

FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 6 – THE EXECUTIVE FUNCTIONS, RULES AND PROCEDURES

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PART 6. – THE EXECUTIVE FUNCTIONS, RULES AND PROCEDURES

PART 6.1 - EXECUTIVE FUNCTIONS

1. EXECUTIVE FUNCTIONS

1.1 Executive functions are exercised by:

- a) The Cabinet;
- b) Cabinet committees, if any;
- c) The Leader and other individual cabinet members;
- d) Officers, under delegated powers (Delegation to Officers, Part 8);
- e) Ward councillors, to the extent that the executive function is exercisable in relation to the ward for which the member is elected.

1.2 It is the responsibility of the Leader to decide on the delegation of executive functions and to maintain a written record of such delegations. Executive functions can be also delegated to other local authorities, other organisations and may be contracted out.

1.3 This scheme of delegation has been prepared by the Leader, in accordance with those provisions. The executive is responsible for initiating and developing policy, and taking decisions, within the Budget and Policy Framework, in respect of all the functions of the Council, other than those which, whether by law, or under this Constitution, cannot be the responsibility of the executive. Such functions are referred to in this Scheme as 'executive functions'.

1.4 Members of the executive

The members appointed to the executive, by the Leader, are set out in Annexe A to this part.

1.5 An outline of the responsibilities, included in each portfolio, is set out in Annexe B.

1.6 A full description of the policy areas and executive functions, included in each portfolio, is set out in Annexe C to this part. The Leader will determine any question arising, as to whether a policy area or executive function falls within a particular portfolio conclusively.

1.7 Annexe D to this part sets out the executive functions, which will be determined by the executive collectively.

1.8 In addition, the Leader has appointed a deputy leader of the Council to exercise the following powers and duties:

- a) Deputising for the Leader, in his absence;
- b) Chairing executive meetings in the absence of the Leader;
- c) Acting as the Council's spokesperson on all key corporate issues, consistent with the Council's overall Budget and Policy Framework, in the absence of the Leader;
- d) Holding, leading or assisting on any portfolio which the Leader may allocate.

1.9 No deputies will be appointed in respect of portfolio holders and, in their absence, their duties and responsibilities will be undertaken by the Leader and, in his/her absence, by the Deputy Leader or such other portfolio holder as the Leader may nominate.

1.10 Duties and responsibilities of individual portfolio holders

The duties and responsibilities of individual portfolio holders are to:

- a) Provide political leadership for the designated functions and services of the Council, set out in the allocated portfolio;
- b) Exercise any delegated powers, and make decisions, in respect of the relevant portfolio area, to the extent authorised to do so by the Leader, under this scheme of delegation;
- c) Initiate and promote policies and programmes in respect of the allocated portfolio, both within the Council and externally;
- d) Present and consult on the Council's policies, in respect of the allocated portfolio, with the public, both directly and through appropriate media;
- e) Engage with, and represent, the Council in appropriate local, regional and national groupings involved with the service areas set out in the allocated portfolio;
- f) Report to the executive, and the Council, on decisions made, actions taken and progress achieved within the allocated portfolio;
- g) Consult with, and report, as required, to the executive, the Council and the Overview and Scrutiny Committee, in respect of the portfolio;
- h) Commission and consider reports/briefs from appropriate officers, as required, for the efficient discharge of the portfolio holder's duties/responsibilities;

- i) Keep abreast of national best practice/new initiatives in the areas covered by the portfolio, to help ensure high local service standards and provision;
- j) Consider, and act on, performance data and reports from the executive and the Overview and Scrutiny Committee;
- k) Contribute to the corporate development of the Council's policies and objectives, through active engagement of, and participation in the executive;
- l) Work closely with the relevant senior officers of the Council to help ensure the efficient management of the authority, to uphold high standards of performance and conduct, and to enable officers to exercise any powers delegated to them;
- m) Attend meetings of the Overview and Scrutiny Committee, as and when required.

1.11 Non-key decisions – delegations to portfolio holders

Each Cabinet member is authorised to take non-key decisions falling within his/her portfolio area, unless the matter falls within one of the matters that the executive must determine collectively.

- 1.12** If a Cabinet member has a Disclosable Pecuniary Interest, or an Other Significant Interest, in a decision to be taken on a matter within his/her portfolio, the Leader of the Council will decide who will take the decision.

1.13 Amendment of scheme

This scheme of delegation may be amended at any time, by the Leader, as provided for in the Cabinet Procedure Rules set out in Part 6 of this Constitution.

2. PORTFOLIOS

The portfolios, with any conditions and limitations of each member of the Cabinet, are set out in full in Part 6 to this part of the Constitution.

ANNEX A TO PART 6.1 – MEMBERS OF THE EXECUTIVE

Details of Councillors addresses can be found at:

<http://www.folkestone-hythe.gov.uk/moderngov/mgMemberIndex.aspx?bcr=1>

Name	Ward
Councillor David Monk	Folkestone Central
Councillor Mrs Jennifer Hollingsbee	North Downs West
Councillor John Collier	Cheriton
Councillor David Godfrey	North Downs East
Councillor Stuart Peall	North Downs East
Councillor David Wimble	New Romney
Councillor Tim Prater	Sandgate and West Folkestone
Councillor Lesley Whybrow	Hythe
Councillor Ray Field	Folkestone Harbour

ANNEX B TO PART 6.1 – CABINET PORTFOLIOS

Cllr David Monk Leader

Councillors, election and electoral registration, corporate policy, partnership development, strategic budget, economic growth, property development, human resources, organisational development, emergency planning and business continuity. Financial management, corporate debt, audit (internal and external), treasury management, business rates collection, write offs, risk management, communications and public relations, corporate governance, contract management, procurement, legal, Information technology, information access and security, RIPA and Customer services.

