speak in response for a maximum of two minutes¶

¶ (iii) . Amendments are permitted but the mover and seconder shall not be permitted to speak to them¶

¶ (iv) . Before the motion is put to the vote, any Member may move that the motion be referred for further discussion at the next Council meeting. If the proposer agrees, it shall be put to a vote, and if the majority of members agree it will be considered as a priority at the next Council meeting where motions are considered.¶

¶ (v) . Following (i) and (ii) the Mayor will put the motion and any amendments to a vote without any discussion or debate¶

¶ A maximum of 30 minutes will be permitted at any meeting (subject to Rule 5) for consideration of Five Minute Motions.¶

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out of order, illegal, irregular or improper, the Chief Executive in consultation with the Mayor shall determine whether to accept its inclusion on the agenda. If a motion is not deemed acceptable the Chief Executive shall inform the Members who gave notice of the item.

Withdrawal

- (6) A Member who has given notice of motion may subsequently withdraw by writing to the Assistant Director - Legal, Governance and Monitoring

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Inclusion on Council Agenda

- (7) The Assistant Director - Legal, Governance and Monitoring shall set out in the agenda for each Council meeting the motions received and accepted in the order they were received. A Member may, at the time when a motion is delivered to the Assistant Director - Legal, Governance and Monitoring also give written notice of a request for the motion to be considered as a later item on the Council agenda.

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Moving of Motions

- (8) If a motion set out in the summons is not moved either by the Member who gave notice or by another Member on their behalf, it shall be treated as withdrawn and shall not be considered again without fresh notice. Alternatively, the Council may consent to postpone consideration of a motion to the next meeting.

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Receipt of Amendments

- (9) Any proposed amendment to a motion which has been included in the summons for a meeting, shall be delivered to the Assistant Director - Legal, Governance and Monitoring in accordance with the following timescales:-

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- (a) by 10.00am on the day of Council if the meeting is to start at 5.00 p.m.
or

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- (b) by 2.00 p.m. on the day before a Council meeting which is to start in a morning

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Motions on Identical Subjects

- (10) Where motions have been submitted to Council by different groups which relate to the same subject matter, then the movers shall be given the opportunity to agree a composite motion by 2.00 p.m. on the second working day before the date of the Council meeting. Notice of the composite shall be given to the Assistant Director - Legal, Governance and Monitoring who will notify the groups or individual Members to allow them to consider the proposals.

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Alterations to Motions and Amendments

- (11) Alterations to the wording of any motion or amendment may be made with the agreement of the Members moving and seconding the motion or

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amendment and with the meeting's consent' provided that when such alterations are agreed copies shall be made available. Only alterations which could be made as an amendment may be made.

- (12) With the exception of those moved under (5) of this Rule, no motion made under this Rule may be voted on unless there has been a debate.

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15. Motions and Amendments Which May Be Moved Without Notice

The following motions and amendments may be moved without notice:

- (1) Appointment of a Chair of the meeting at which the motion is moved.
- (2) Questioning the accuracy of the Minutes of the previous meeting of the Council.
- (3) To change the order of business in the Agenda.
- (4) Reference to Cabinet a Committee, Sub-Committee or Panel for further consideration.
- (5) Appointment of Cabinet or a Committee, or Member thereof arising from an item on the Agenda for the meeting.
- (6) That leave be given to withdraw a motion.
- (7) Motions and amendments in respect of urgent business under Rule 6.
- (8) That the Council proceed to the next business.
- (9) Motions under Rule 11(5) and 11(9) as to questions by electors at Council Meetings.
- (10) Amendments to any motion to approve the recommendations of Cabinet or a Committee.
- (11) That the question be now put.
- (12) Amendments to any Motion except amendments to notices of motion pursuant to Rule 14(8) and (9) or where notice is required under Rule 19.
- (13) That the debate be now adjourned.
- (14) That the Council do now adjourn.
- (15) Adoption of reports of Officers and any consequent resolutions.
- (16) Suspending these Rules in accordance with Rule 47.
- (17) Motion to exclude the public.

- (18) That a Member named under Rule 21 be not heard further or leave the meeting.
- (19) Giving consent or leave of the Council where the consent or leave of the Council is required by these Rules.
- (20) That the subject matter of an announcement made by the Mayor, or the Chief Executive under Rule 8 be referred to Cabinet or the appropriate Committee, Sub-Committee or Panel.
- (21) Motions under Rule 16 to continue a Council meeting after 9.00 p.m.
- (22) That the Council do now adjourn for discussion in smaller groups or in some other form.