Cllr Jenny Hollingsbee Deputy Leader and Cabinet Member for Communities

Community safety, community engagement and empowerment, arts and culture, leisure and sport, young people, voluntary sector, town and parish liaison, equalities and diversity, safeguarding (children, young people & vulnerable adults). Health and wellbeing, Lifeline. Area Officers. Street homeless.

Cllr David Godfrey Cabinet Member for Housing, Transport and Special Projects

Strategic housing, local authority housing management, housing allocation, homelessness, private sector housing. Traffic management, on and off street parking. Special projects.

Cllr Stuart Peall Cabinet Member for Enforcement, Regulatory Services, Waste and Building Control

Waste management and street cleansing, recycling and environmental enforcement, dog and pest control, food safety, health and safety. Execution of planning enforcement, building control.

Cllr John Collier Cabinet Member for Property Management and Grounds Maintenance

Property and estate management, corporate health and safety. Engineers (coastal protection and strategy), contaminated land. Grounds maintenance.

Cllr David Wimble Cabinet Member for the District Economy

Economic development, regeneration, tourism, heritage (conservation), business rate relief. Planning policy.

Councillor Tim Prater

Cabinet Member for Revenues & Benefits, Anti-Fraud and Corruption

Revenues & Benefits service. Anti fraud and corruption.

Councillor Lesley Whybrow

Cabinet Member for the Environment

Chair of the Council's Climate & Ecological Emergency Working Group. Air quality.

Councillor Ray Field

Cabinet Member for Digital Transformation

Information technology, information access and security, RIPA. Customer service.

ANNEX C TO PART 6.1 – CABINET MEMBER ROLE DESCRIPTIONS

Policy development

- a) To submit matters of policy, or which have strategic implications, within the portfolio, for consideration by the Cabinet.
- b) To contribute to, and support, any consultation carried out as part of any policy development.
- c) Engage with any partners or stakeholders involved in the formulation, or delivery, of the policy or strategy.
- d) Keep up to date with any local, regional or national developments that relate to, or effect, policies or strategies under development.
- e) To engage with the Council's overview and scrutiny process, ensuring that recommendations, in relation to the portfolio, are fully considered.

Leadership

- a) To take the lead role in:
 - i. preparing strategies and policies, in consultation with the appropriate officers relating to the portfolio;
 - ii. preparing the Budget to support the strategies and plans;
 - iii. being accountable for the Budget mentioned above;
 - iv. ensuring that the Council fulfils its equalities' duties;
 - v. making sure the citizens' interests are looked after.
- b) To be the principle spokesperson for the portfolio.
- c) To represent the Council at meetings of local, regional and national bodies dealing with matters in the portfolio.
- d) Ensuring that approved policies and strategies are implemented and delivered effectively.
- e) To chair the Cabinet.
- f) To determine the agenda of each Cabinet.
- g) To approve reports submitted in the name of the portfolio holder, or where reports are submitted in more than one portfolio holder's name, to agree the reports with the other portfolio holder(s).

Decision-making

- a) To bring to the Cabinet all matters that require a collective decision, at councillor level, as follows:
 - i. decisions to implement or amend a policy or strategy;
 - ii. decisions that require a departure from an approved policy or strategy;
 - iii. decisions outside the Budget and Policy Framework.
- b) An individual councillor can make a decision, if authorised to do so by the Leader. In cases of urgency, when it is not possible to obtain the consent of the Leader, an individual councillor may make a decision him/herself. The Leader may decide to take an individual decision him/herself.

Ways of working

- a) To take collective responsibility, and be accountable, for decisions and recommendations reached by the Cabinet.
- b) To comply with the Council's Code of Conduct for councillors and its other rules governing behaviour.
- c) To comply with the councillor/employee code of conduct contained in the Constitution.
- d) To take part in training and development, to ensure that the portfolio role is undertaken effectively.
- e) To champion equalities' duties.
- f) To use technology wherever possible.

Skills and knowledge required

- a) Good communication and interpersonal skills.
- b) Good understanding of how the Council works.
- c) Leadership skills.
- d) Ability to work effectively with the Council's officers, the media and partner organisations.
- e) Ability to work as part of a team.

ANNEX D TO PART 6.1 – COLLECTIVE DECISIONS

The executive shall, unless the Leader decides otherwise, collectively take decisions on the following:

- a) all key decisions;
- b) matters falling outside any identifiable portfolio, unless otherwise allocated to a portfolio holder by the Leader;
- c) issues referred to the executive by either a portfolio holder or one of the Council's statutory officers;
- d) where a virement of money is required, to implement a proposed decision;
- e) departures from the Budget and Policy Framework;
- f) decisions on matters that are not solely executive functions (e.g. that require the Council to make a decision).

ANNEX E TO PART 6.1 – CABINET COMMITTEES

TERMS OF REFERENCE AND CONSTITUTION

1. DISCRETIONARY RATE RELIEF APPEALS PANEL (Committee of the Cabinet)

1.1 Terms of reference

To consider appeals against discretionary rate relief decisions that have been made by the Cabinet Member for the District Economy or the Cabinet Member for Finance.

1.2 Composition

Any three members of Cabinet make up the membership of this panel.

PART 6.2 - CABINET PROCEDURE RULES

1. HOW THE CABINET OPERATES

1.1 Making Cabinet decisions

The Leader decides the arrangements for the discharge of Cabinet functions.

The Leader may provide for Cabinet functions to be discharged by:

- a) The Cabinet as a whole;
- b) A committee of the Cabinet;
- c) An individual member of the Cabinet;
- d) An officer;
- e) An area committee;
- f) Joint arrangements; or
- g) Another local authority.