16. Termination and Adjournment of Meeting

- (1) The Mayor, in consultation with the Chief Executive, may adjourn the meeting at any time.
- (2) A meeting of the Council (except the Annual Meeting) shall terminate at 9.00 p.m. unless a Member moves a motion that the meeting shall continue until (i) a later time (to be specified in the motion) or (ii) the conclusion of the business of the meeting. If the motion is seconded it shall be put to the meeting without comment.
- (3) If the motion is passed the meeting shall continue until the time specified or until the conclusion of the business of the meeting.
- (4) At 9.00 p.m. or such later time as the Council has agreed, the Mayor shall have discretion to grant an additional period of time to allow the item under consideration at that time to be concluded. Otherwise, the Mayor shall
 - a) allow no further points of order to be raised by any other Member.
 - b) interrupt the discussion of the item being considered by the meeting.
 - c) allow the proposer of the motion then under consideration a maximum of five minutes to reply to the debate unless he/she seeks leave to withdraw the motion.
 - d) put (without discussion) all of the questions necessary to dispose of that motion, unless the motion is withdrawn.
 - e) put (without discussion) all of the questions necessary to complete the consideration of any reports of Cabinet or any Committee, which are on the Agenda for the meeting, unless the Member appointed to preside in any such body (or a person on his/her behalf) indicates a wish to the contrary.
- (5) Any Motion given under Rule 14 not considered at an Ordinary Council meeting due to time constraints shall automatically be deemed withdrawn

unless the Assistant Director – Legal, Governance and Monitoring receives written confirmation (from the Member or Group who submitted the Motion) by 5pm on the fifth working day following that Council meeting that the Motion should be rolled over for consideration at the next Ordinary Council meeting.

- (6) Where proceedings are in the course of being wound up as above either at 9.00 p.m. or at a later time specifically agreed by the Council in accordance with a motion to that effect, the provisions of Rule 24(3) as to recorded votes shall not apply to any other matter considered by the Council in the course of such process
- (7) Following any processes outlined above, the Mayor shall finally close the meeting

17. Opposition Priority Business

- (1) This Rule applies where there is a majority group of members of the Council.
- (2) A minority group may require that any one item of business placed on the Agenda for any Council meeting be treated as opposition priority business. Such a requirement will only be considered if the Leader of that Group has submitted it in writing to the Chief Executive at least seven days before the Council meeting.
- (3) Where the Chief Executive receives more than one such request for a meeting, he/she shall decide which shall be selected so as to ensure that as far as is possible each minority group's share of opposition priority business reflects the relative size of those groups in the period from the last Annual Meeting of the Council.
- (4) Assistant Director - Legal, Governance and Monitoring shall indicate on the Agenda which item of business (if any) is to be treated as opposition priority business.
- (5) If consideration of an item of opposition priority business has not begun two hours after the start of the meeting it will be brought forward and considered immediately after the conclusion of the item of business then under discussion.

18. Rules of Debate

Motions and Amendments

- (1) A motion or amendment shall not be discussed unless it has been proposed and seconded. Unless notice of the motion or amendment has already been submitted in accordance with Rules 14 and 19, the Mayor may also require that it be written out and handed to him/her before it is discussed further or put to the meeting.
- (2) Members when seconding a motion or amendment may, if they then declare their intention to do so, reserve their right to speak until a later period in the debate on the motion or any amendment.

Seconders Speech

- (3) The Member seconding the motion or amendment and reserving the right to speak shall further indicate to the Mayor during the debate when he/she wishes to speak.

List of Names of Those Wishing to Speak

- (4) During the debate Members should indicate their wish to speak by use of their individual voting console. The Mayor shall have absolute discretion to alter the order of those wishing to speak and may close the list at any time. This provision does not apply to:

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- the Mayor
- the mover of the original motion
- the seconder of the original motion who has reserved the right to speak
- Members rising on a point of order or to provide a personal explanation
- persons moving motions and amendments under Rule 15

Addressing the Mayor

- (5) Unless the Mayor indicates otherwise, a Member must stand and address the Mayor while speaking. If two or more Members rise, the Mayor shall request one to speak and the other(s) to be seated. While a Member is speaking the other Members shall remain seated and be silent, unless rising on a point of order or in personal explanation.

Content and Length of Speeches

- (6) No speech of a Member of the Council in moving a motion to adopt the report of Cabinet or a Committee, or a motion under Rule 14, shall exceed 10 minutes and no other speech on any item before Council shall exceed 5 minutes, except:-

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- (a) by consent of the Council, or
- (b) the Leader's annual budget speech on the setting of the amounts of Council Tax.

Additional Time For Speeches

- (7) If the Mayor is of the opinion that the subject matter is of special importance or the Member requests additional time, the Mayor may permit the Member to continue for as long as the he/she allows.

When a Member May Speak Again - Adoption of Reports

- (8) On a motion to adopt the report of Cabinet or a Committee, a Member may speak once in general regarding the report. In addition, he/she may move or second or speak to one amendment only on each item in the report requiring a decision by the Council.

When a Member May Speak Again - Other Motions

- (9) On any other motion a Member shall speak only once whilst the motion is the subject of debate other than to move, second or speak to one amendment. If consideration of an amendment begins before a Member has had the opportunity to speak on the motion he/she may still exercise the right to speak on the motion.

Exceptions to Speaking Only Once

- (10) The requirement that a Member shall only speak once shall not prevent a Member from speaking:
- (i) in exercise of a right to reply,
 - (ii) on a point of order,
 - (iii) by way of personal explanation.

Amendments to Motions

- (11) An amendment shall be relevant to the motion and shall be either:
- (a) to refer a subject of debate to Cabinet or a Committee, for consideration or reconsideration;
 - (b) to leave out words;
 - (c) to leave out words and insert or add others;
 - (d) to insert or add words;

The omission, insertion or addition of words must not have the effect of blocking the motion which is under consideration by the Council. In addition the amendment must not have the effect of increasing the expenditure or reducing the revenue of the Council other than in the form of a referral to Cabinet or the relevant Committee for consideration. (This provision does not apply for the setting of the Council Tax).

Discussion of Amendments

- (12) Except where the voting procedure in Rule 24(6) applies, only one amendment may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of. However, the Mayor may permit two or more amendments to be discussed together if he/she considers that this would be helpful in the circumstances. Where two or more amendments are discussed together they

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shall be voted upon in the order in which they were moved.

Motion as Amended

- (13) If an amendment is lost, other amendments may be moved on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.

Withdrawal of Motion/Amendment

- (14) A motion or an amendment may be withdrawn by the proposer with the consent of the seconder and of the Council (which shall be decided upon without debate). No Member may speak on it after the proposer has been granted permission for its withdrawal.

Right of Reply

- (15) The proposer of a motion shall have the right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the proposer of the original motion shall have also the right to reply at the close of such debate on the amendment, and shall not otherwise speak on the amendment. Such a reply shall be confined to matters raised in the debate on the motion or amendment, as the case may be. The proposer of an amendment shall have no right to reply to the debate on the amendment. However where an amendment is carried the proposer of that amendment (now the substantive motion) shall have a right of reply at the close of the debate on any subsequent amendment.

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Motions which may be moved during debate

- (16) When a motion is under debate no other motion shall be moved except the following:-
- (a) to amend or withdraw the motion;
 - (b) to adjourn the meeting;
 - (c) to adjourn the debate;
 - (d) to proceed to the next business
 - (e) that the question be now put;
 - (f) that a Member be not further heard on the item of business before the Council;
 - (g) by the Mayor under Rule 21(2);
 - (h) to exclude the public;
 - (i) to withdraw or amend proceedings in accordance with paragraph (14) of this Rule.

Closure Motion

- (17) A Member may move without comment at the conclusion of a speech of another Member "That the question be now put", "That the debate be now adjourned" or "That the Council do now adjourn". If such a motion is seconded, the Mayor shall proceed as follows:-

- (a) On a motion "that the question be now put". The Mayor shall put this motion to the vote, unless he or she is of the opinion that the matter before the meeting has not been discussed sufficiently. If the motion is voted on and carried, the Mayor will allow the proposer of the original motion the right to reply under paragraph (15) above before putting the motion to the vote.
- (b) On a motion "to adjourn the debate or meeting". The Mayor shall put the motion for an adjournment to the vote without giving the mover of the original motion the right to reply, if he or she is of the opinion that the matter before the meeting has not been sufficiently discussed and cannot reasonably be discussed at that meeting.

Point of Order and Personal Explanation

- (18) A Member may rise on a point of order or in personal explanation, and shall be entitled to be heard immediately. A point of order shall relate only to an alleged breach of one of these Rules or the law and the Member shall specify the Rule or the law and the way in which it has been broken. A personal explanation shall be confined to some material part of a speech by the Member in the Council meeting which may appear to have been misunderstood in the present debate. A personal explanation may not be made in any other circumstances and in particular reference in a speech to another Member does not give that Member any right of personal explanation except in circumstances specified above.
- (19) The ruling of the Mayor on a point of order or on the admissibility of a personal explanation will be final.

Relaxation by the Mayor of Rules of Debate

- (20) Before the start of the debate on any item or motion the Mayor may determine, after consultation with the Chief Executive, that any of the requirements of this Rule shall be relaxed or waived during the debate on that item or motion.

Mayor's Authority

- (21) Whenever the Mayor rises during a debate, a Member who is standing and speaking shall sit down and the Council shall be silent. Afterwards, a Member may continue his or her speech unless the Mayor determines otherwise.
- (22) The time permitted for consideration of scrutiny reports under Rule 5 (3) (q) shall be a maximum of 60 minutes.
- (23) The time permitted for consideration of key issues shall be a maximum of 60 minutes
- (24) The time permitted under (22) and (23) of this Rule may be extended at the discretion of the Mayor in consultation with the Chief Executive.

Mayor's Casting Vote

(25) The Mayor, or in their absence, the person presiding at the Council meeting, shall have a second or casting vote in the case of an equality of votes.

19. Motion to Make Statutory Calculations and to set Amounts of Council Tax

Motion referred from Cabinet

- (1) At least 14 days before the date fixed for calculating the amounts required under Sections 32 to 36 of the Local Government Finance Act, 1992, and setting the amounts of Council Tax, the Chief Executive shall distribute to all Members of the Council the motion which has been proposed by the Cabinet for the Council, together with the draft Revenue Budget.

Motion distributed by Chair of Cabinet

- (2) If the Cabinet is not able to recommend a motion for the Council meeting, the Chair of Cabinet shall distribute to all Members of the Council at least 14 days in advance a motion to be presented to the Council meeting together with the draft Revenue Budget. This motion must be presented in the names of the Chair of the Cabinet and be supported by at least two other Members of the Council.

Amendments

- (3) An amendment to a motion proposed under paragraph (1) above, cannot be moved unless at least 7 days notice has been given in writing. Notice for such an amendment must be delivered to the Chief Executive and must specify the terms of the proposed amendment and the effect which it will have on the draft Revenue Budget.