1.2 Delegation by the Leader

At the Annual Meeting of the Council, the Leader will present to the Council a written record of delegations, made by him, for adoption and inclusion in the Council's scheme of delegation. The document, presented by the Leader, will contain the following information about Cabinet functions, in relation to the coming year:

- a) The names, addresses and wards of the people appointed to the Cabinet by the Leader;
- b) The extent of any authority delegated to Cabinet members, individually, including details of the limitation on their authority;
- c) The terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet members appointed to them;
- d) The nature and extent of any delegation of Cabinet functions to any other authority, or any joint arrangements, and the names of those Cabinet members appointed to any joint committee for the coming year.

1.3 Sub-delegation of Cabinet functions

1.3.1 Where the Cabinet, a committee of the Cabinet or an individual member of the Cabinet is responsible for a Cabinet function, they may delegate further to an area committee, joint arrangements or an officer.

1.3.2 If the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to a committee of the Cabinet or to an officer.

1.3.3 Unless the Leader directs otherwise, a committee of the Cabinet to whom functions have been delegated by the Leader, may delegate further to an officer.

1.3.4 Even where Cabinet functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated them.

1.4 Amendment to the scheme of delegation of executive functions

1.4.1 The Leader may amend the scheme of delegation, relating to Cabinet functions, at any time during the year. To do so, the Leader must give written notice to the Head of Paid Service and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the Cabinet, as a whole. The Head of Paid Service will present a report to the next ordinary meeting of the Council, setting out the changes made by the Leader.

1.4.2 Where the Leader seeks to withdraw delegation from a committee, notice will be deemed to be served on that committee when he has served it on its chairman.

1.5 Delegation to officers

Cabinet functions delegated to officers are set out in Part 8 of this Constitution, subject to the limitations and conditions shown. Responsibility to produce a detailed scheme of delegations for officers lies with the Head of Paid Service.

1.6 Conflicts of interest in decision-making

Where an individual member of the Cabinet, including the Leader, has a conflict of interest in a matter on which a decision is to be made (including where he/she is making an individual decision), this should be dealt with as set out in the Councillor's Code of Conduct, in Part 9 of this Constitution.

1.7 Cabinet meetings

The Cabinet will hold a minimum of six meetings a year at times to be agreed by the Leader. The Cabinet shall meet at the Civic Centre or another location to be agreed by the Leader.

1.8 Public or private meetings of the Cabinet

All meetings of the Cabinet will be held in public session. If an item which contains confidential information is due to be discussed, the discussion of that item will take place in private. If an item containing exempt information is due to be discussed, the Cabinet meeting shall decide whether it is necessary to move into private session.

1.9 Recording/Broadcast of the meeting

1.9.1 While a meeting is open to the public, any person is permitted to report on the meeting. For these purposes, report means filming, photographing or making audio recordings of proceedings at the meeting; using any other means for enabling persons, not present, to see or hear proceedings at the meeting, as it takes place, or later; or reporting or providing commentary on proceedings at the meeting, in writing, or orally, outside or after the meeting.

1.9.2 Reasonable facilities will be provided to any person who wishes to report on a meeting, subject to the following conditions:-

- a) Prior notification, to the Head of Democratic Services and Law, on the intention to report on a meeting.
- b) Recordings being made in an overt manner that would not disrupt the good order of the meeting. Disruptive behaviour could be any action or activity which disrupts the conduct of meetings or impedes other members of the public from being able to see, hear, or record the proceedings. Examples of disruptive behaviour include, but are not limited to:
 - Moving to areas outside those designated for the public without the consent of the Chairman;
 - Oral commentary during a meeting;
 - Excessive noise in recording, or setting up, or re-siting equipment during the debate/discussion;
 - Intrusive lighting and use of flash photography;
 - Asking for people to repeat statements for the purposes of recording.
- c) Attendees being advised, by the Chairman, at the start of the meeting, that it is to be recorded, in order to receive objections from those not wishing to be recorded.
- d) Removing any recording equipment from the meeting room prior to any part of the meeting where the public is excluded.
- e) The Chairman's decision in relation to disruptive behaviour shall be final.

1.9.3 These rights are subject to the Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1.10 Quorum

The quorum for a meeting of the Cabinet will be one quarter of the total number of members of the Cabinet (including the Leader or in his/her absence the Deputy Leader), or 3 members, whichever is the larger.

1.11 Decisions to be taken by the Cabinet

1.11.1 Cabinet decisions, which have been delegated to the Cabinet as a whole, will be taken at a meeting convened in accordance with the Access to Information Rules in Part 6 of this Constitution.

1.11.2 Where Cabinet decisions are delegated to a committee of the Cabinet, the rules applying to Cabinet decisions, taken by them, shall be the same as those taken by the Cabinet as a whole.

2. CONDUCT OF CABINET MEETINGS

2.1 Who presides?

The Leader will preside at any meeting of the Cabinet, or its committees, at which he is present. In his absence, the Deputy Leader will preside and, in his absence, a member of the Cabinet, appointed by the meeting, will preside.

2.2 Order of business

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

- a) Minutes of last meeting;
- b) Declarations of interest;
- c) Matters referred to Cabinet;
- d) Reports from the Overview and Scrutiny Committee;
- e) Matters set out in the agenda.

2.3 Who can put items on the Cabinet agenda?

2.3.1 The Leader will decide upon the schedule for the meetings of the Cabinet. In deciding the agenda for each meeting, the Leader may include any matter, whether or not authority has been delegated to the Cabinet, a committee of it or any councillor, or officer, in respect of that matter.

2.3.2 Any member of the Cabinet may request the Head of Paid Service to place an item on the agenda of the next available meeting of the Cabinet, for consideration. The item will be placed on the agenda, if the Leader agrees.