Amendments to the budget motion cannot be accepted unless the Chief Executive is satisfied, on the advice of the Director of Resources, that the proposed amendment is financially sound and sustainable.

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Notification of Amendments

- (4) The Chief Executive shall inform the Leader of the Council and the Leader of each Opposition Group of any amendment received.

Submission of Further Motions and Amendments

- (5) If a motion or an amendment described in paragraph (1), (2) and (3) above is not carried at the Council meeting, further motions and amendments may be moved and seconded without notice for consideration and determination. Copies of these additional motions or amendments must be made available to each Member of the Council by the mover or seconder before any debate begins.

Limitations

- (6) The introduction of a new motion or amendment on the day of the Council meeting by a Political Group represented on the Council will not be permitted unless it gave notice of a motion or an amendment under paragraph (1), (2) and (3) above for inclusion on the summons for the meeting.

20. Motion affecting persons employed by the Council

If a question arises at a meeting of the Council on the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by the Council, it shall not be considered until the Council has determined whether or not the public and press shall be excluded.

21. Members Conduct

Member not be heard

- (1) If at a Council meeting any Member of the Council (in the opinion of the Mayor) persistently disregards the ruling of the Mayor or behaves irregularly, improperly, offensively or obstructs the business of the Council, the Mayor or any other Member may move "That the Member named be not heard further on the item of business before the Council". If the motion is seconded it shall be determined without discussion.

Member to leave the meeting

- (2) If the named Member continues his or her misconduct after a motion under paragraph (1) above has been carried, the Mayor shall either move "That the Member named do leave the meeting" (in which case the motion shall be put and determined without seconding or discussion), or adjourn the meeting for as long as he/she considers necessary.

General Disturbance

- (3) In the event of general disturbance which in the opinion of the Mayor renders the despatch of business impossible, the Mayor may decide to adjourn the meeting of the Council for as long as he/she considers necessary.

Mayor's Power to Adjourn

- (4) The provisions of this Rule do not limit the Mayor's power to adjourn the meeting at any time under Rule 16(1).

22. Disturbance by the Public

If members of the public interrupt the proceedings of any meeting, the Mayor shall warn them regarding their conduct. If they continue the interruption, the Mayor shall order their removal from the room. In case of general disturbance in any part of the room open to the public, the Mayor shall order that part to be cleared.

23. Previous Decisions and Motions

Motion to rescind a previous decision

- (1) No motion to rescind any decision taken within the preceding six months, and no motion or amendment with the same effect as one which has been rejected within the preceding six months, shall be proposed unless notice has been given in accordance with Rule 14 and has been signed by at least 10 Members of the Council. When any such motion or amendment has been disposed of by the Council, no similar motion may be proposed within a further period of six months.

Motion similar to the one previously rejected - exceptions

- (2) This Rule shall not apply to motions moved on a recommendation of Cabinet or a Committee, or to motions or amendments moved in accordance with Rule 19.

24. Voting

Show of Hands / Voting Equipment

- (1) Voting at Council meetings shall be as directed by the Mayor, either by a show of hands or by use of the electronic voting equipment unless a Ballot is agreed under paragraph (5). Where a recorded vote is taken under paragraphs (3) and (4) below, then the result of the vote shall be recorded by the process under paragraph (4) below.

Casting Vote

- (2) The Mayor, or in his/her absence the Deputy Mayor or the Chair at the time the vote is taken shall have a second or casting vote.

Recorded Vote

- (3) Any Member of the Council may request that a recorded vote be taken on an item to record how each Member present at the meeting intended or decided to vote. This request for a recorded vote will only be acceptable if it is supported by at least five other Members and is made before the Mayor has announced the result of the vote.

Ballots

- (4) The vote will take place by ballot at the request of any Member supported by at least five other Members. The Mayor/Chair will announce the numerical result of the ballot immediately the result is known.

Right to require individual votes to be recorded

- (5) At any meeting of the Council a Member may require that his or her decision in voting for or against or abstaining on an item on the Agenda be recorded in the Minutes of the meeting. This will be effective only if it is proposed by the Member before the Mayor has announced the result of the vote.

Voting on Appointments (including Mayor and Leader)

- (6) If there are more than two persons nominated for any appointment to be filled by the Council (including the election of the Mayor and the Leader) and there is no overall majority vote in favour of one person, the following procedure will apply. The name of the person who has received the least number of votes will be struck off the list of nominations and a fresh vote will be taken. This procedure will continue until a majority vote is given in support of one of the persons nominated.

25. Failure to Attend Meetings

- (1) In accordance with the Local Government Act 1972, if a Councillor attends no meetings of the Authority for six months the Chief Executive will tell the Council (unless the Member has been granted leave of absence by the Council). The Council will consider whether the absence was caused by some reason approved by them. If they are not satisfied about the cause of the failure, the Member will cease to be a Member of the Council.
- (2) For the purpose of this Rule a meeting of the Authority shall include:-
- * the Council, Cabinet or any Committee, Sub-Committee or Panel; or
 - * any Joint Committee or Joint Board which has Council functions delegated to it;
 - * any other body at which the Member represents the Council.

26. Personal or Prejudicial Interests of Members

- (1) Any Member who has a personal or prejudicial interest as defined by the Council's Code of Conduct in any matter shall comply with the requirements of that Code in respect of that interest. Those requirements may include:
- (a) declaration of the interest at meetings
 - (b) withdrawal from meetings while the issue concerned is under debate
 - (c) giving of written notice in the register kept by the Assistant Director - Legal, Governance and Monitoring on behalf of the Monitoring Officer.
- (2) When a Member has declared a prejudicial interest in a matter which is under consideration by the Council as part of a report of Cabinet or a Committee but which is not itself the subject of debate, the Member may, subject to the requirements of the Code of Conduct, remain in a meeting. In such circumstances the Mayor shall take a vote on the item before the Motion to approve the report is put before the Council.
- (3) A Member of the Council may declare in a register kept by the Assistant Director - Legal, Governance and Monitoring his/her membership of any organisation which requires details of its aims, duties or membership to be kept secret. This register will be open to public inspection during office hours.

27. Interpretation of these Rules

The ruling of the Mayor, after consultation with the Chief Executive, as to the construction or application of any of these Rules, or as to any proceedings of the Council shall be final.

(B) Members and Officers Etc.

28. Leaders and Business Managers

- (1) Members of the Council may be chosen by each of the political groups on the Council to act as the Leaders, Deputy Leaders and Business Managers of those groups.
- (2) The names of the Leader, Deputy Leader and Business Manager appointed by a political group represented on the Council shall be notified to the Chief Executive. The powers of a Leader shall also be exercisable by the Deputy Leader in the absence of the Leader.

29. Inspection of Documents

- (1) A Member of the Council may, for the purposes of his/her duty as a Councillor, on application to the Assistant Director – Legal, Governance and Monitoring, inspect any document which has been considered by the following subject to the provisions of the Local Government (Access to Information) Act 1985 and the Local Government Act 2000 being met in relation to items determined as exempt information:

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Council
a Committee
a Sub-Committee
a Panel

For the same purposes a Member may also request that he or she be supplied with a copy of the document. This will be provided if it is practicable.

- (2) Members should not inspect or request a copy of any document relating to a matter in which they have a prejudicial interest as defined in the Council's Code of Conduct. The Assistant Director – Legal, Governance and Monitoring may decline an application from a Member to inspect a document which would be protected by privilege arising from the relationship of solicitor and client in the event of legal proceedings.

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- (3) Copies of all reports and minutes associated with the following meetings shall be kept by the Assistant Director – Legal, Governance and Monitoring in accordance with the requirements of the Local Government (Access to Information) Act 1985 and the Local Government Act 2000.

Deleted: and

Council
a Committee
a Sub-Committee
a Panel

These shall be open to inspection by any Member of the Council during office hours subject to the provisions of those Acts being met in relation to items determined as exempt information.

- (4) The Chief Executive or any Officer of the Council may decline a Member's request to inspect a document, if it contains confidential information. The only exceptions to this rule will be if the Member has a legal right to inspect a document or has obtained the consent of the Cabinet (for matters within its remit) or the Corporate Governance & Audit Committee (for all other matters).
- (5) Rights in respect of documents under the control of the Cabinet are set out in Rules 24 and 25 of the Access to Information Procedure Rules.

30. Orders Regarding Works; Inspection of Lands, Premises, etc.

A Member of the Council shall not issue any order regarding any works which are being carried out by or on behalf of the Council. In addition he or she shall not claim, by virtue of being a Member of the Council, any right to inspect or to enter upon any land or premises which the Council has the power or duty to inspect or enter.

31. Representation of the Council on Other Bodies

If any Member of the Council is nominated or appointed by or on behalf of the Council to serve as a Member of another body, the appointment shall stand until the next Annual Meeting of the Council or until the first meeting thereafter of the Cabinet or Committee making the nomination or appointment unless

- (a) the constitution of the other body makes different provisions, or
- (b) the Council (or the Cabinet, in the case of nominations made by it) at any other time resolves otherwise.
- (c) the Member resigns from the outside body by the method required by the body or, if none, by notifying in writing to the Assistant Director - Legal, Governance and Monitoring

32. Interest of Officers in Contracts

The Assistant Director - Legal, Governance and Monitoring shall keep a register to record the details of any Officer of the Council who has given notice of a pecuniary interest in a contract as described by Section 117 of the Local Government Act 1972. This register shall be open to inspection by any Member of the Council during office hours.

33. (Left deliberately blank)

34. Confidentiality of Meetings and Recording of Proceedings

- (1) The Council's meetings will be held in public unless the Access to Information Procedure Rules permit the public to be excluded. Those Rules also deal with public access to documents.
- (2) Any person attending a meeting may take written notes of the proceedings. Accredited representatives of the media as determined by the Assistant Director – Legal, Governance and Monitoring may use sound and visual

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recording equipment and take still photographs for publication.

- (3) A Member or employee of the Council shall not disclose to any person any document or any matter contained in any document which is marked "Confidential" or "not for publication" except with the permission of the Council, Cabinet, Committee, Sub-Committee, or Panel which considered the item, or if the person concerned has a legal right to inspect the document.

(C) Relating To Committees, Sub-Committees, Panels Etc.