- 2.3.3** The Head of Paid Service will make sure that an item is placed on the agenda of the next available meeting of the Cabinet, where the Overview and Scrutiny Committee, or the full Council, has resolved that an item be considered by the Cabinet.
- 2.3.4** Any non-Cabinet councillor may ask the Leader to put an item on the agenda of a Cabinet meeting, for consideration, and if the Leader agrees, the item will be considered at the next available meeting of the Cabinet. The notice of the meeting will give the name of the councillor who asked for the item to be considered. This individual will be invited to attend the meeting, whether or not it is a public meeting, for that item.
- 2.3.5** The Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the Head of Paid Service to call such a meeting, in pursuance of their statutory duties. In other circumstances, where any two of the Head of Paid Service, Chief Finance Officer and Monitoring Officer are of the opinion that the Cabinet needs to consider a matter that requires a decision, they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting of the Cabinet soon enough to deal with the issue in question, they may require that a meeting be convened, at which the matter will be considered.

2.4 Decisions

- 2.4.1** No decision, subject to sub-paragraph 2.4.2 below, relating to urgent decisions, shall be made by the Cabinet, or an individual member of the Cabinet, under delegated powers, without first receiving a written report, approved by chief officers, setting out the material factors and any financial and legal issues.
- 2.4.2** Where a decision is urgent and it is not reasonably practicable to receive a written report, a decision may be made by the Cabinet, having received an oral report from an officer. The officer shall, where practicable, obtain the advice of the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer on the contents of the oral report. The statutory officers may also comment on the oral report at the meeting.
- 2.4.3** In every case, where an oral report has been made, the officer shall, as soon as reasonably practical, record his/her advice in writing. The written advice shall be treated, in all respects, as if it was a written report, and the articles of this Constitution shall apply accordingly.

2.5 Withdrawal from the meeting

- 2.5.1** A Cabinet member with a Disclosable Pecuniary Interest in a matter to be considered, or being considered, at a meeting, must withdraw from the meeting room, unless he/she has been granted a dispensation by the Audit and Governance Committee, or the Monitoring Officer (where authorised), to speak only, or to speak and vote on the matter.

2.5.2 A Cabinet member with an Other Significant Interest in a matter to be considered, or being considered, at a meeting must:

- a) if he/she attends the meeting and, subject to sub-paragraph b) below, be in the place reserved for public in the meeting room;
- b) where the public are allowed to make representations, answer questions or give evidence relating to the business, withdraw to the place in the meeting room reserved for the public, after having made representations, answered questions or given evidence;

unless, in either case, he/she has been granted a dispensation by the Audit and Governance Committee, or the Monitoring Officer (where authorised), to speak only, or to speak and vote on the matter.

3. ADVISORY PANELS

3.1 General

3.1.1 The Cabinet, or any member of it, may establish such advisory panels and/or appoint advisers to it, as s/he considers necessary, in order to advise on matters relating to a Cabinet or portfolio holder decision.

3.1.2 An advisory panel or an adviser cannot exercise any Cabinet functions and its/his/her functions shall be solely advisory. The Cabinet, or any member of the Cabinet, shall not be bound to exercise its/his/her discretion in accordance with any report of an advisory panel or an adviser.

3.2 Membership

An advisory panel may consist of councillors, non-councillors, or both. The councillors' Code of Conduct shall apply to any voting non-councillor on an advisory panel. Any local protocol shall apply to voting, and non-voting councillors, if the protocol so states.

3.3 Overview and scrutiny

A councillor, who is on an advisory panel, shall not sit on the Overview and Scrutiny Committee when it is scrutinising a decision made by the Cabinet, after receiving a report of the advisory panel on which the councillor sits.

3.4 Cabinet Procedure Rules

The Cabinet Procedure Rules shall apply to advisory panels, subject to the rule that the chairman of the advisory panel shall be chosen from amongst its members.

3.5 Dissolution

An advisory panel may be dissolved by the Cabinet at any time.

3.6 Publicity

The Cabinet shall publish, as soon as reasonably practical, the names of those persons serving on advisory panels.

4. APPOINTMENTS TO OUTSIDE BODIES

An individual member of the Cabinet, acting under delegated powers, may make or change an appointment of the Council, to an outside body, without receiving or considering a written report.

PART 6.3 – CALL-IN RULES OF PROCEDURE

1. WHEN CAN A DECISION BE CALLED IN?

- 1.1** When a decision is made by the Cabinet, an individual member, or a committee of the Cabinet; or where a Key Decision is made by an officer, under delegated authority given to him/her by the Leader; or by an area committee; or under joint arrangements; the decision shall be published within three clear working days.
- 1.2** The notice of the decision will be dated and will specify that the decision will come into force, and may be implemented, on the expiry of five clear working days after the publication of the decision, unless a valid request has been received by the Head of Paid Service, objecting to the decision and asking for it to be called in. This does not apply to an urgent decision.

2. WHO MAY CALL-IN A DECISION?

Any three or more members of the Overview and Scrutiny Committee may request that a decision is called in, during the five clear working days after the publication of the notice of the decision, in 1.2 above (the call-in period).