35. Appointment of Committees, Sub-Committees and Panels

- (1) The Council at its Annual Meeting will establish those Committees which are required by law and such other Committees as are deemed necessary to carry out the work of the Council during the municipal year. The Council may at any other time establish new Committees, which are considered necessary to carry out the work of the Council.
- (2) The Council subject to any statutory provision:-
 - (i) shall not appoint any Member of a Committee so as to hold office later than the next Annual Meeting of the Council;
 - (ii) may at any time dissolve a Committee, or alter its membership.
 - (iii) shall not appoint the Leader, the Deputy Leader of the Council or any Members of the Cabinet as members of the Overview and Scrutiny Committee or its Panels, or the Leader or more than one Member of the Cabinet as a Member of the Standards Committee.

Appointment of Sub-Committees, Panels etc.

- (3) At the first meeting of a Committee in the municipal year, it shall establish such Sub-Committees or Panels as are considered necessary. Committees subject to any statutory provision,
 - (i) shall not appoint any Member of a Sub-Committee or Panel so as to hold office later than the next Annual Meeting of the Council.
 - (ii) may at any time dissolve a Sub-Committee or Panel or alter its membership, and
 - (iii) may delegate to any such Sub-Committee or Panel any power or duty delegated to the Committee by the Council.
- (4) A Committee may establish other Sub-Committees or Panels at any time in the municipal year.

Membership of Committees, Sub-Committees, Panels etc.

- (5) The Members on each Committee, or Sub-Committee or Panel shall (so far as legally required) be selected by each of the Political Groups represented on the Council, on the basis of their proportional representation at the date that the Committee, or Sub-Committee, or Panel is appointed.

Proportional Representation of Political Groups not to apply

- (6) The Council may determine that proportional representation shall not apply to any Committee, and any Committee may make a similar determination with respect to any of its Sub-Committees or Panels subject to compliance with

the requirements of Section 17 of the Local Government and Housing Act 1989. In any event proportional representation is not required in respect of the Standards Committee.

Substitute Members

- (7) At the Annual Meeting of the Council a panel of substitute Members will be established, to be available to replace Members of Committees, and Sub-Committees, (except the Overview and Scrutiny Committee, the Overview and Scrutiny Panels, Area Committees and the Standards Committee) at each meeting during the municipal year as and when required. The names of those Members included on the panel of substitutes will be placed on every notice for a relevant Committee, or Sub-Committee meeting.

Changes to the Substitute Panel and Members of a Committee, Sub-Committee and Panel

- (8) The Business Manager to each Group shall provide the Assistant Director - Legal, Governance and Monitoring within nine days of notice of
- (i) any change(s) to the names of those Members included on the panel of substitutes approved by the Annual Council Meeting.
 - (ii) any change(s) to the membership of a Committee or Sub-Committee, which do not involve a member of that substitutes panel.

Notice of Substitutes cannot be revoked

- (9) After notice of a substitution has been given for a Committee, Sub-Committee, or Panel meeting it cannot be revoked. Once a Committee or Sub-Committee, or Panel has begun the Member who has been substituted will only be entitled to attend the meeting as an observer. If a Committee or Sub-Committee or Panel meeting is adjourned the change(s) in membership will stand for the purpose of the reconvened meeting.

Membership of a Sub-Committee or Panel to include persons who are not Members of the parent Committee

- (10) The membership of a Sub-Committee or Panel may include persons who are not Members of the Committee by which the Sub-Committee or Panel was appointed.
- (11) Except in cases required by law, or permitted by law and agreed by the appointing body, no co-opted member of any Committee, Sub-Committee or Panel shall be entitled to vote on any matter considered by it.

36. Observer Attendance by Councillors at Committees, Sub-Committees or Panels

- (1) Subject to paragraphs (3) and (4) below a Councillor who is not a Member of a Committee, Sub-Committee, or Panel may attend any meeting as an observer. That Councillor shall have the same speaking rights as any

Member of that Committee Sub-Committee or Panel. The Councillor cannot:-

- (a) speak on any item considered in the private session of the meeting.
 - (b) attend for any item of business if he or she has a prejudicial interest as defined in the Council's Code of Conduct ("the Code") unless attending for the sole purpose of making representations, answering questions or giving evidence relating to that business and members of the public are also allowed to attend the meeting for the same purpose (in accordance with paragraph 12(2) of the Code).
 - (c) attend for any item of business on the Committee, Sub-Committee or Panel agenda which personally relates to them as a Councillor or otherwise.
 - (d) remain in a meeting of the Committee, Sub-Committee, or Panel after receiving advice from the Assistant Director – Legal, Governance and Monitoring that he or she should be excluded from the meeting.
 - (e) retire with a Committee, Sub-Committee, or Panel which is exercising a quasi judicial or administrative function when it is considering its decision.
- (2) Any Member attending a meeting of a Committee, Sub-Committee, or Panel shall under the Agenda Item of "Membership of Committees, Sub-Committees etc." identify themselves as an observer.
- (3) Councillors who attend a Planning Committee or Sub-Committee but who:
- (a) Are not members of that Planning Committee or Sub-Committee; or
 - (b) Are members of that Planning Committee or Sub-Committee but who have indicated that they will not be voting on an application because, for example, they believe that they may have predetermined it or wish to make representations rather than participate in the determination of the application
- shall be entitled to speak once for a maximum of five minutes.
- (4) Councillors who have a prejudicial interest in a planning application and who attend a Planning Committee or Sub-Committee in accordance with the provisions of paragraph 12(2) of the Code shall be entitled to speak once for a maximum of three minutes.