3. WHAT ARE THE CRITERIA FOR CALL-IN OF A DECISION AND WHO DECIDES WHETHER IT IS VALID?

- 3.1** The Head of Paid Service, on advice from the Monitoring Officer, will determine whether or not a call-in is valid. In order to be valid, the call-in must meet all of the criteria in (a) to (g), plus at least two of the criteria in (h) to (m) below:
- a) It is submitted by three or more members of the Overview and Scrutiny Committee, in writing;
 - b) It is received before 5pm on the fifth day after publication of the notice of the decision;
 - c) It specifies which decision is being objected to;
 - d) It gives the reasons for the call-in request;
 - e) It is not made in relation to a decision taken in accordance with the urgency procedures;
 - f) It specifies the officers and members the councillors, calling in the matter, wish to hear from;
 - g) The matters concerning the decision the councillor, calling in the decision, wishes to ask questions on.
- 3.2** The call-in must also meet two or more of the following criteria:

- h) It specifies that the decision is claimed to be outside or contrary to the Budget and Policy Framework;
- i) It specifies inadequate consultation with stakeholders, prior to the decision;
- j) It specifies inadequate evidence on which to base the decision;
- k) It specifies that the action is not proportionate to the desired outcome;
- l) It specifies a potential human rights challenge;
- m) It specifies insufficient consideration of the advice of the statutory officers.

3.3 If the Head of Paid Service decides that a call-in is not valid, he will inform the decision-taker, and those requesting the call-in, and the decision may be implemented at any time thereafter.

4. THE PROCESS FOR REFERRAL OF A DECISION VALIDLY CALLED IN

4.1 Subject to rules 4.2 and 4.3 below, once a request for a call-in is deemed valid by the Head of Paid Service, the decision may not be implemented until the Overview and Scrutiny Committee has met to consider the called in decision. The Head of Paid Service will call a meeting of the Overview and Scrutiny Committee, within 10 clear working days of a valid call-in (unless a scheduled meeting is due to take place within that period, in which case the scheduled meeting will consider the call-in).

4.2 Where the Overview and Scrutiny Committee fails to meet to discuss a called in decision, within 10 clear working days of the Head of Paid Service's confirmation of a decision validly called in, the decision may be implemented on the day following 15 clear working days from the date the decision was published.

4.3 Where the Overview and Scrutiny Committee meets within 10 clear working days of the Head of Paid Service's confirmation of a valid call-in, but fails to discuss the call-in request, and no other meeting of the Overview and Scrutiny Committee is planned before 10 clear working days after the confirmation of a valid call-in, the decision may be implemented on the day following the committee meeting.

5. THE PROCESS FOR CONSIDERATION OF DECISIONS VALIDLY CALLED IN

5.1 The Overview and Scrutiny Committee will consider the decision and the reasons for call-in. The committee may invite the decision-taker, and a representative of those calling in the decision, to attend the meeting to provide information.

5.2 The committee may then come to one of the following conclusions:

- a) That the challenge to the decision should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Budget or Policy Framework and should therefore be referred to the Council. In such a case, the Overview and Scrutiny Committee must set out its reasoning for the Council to consider;
- c) That the matter should be referred back to the decision-taker, for reconsideration. In such a case, the Overview and Scrutiny Committee must set out its reasoning for the decision-taker to consider.

5.3 If the Overview and Scrutiny Committee refers back to the decision-taker under 5.2.c) above, the decision-taker must reconsider the decision, in accordance with paragraph 6 below.

5.4 If the Overview and Scrutiny Committee refers the decision to the Council meeting, under 5.2.b, the decision shall be discussed at the next ordinary meeting of the Council, provided that the next scheduled meeting is within 20 clear working days of a referral of the decision from the Overview and Scrutiny Committee. If the next ordinary meeting of the Council is more than 20 clear working days after the referral of the decision from the Overview and Scrutiny Committee, the Chairman of the Council, in consultation with the leaders of all the political parties, will decide whether an extraordinary meeting of the Council is needed. If they decide that it is not, the decision will stand referred to the next ordinary meeting of the Council.

5.5 When the Council considers the decision, it may conclude:

- a) That the challenge to the decision-taker should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Policy Framework or the Budget and cannot be implemented, with reasons being given;
- c) That the decision is contrary to the Budget or Policy Framework, but that the relevant framework should be amended to enable the decision to be implemented (in which case the Council meeting should make the amendment at the meeting, in order that the decision can be implemented);
- d) That the matter should be referred back to the decision-taker for reconsideration, with reasons being given.

5.6 If the Council meeting is scheduled to, but does not discuss the called in decision at the next ordinary meeting, or an extraordinary Council meeting called for that purpose, the decision may be implemented on the day following the meeting at which the matter was to be discussed.

6. ACTION OF THE DECISION-TAKER AFTER A REFERRAL BACK FROM THE COUNCIL OR THE OVERVIEW AND SCRUTINY COMMITTEE

6.1 A decision referred back to the /Cabinet, a Cabinet committee, or an area committee, as decision-taker, must be discussed at the next scheduled meeting of the Cabinet or committee (the Leader may decide to call a special meeting of the Cabinet, or the committee, if he considers it necessary). A decision referred back to a Cabinet member, or an officer, must be reconsidered by the decision-taker within 10 clear working days of receiving the referral.

6.2 The decision-taker(s) may either reconfirm the decision, or amend the decision, in light of the comments from the Council or the Overview and Scrutiny Committee, and report back, as appropriate, to the next meeting of the Council or the Overview and Scrutiny Committee. In either case, the decision can be implemented as soon as the decision has been reconfirmed or amended.

7. CALL-IN AND URGENCY

7.1 The call-in procedure, set out above, shall not apply where the decision being taken is urgent. A decision is urgent if any delay, likely to be caused by the call-in process, would seriously prejudice the Council's or the public interest.

7.2 The record of an urgent decision, and the notice by which it is made public, shall state whether, in the opinion of the person or body making the decision, that the decision is an urgent one and therefore not subject to call-in.

7.3 The Chairman of the Overview and Scrutiny Committee must agree both that the decision proposed is reasonable, in the circumstances, and should be treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent is required. In the absence of both the Chairman and Vice-Chairman, the Head of Paid Service's consent is required.

7.4 Decisions taken, as a matter of urgency, must be reported to the next available meeting of the Council, together with the reasons for urgency.

7.5 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council, with proposals for review, if necessary.

8. DECISION NOT SUBJECT TO CALL-IN

8.1 The call-in procedure shall not apply to the decisions set out in Rule 8.2 below.

8.2 The decisions not subject to call-in are:

- a) Matters to be decided by full Council;

- b) Executive appointments to outside bodies;
- c) A decision of the executive to consult on a proposal;
- d) Decisions by ward members, under the Council's approved Ward Member Budget Scheme or relating to ward plans; and
- e) Decisions made after considering the call-in of the original decision.

8.3 An executive decision, against which there is a right to request an internal review or an appeal to an external body, is subject to call-in; however, if the right to request an internal review is exercised, or an appeal made, the call-in shall cease to have effect.

8.4 No non-executive decision is subject to call-in.

PART 6.4 – CABINET ACCESS TO INFORMATION PROCEDURE RULES

1. ADDITIONAL RIGHTS TO INFORMATION

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

2. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings, subject only to the exceptions in these rules.

3. NOTICE OF MEETINGS

The Council will give at least 5 clear days notice of any meeting, by posting details of the meeting at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY and on the Council's website.

4. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

4.1 The Council will make copies of the agenda and reports, which are open to the public, available for inspection, at the Civic Centre and on the Council's website, at least 5 clear days before the meeting.

4.2 Where the meeting is convened at shorter notice than set out in Rule 3 (notice of meetings), copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

4.3 If an item is added to the agenda, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons or agenda has been sent out, the Head of Paid Service shall make each such report available to the public, as soon as the report is completed and sent to councillors.

5. SUPPLY OF COPIES

The Council will supply:

- a) Copies of any agenda and reports which are open to public inspection;
- b) Copies of any further statements or particulars necessary to indicate the nature of the items on the agenda; and
- c) Where the Head of Paid Service considers it appropriate, copies of any other documents supplied to councillors in connection with an item;

to any person, on payment of a charge for postage and any other costs, including copying and administration costs. All relevant documentation will be available from the Council's website, free of charge.

6. ACCESS TO DOCUMENTS AFTER MEETINGS

The Council will make copies of the following documents, available, for six years after a meeting:

- a) The minutes of the meeting (or records of decisions taken, together with reasons), excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- b) A summary of any proceedings not open to the public, where the minutes, open to inspection, would not provide a reasonably fair and coherent record;
- c) The agenda for the meeting; and
- d) Reports relating to items when the meeting was open to the public.

7. BACKGROUND PAPERS

7.1 Background papers

The chief officer, responsible for the report, will set out in every report a list of those documents (called background papers) relating to the subject matter of the report, which in his/her opinion:

- a) Relate to the subject matter of the report or, as the case maybe, the part of the report;
- b) Disclose any facts or matters on which the report, or an important part of the report, is based; and
- c) Which have been relied on, to a material extent, in preparing the report but will not include, in such a list, published works or those which disclose exempt or confidential information (as defined in Rule 9) and, in respect of Cabinet reports, the advice of a political assistant.

7.2 Public inspection of background papers

The Council will make available for inspection:

- a) A copy of the background papers at the Council, or on the Council's website; and
- b) A copy of the background documents, for four years after the date of the meeting.

8. SUMMARY OF THE PUBLIC'S RIGHTS

Article 3 of this Constitution, in conjunction with these rules, is the written summary of the public's rights to attend meetings and to inspect and copy documents. These documents will be kept and be available to the public at

the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

9. EXCLUSION OF ACCESS, BY THE PUBLIC, TO MEETINGS

9.1 Confidential information – requirement to exclude the public

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

9.2 Meaning of confidential information

Confidential information means information given to the Council, by a Government department, on terms which forbid its public disclosure, or information which cannot be publicly disclosed because of a Court Order.

9.3 Exempt information – discretion to exclude the public

9.3.1 The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that exempt information would be disclosed.

9.3.2 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public, unless a private hearing is necessary for one of the reasons specified in Article 6 of the Human Rights Act 1998.

9.4 Meaning of exempt information

Exempt information means information falling within the following categories (defined by Part 1 of Schedule 12A to The Local Government Act 1972, as amended), provided that two conditions are met. The first condition is set out in the second column of the following table:

Category	Condition
1. Information relating to any individual.	Information falling within paragraph 1 is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
2. Information which is likely to reveal the identity of an individual.	Information falling within paragraph 2 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
3. Information relating to the financial or business affairs of any particular person	Information falling within paragraph 3 is exempt if and so long as in all the circumstances of the case, the public interest

<p>(including the authority holding that information) 'Financial or business affairs' includes contemplated as well as current activities.</p>	<p>in maintaining the exemption outweighs the public interest in disclosing the information. Information falling within paragraph 3 is not exempt information if it is required to be registered under:</p> <p>The Companies Act (as defined in section 2 of the Companies Act 2006) The Friendly Societies Act 1974 The Friendly Societies Act 1992 The Industrial and Provident Societies Act 1965 to 1978 The Building Societies Act 1986 The Charities Act 1993</p>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	<p>Information falling within paragraph 4 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>'Labour relations matters' are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act or any dispute about a matter within this paragraph).</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	<p>Information falling within paragraph 5 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>
<p>6. Information which reveals that the authority proposes: to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment.</p>	<p>Information falling within paragraph 6 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>Information falling within paragraph 7 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>

The second condition is that information is not exempt information if it relates to proposed development, for which the local planning authority may grant itself planning permission, pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

10. EXCLUDING PUBLIC ACCESS TO REPORTS

The public may be denied access to reports if the Head of Paid Service believes that the report relates to matters which, in accordance with Rule 9, will not be considered in a public meeting. Such reports will be marked 'Not for publication' together with the category of information likely to be disclosed.