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37. Attendance by Members of the Public - Permission to Speak

Any member of the public attending a meeting of the Council (with the exception of the Annual Meeting) a Committee, Sub-Committee, or Panel (or any other meeting open to the public) may, with the permission of the Mayor/Chair, speak at that meeting. That person shall not be permitted to remain in the meeting when consideration is being given to confidential or exempt information.

38. Appointment of Chairs and Deputy Chairs of Committees, Sub-Committees, and Panels and Appointments to Outside Bodies, etc.

- (1) At the Annual Meeting of the Council, the Council will -
 - (i) appoint the Chairs and if considered appropriate the Deputy Chairs of Committees. In default of such appointments by the Council, every Committee, shall be empowered to make the appointment subject to confirmation by the Council;
 - (ii) appoint the Members of Outside Bodies, except where membership is appointable by the Cabinet or a Committee, and
 - (iii) agree the dates of meetings of Committees, Sub-Committees, and Panels for the Municipal Year. The alteration of a date may be determined by the respective Chair in consultation with the Assistant Director - Legal, Governance and Monitoring provided that 7 days notice of the revised date can be given.
- (2) The Council may at any other time appoint the Chairs and if considered appropriate the Deputy Chairs of Committees, for the remainder of the Municipal Year.
- (3) At the first meeting of each Committee in the Municipal Year the Chair and if considered appropriate Deputy Chair of its Sub-Committees or Panels shall be appointed for that year.
- (4) Any Committee shall when appointing a Sub-Committee, or Panel under Rule 35(4), also appoint a Chair and if considered necessary a Deputy Chair.
- (5) In the absence of the Chair and Deputy Chair from a meeting, a Chair shall be chosen for the duration of that particular meeting or until the official Chair or Deputy (as recognised by Council) arrives. The Chair or Deputy Chair will then assume the Chair when the item under discussion at the time of his or her arrival has been dealt with.
- (6) The Chair and Deputy Chair of every Committee, Sub-Committee, or Panel other than the Standards Committee shall be a Member of the Council.
- (7) A Member of a Committee, Sub-Committee, or Panel may resign membership and the Chair or Deputy Chair of a Committee, Sub-Committee, Sub-Group, or Panel may resign office by giving notice in writing to the Chief Executive. Any such resignation shall take effect on the date of receipt of the notice.
- (8) The removal from office of the Chair or Deputy Chair of a Committee may only be agreed by the Council on the recommendation of the Corporate Governance & Audit Committee. The removal from Office of the Chair of Standards Committee and Overview and Scrutiny Committee may only be agreed by Council on the recommendation of that Committee. Only the Committee which appointed a Sub-Committee or Panel may remove the Chair or Deputy Chair of that Sub-Committee or Panel from office.

- (9) No Member of the Cabinet may be appointed as Chair of an Appeals Panel, the Licensing and Safety Committee, a Planning Area Sub-Committee, the Standards Committee, Overview and Scrutiny Committee, Overview and Scrutiny Management Committee or the Overview and Scrutiny Panels.

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39. Quorum of Committees, Management Boards, Sub-Committees and Panels

- (1) Except where ordered by the Council, or authorised by statute, business shall not be transacted at a meeting of any Committee, unless at least one third of the number of the body are present.
- (2) Except where ordered by the Council, or authorised by statute or by the Committee which has appointed it, business shall not be transacted at a meeting of any Sub-Committee or Panel unless at least one third of the number of the Sub-Committee or Panel are present.
- (3) If the Chair declares there is not a quorum present then the meeting will adjourn immediately. Remaining business will be considered at a date and time fixed by the Chair. If no such date is fixed the business will be considered at the next meeting.
- (4) Where a Committee or Sub-Committee sits to consider an appeal, only those Members who are eligible to attend shall count for the purpose of a quorum.
- (5) No quorum may be less than two Members.
- (6) Committees, Sub-Committees and Panels shall be entitled to meet and transact business prior to the appointment of Co-opted Members.
- (7) Co-opted Members of a Committee, Sub-Committee or Panel shall only be counted for the purposes of a quorum at a meeting, if the Committee, Sub-Committee or Panel has no delegated powers and can only make recommendations.
- (8) No meeting of the Standards Committee may proceed unless at least two Kirklees Members, one independent Member and (for Parish business only) at least one Parish Member are present.

40. Meetings of Committees, Sub-Committees and Panels and Agenda Papers

- (1) Every scheduled meeting of a Committee, Sub-Committee or Panel shall be summoned by the Assistant Director - Legal, Governance and Monitoring through the issue of a notice for the meeting where practical at least 7 days prior to the meeting. The items of business for consideration at the meeting will be set out in the Agenda for the meeting. No additional items of business will be allowed unless the Chair for the meeting determines that they are urgent.
- (2) The Leader of each Political Group (or in his/her absence the Deputy Leader of each Group) shall notify the Chief Executive, in writing, not less than 14 days before the date of the intended meeting to which the item should be submitted of any item(s) which he/she wishes to include on the Agenda of

any Committee, Sub-Committee or Panel of the Council. The notification shall include such information as is necessary to enable the Chief Executive to determine whether the subject matter requires consideration by the Committee, Sub-Committee or Panel. The Chief Executive shall determine the appropriate body to which the item shall be referred and notify the Group Leader (Deputy Group Leader) of the date of that meeting which shall be the next available meeting. Any item which, in the opinion of the Chief Executive is out of order, illegal, irregular or improper shall not be accepted and the decision of the Chief Executive shall be final.