11. KEY DECISIONS

11.1 Definition

11.1.1 A key decision is any decision:

- a) Relating to the approval of, or variation to, the Council's Budget or Policy Framework, which is reserved in the Council's Constitution for determination by full Council, on a recommendation from Cabinet; or
- b) Which involves the incurring of expenditure, or the making of savings, by the Council, which are anticipated to be in excess of £300,000, with the exception of items previously included in the relevant approved budget; or
- c) Where the Council is entering into a contractual obligation with a value in excess of £500,000; or
- d) For the acquisition or disposal of land or property with a value of over £500,000; or
- e) Which is likely to be significant in terms of its effects on communities, living or working in an area comprising two or more wards, in the Council's area.

11.1.2 A decision will not be a key decision if it relates to expenditure, income or savings that:

- a) Has been approved previously by full Council; or
- b) Has been approved previously, following compliance with the key decision procedure or;
- c) Is in accordance with the current treasury management and investment policy of the Council.

11.2 Publicity in connection with key decisions

11.2.1 Subject to Rule 12 (General Exception) or Rule 13 (Special Urgency), a key decision may not be taken unless, at least 28 clear days before it is made, a document has been made available for inspection at the Council's offices, and on its website, which states:

- a) That a key decision is to be made on behalf of the Council;
- b) The matter in respect of which a decision is to be made;
- c) Where the decision-taker is an individual, his/her name and title, if any, and where the decision-taker is a body, its name and details of membership;
- d) The date on which, or the period within which, the decision will be taken;
- e) A list of the documents submitted to the decision-taker, for consideration, in relation to the matter; and
- f) The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document are available;
- g) That other documents, relevant to those matters, may be submitted to the decision-maker; and
- h) The procedure for requesting details of the document, (if any) as they become available.

11.2.2 An item that is likely to contain confidential or exempt information, as defined in Rule 9, should still be included in the document, but the confidential information must be omitted and the exempt information should be omitted.

12. GENERAL EXCEPTION

Where it is not possible to publish the intention to make a key decision, then, subject to Rule 13 (Special Urgency), the decision may still be taken if:

- a) The decision must be taken by such a date, that it is impracticable to defer the decision until the publicity requirements for key decisions can be met;
- b) The Head of Paid Service has notified the Chairman of the Overview and Scrutiny Committee, by notice, in writing, of the matter on which the decision is to be made. If there is no chairman, all the members of the committee will be notified;

- c) The Head of Paid Service has made copies of that notice available, to the public, at the offices of the Council and on the Council's website;
- d) At least five clear working days have elapsed since the Head of Paid Service complied with b) and c).

13. SPECIAL URGENCY

13.1 If, by virtue of the date by which a decision must be taken, Rule 12 (General Exception) cannot be followed, then the decision can only be taken if the decision-taker (if an individual), or the chairman of the body making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot reasonably be deferred. In the absence of the Chairman of the Overview and Scrutiny Committee, the agreement of the Chairman of the Council will be required. In the absence of both the Chairman of the Overview and Scrutiny Committee and the Chairman of the Council, the agreement of the Vice-Chairman of the Council will be required.

13.2 As soon as reasonably practicable after the decision-maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred, the decision-maker must make available at the offices of the Council, and on its website, a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

14. PRIVATE MEETINGS OF THE EXECUTIVE

14.1 The Cabinet or its committees may, subject to rule 14.2, only hold a meeting in private (in whole or part) if notices are made available at the offices of the Council, and on its website,:

- a) At least 28 clear days, prior to the meeting, of its intention to hold a private meeting, containing a statement of reasons for the meeting to be held in private; and
- b) At least 5 working days, prior to the meeting, of its intention to hold the meeting in private, containing a statement of reasons for the meeting to be held in private, details of any representations, received by the decision-making body, about why the meeting should be open to the public, and a statement of its response to any such representation.

14.2 If, by virtue of the date by which a meeting must be taken, Rule 14.1 cannot be followed, then the meeting can only be held in private if the Chairman of the body, making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot reasonably be deferred. In the absence of the Chairman of the Overview and Scrutiny Committee, the agreement of the Chairman of the Council will be required. In the absence of both the Chairman of the Overview and Scrutiny Committee and the Chairman of the Council, the agreement of the Vice-Chairman of the Council will be required.

- 14.3** As soon as reasonably practicable, after the decision-maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred, the decision-maker must make available at the offices of the council, and on its website, a notice setting out the reasons that the meeting is urgent and cannot be reasonably deferred.

15. RECORD OF DECISIONS

As soon as reasonably practicable, and normally within three clear working days, after any meeting of the Cabinet or any of its committees, whether held in public or private, the Head of Paid Service or, where the Head of Paid Service or his/her representative is not present, the person presiding at the meeting, will ensure that a written statement is produced, in respect of every decision made at that meeting, which must include the following information:

- a) A record of the decision;
- b) A statement of the reasons for the decision;
- c) Details of any alternative options considered, and rejected, at that meeting;
- d) A record of any conflict of interest, in relation to the matter decided, which is declared by any member of the decision-making body; and
- e) In respect of any declared conflict of interest, a note of any dispensation granted by the Head of Paid Service.

16. DECISIONS BY INDIVIDUAL CABINET MEMBERS AND OFFICERS

16.1 Reports intended to be taken into account

- a) Where an individual member of the Cabinet receives a report, which he/she intends to be taken into account in making any decision, whether or not that decision is a key decision, then he/she will not make the decision until at least five clear working days after receipt of that report.
- b) Where an officer receives a report, which he/she intends to be taken into account in making a key decision, then he/she will not make the decision until at least five clear working days after receipt of that report.
- c) The report, and background papers, must be made available for inspection by the public, except in so far as they contain confidential or exempt information.

16.2 Provision of copies of reports to the Overview and Scrutiny Committee

On giving such a report to an individual decision-maker, the person who prepared the report will give a copy of it to the Chairman of the Overview

and Scrutiny Committee, as soon as reasonably practicable, and make it publicly available at the same time.

16.3 Status of decision-making by an individual member of the Cabinet

The point at which an individual member of the Cabinet makes a decision does not constitute a meeting and is not open to the public.

16.4 Record of individual decision by a member of the Cabinet

As soon as reasonably practicable, after a Cabinet member has made an Executive decision, he/she will produce, or if he/she instructs the Head of Paid Service to do so, the Head of Paid Service, or his/her representative will produce a written statement in respect of that executive decision, which must include the following:

- a) A record of the decision;
- b) A statement of the reasons for the decision;
- c) Details of any alternative options considered, and rejected, by the member when he/she made the decision;
- d) A record of any conflict of interest which is declared, in relation to the decision, by any Cabinet member, who is consulted by the member in relation to the decision or making the decision; and
- e) In respect of any declared conflict of interest, a note of any dispensation granted by the Head of Paid Service.

16.5 Record of individual decision by an officer

As soon as reasonably practicable, after an officer has made a decision where:

- a) The financial implications for the Council, of the decisions, exceed £49,999 (officers should ensure that they act within the Budget and the Financial Procedure Rules);
- b) They make a key decision; or
- c) They have been specifically delegated to make a particular decision (whether or not in consultation with a Cabinet member) by the Cabinet or an individual executive councillor;

the officer will produce a written statement which must include:

- a) A record of the decision;
- b) The date that the decision was made;

- c) A record of the reasons for the decision;
- d) Details of any alternative options considered, and rejected, by the decision-maker;
- e) A record of any conflict of interest declared by the decision-maker, or any executive member who is consulted by the officer, which also relates to the decision;
- f) In respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

17. INSPECTION OF DOCUMENTS FOLLOWING EXECUTIVE DECISIONS

17.1 After a private meeting, or a public meeting, of a decision-making body, at which an executive decision has been made; after an individual councillor has made an executive decision; or after an officer has made a key decision, the proper officer shall ensure that a copy of:

- a) Any records are prepared in accordance with Rule 16; and
- b) Any report considered at the meeting, or, as the case may be, considered by the individual member, or officer, and relevant to a decision recorded in accordance with Rule 16 or, where only part of the report is relevant to such a decision, that part, shall be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of Folkestone and Hythe District Council and on the Council's website.

17.2 Where a request, on behalf of a newspaper, is made for a copy of any of the documents available for public inspection, as detailed in 17.1 above, those documents shall be supplied for the benefit of the newspaper on payment of postage, copying or other necessary charge for transmission.

18. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

18.1 Cabinet members

- a) All members of the Cabinet will be served notice of all private meetings of committees of the Cabinet, whether or not they are members of that committee.
- b) All members of the Cabinet are entitled to attend a private meeting of any committee of the Cabinet.

18.2 Non-executive councillors

Members, other than Cabinet members, will not be entitled to attend private meetings of the Cabinet and its committees but may be invited to attend by the Leader.

18.3 Officers

- a) The Head of Paid Service, the Section 151 Officer and the Monitoring Officer, and their nominees, are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Head of Paid Service has been given reasonable notice that a meeting is to take place.
- b) Decisions may only be made, at a private Cabinet meeting, in the presence of the Head of Paid Service, or his/her nominee, whose purpose will be to record and publicise the decisions taken.

19. REPORT TO COUNCIL

19.1 Requests from the Overview and Scrutiny Committee

Where the Overview and Scrutiny Committee thinks that a key decision has been taken, which was neither:

- a) Treated as a key decision nor
- b) The subject of the General Exception procedure, as detailed in Rule 12; or
- c) The subject of an agreement with the Overview and Scrutiny Committee Chairman, or the Chairman or Vice-Chairman of the Council, under Rule 13 (Special Urgency).

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

19.3 Cabinet's report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the Overview and Scrutiny Committee, then the report may be submitted to the following Council meeting. The report to Council will set out particulars of the decision, the individual or body making the decision, and, if the decision-maker is of the opinion that it was not a key decision, the reasons for that opinion.

19.4 Annual reports on Special Urgency decisions

The Leader of the Council will submit, annually, a report to the Council on the executive decisions taken, in the circumstances set out in Rule 13 (Special Urgency), in the preceding year. The report will include the number

of decisions so taken and a summary of the matters, in respect of which those decisions were taken.

20. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS

20.1 Material relating to previous business

All councillors will be entitled to inspect any document which is in the possession, or under the control of the Cabinet, or its committees, and contains material relating to any business previously transacted at a private meeting; a decision made by an individual member; or a decision taken by an officer, in the circumstances mentioned in the agreed protocol; unless it contains:

- a) Exempt information, as defined in Rule 9, apart from information falling within categories 3 (except in relation to proposed contracts), 6 and
- b) The advice of a political assistant.

20.2 Timescale

Any document required to be available for inspection, under Rule 20.1, must be made available for inspection, in any event, within 24 hours of the conclusion of the meeting on the decision being made, as the case maybe.

20.3 Material relating to key decisions

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control of the Cabinet or its committees, which relates to any key decision, unless Rule 20.1 a) or b) applies.

20.4 Nature of rights

These rights of a councillor are additional to any other right he/she may have. A fuller statement of these rights is set out in the Protocol on Councillor and Officer Relations, contained in Part 8 to this Constitution.