- (3) The Chair (or Deputy Chair) of a Committee, Sub-Committee or Panel with the approval of the Leader of the Council, may instruct the Assistant Director – Legal, Governance and Monitoring to call a meeting of a Committee, Sub-Committee or Panel at any time.

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- (4) An additional meeting of a Committee, Sub-Committee or Panel can be summoned if the Assistant Director - Legal, Governance and Monitoring receives a request in writing from at least half of the Members of the Committee, Sub-Committee or Panel to do so. Assistant Director - Legal, Governance and Monitoring in consultation with the Chair may also summon a special meeting upon any emergency. The summons for such meetings shall set out the business for the meeting and no other items of business will be considered.

41. Procedure Rules to apply to Committees, Sub-Committees and Panels

Procedure Rules 9, 10, 11, 15 and 18 (except those parts which relate to speaking more than once) 20, 21, 22, 25, 26, 27 and 34 shall, with any necessary modifications, apply to meetings of Committees, Sub-Committees and Panels.

42. Voting in Committees, Sub-Committees or Panels

- (1) Voting at a meeting of a Committee, Sub-Committee or Panel shall be by a show of hands or by use of the electronic voting equipment, where appropriate. Alternatively the Committee, Sub-Committee or Panel may require the Assistant Director - Legal, Governance and Monitoring to take a vote by ballot on any motion or amendment which is put to the meeting.
- (2) The Chair at a Committee, Sub-Committee or Panel meeting shall have a second or casting vote in the case of an equality of votes.
- (3) If there are more than two persons nominated for any appointment to be filled and there is no overall majority in favour of one person the following procedure will apply. The name of the person (or persons, if equal) who has received the least number of votes will be struck off the list of nominations and a fresh vote will be taken. This procedure will continue until a majority vote is given in support of one of the persons nominated.
- (4) At any meeting of a Committee, Sub-Committee or Panel (including joint bodies etc.) a Member may require that his or her decision in voting for or against a question (or his or her abstention from voting) be recorded in the Minutes of the meeting. Such a requirement must be proposed by the

Member immediately after the vote is taken.

- (5) At any meeting of a Planning Committee or Sub-Committee, the Chair may propose that a recorded vote is taken on an item. This proposal for a recorded vote will only be effective if it is supported by at least two other Members of the Committee or Sub-Committee and is made before any votes have been cast.

Deleted: to record how each Member present at the meeting intended or decided to vote

43. Working Parties, etc.

- (1) Any Committee, Sub-Committee or Panel may establish a Working Party or Sub-Group (which may include Officers) to undertake a detailed study of any matter(s). A Working Party or Sub-Group shall not have delegated powers and shall not constitute a formal Sub-Committee.
- (2) The terms of reference for any Working Party or Sub-Group shall state their objectives and dates etc. for reporting on their findings.
- (3) The Chair (and Deputy Chair) of a Committee, Sub-Committee or Panel responsible for establishing a Working Party or Sub-Group if not appointed in their own right, shall be entitled to attend and speak at all meetings.

44. Reports to Council

- (1) The Chair may request the Assistant Director - Legal, Governance and Monitoring to include in the report of a Committee, a reference to any particular matters which were considered in the meeting.
- (2) In accordance with the Agenda for the Council meeting.
 - (a) The Chair of a Committee, (or in their absence any other Member of the Committee) shall propose a motion to seek the Council's approval on any matter expressly referred by the Committee, to Council for determination.
 - (b) The Mayor (or in his/her absence the Deputy Mayor or any other Member of the Council) shall propose a motion to seek the Council's approval to the receipt of any report of a meeting of Cabinet or any Committee.

45. Reports of Sub-Committees and Panels

A report of the proceedings of a Sub-Committee or Panel meeting shall be presented to the next convenient meeting of the parent Committee or Cabinet.

(D) Miscellaneous

46. Variation and Revocation of Procedure Rules

- (1) Any motion to add to, vary or revoke these or any other Procedure Rules shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.
- (2) Paragraph (1) of this Rule shall not apply to any review of Procedure Rules proposed at the Annual Meeting of the Council or to a specific recommendation by the Cabinet or a Committee to the Council to add to, vary or revoke any Procedure Rules.

47. Suspension of Procedure Rules

- (1) At any meeting a motion may be moved to suspend the use of any of the preceding Procedure Rules for any item(s) of business included on the Agenda for that meeting.
- (2) A motion to suspend Procedure Rules shall not be moved without notice unless at least one half of the Members of the Council, Committee, Sub-Committee or Panel are present.

48. Standards of Conduct in Public when representing the Council.

Members have an obligation when taking part in Council and Committee meetings etc, held in public to comply with the protocol on standards of conduct in public approved by the Standards Committee and incorporated in Part 5 of the Constitution.