

Council Offices  
Argyle Road  
Sevenoaks  
Kent  
TN13 1HG



Published: 15.05.23

I hereby summon you to attend the meeting of the Sevenoaks District Council to be held in the Council Chamber, Council Offices, Argyle Road, Sevenoaks commencing at 7.00 pm on 23 May 2023 to transact the under-mentioned business.

Chief Executive

## AGENDA

There are no fire drills planned. If the fire alarm is activated, which is a continuous siren with a flashing red light, please leave the building immediately, following the fire exit signs.

### Apologies for absence

1. To elect a Member to be Chairman for the ensuing year
2. To elect a Member to be Vice-Chairman for the ensuing year
3. To approve as a correct record the minutes of the meeting of the Council held on 25 April 2023 (Pages 1 - 6)
4. Declarations of Interest
5. Chairman's announcements
6. Returning Officer's report (Pages 7 - 12)
7. To elect the Leader of the Council for the ensuing four years
8. To note the appointment by the Leader of the Deputy Leader and the delegations of executive functions and appointments to the Cabinet made by the Leader (Pages 13 - 18)
9. To agree the scheme of delegations to Committees (as set out in Parts 3-12 of the Constitution) and to confirm/approve delegations to Officers (as set out in Part 13 of the Constitution). (Pages 19 - 96)
10. To note the Council's Policy Framework (Appendix F of the Constitution) (Pages 97 - 100)

11. To agree the allocation of seats to political groups in accordance with the political balance rules (Pages 101 - 104)
12. To appoint the Chairmen, Vice-Chairmen and Membership of Committees for the municipal year 2023/24 (Pages 105 - 106)
13. To confirm the calendar of ordinary meetings for the municipal year 2023/24 (Pages 107 - 110)
14. To appoint representatives on other organisations (Pages 111 - 112)
15. Sevenoaks Town Neighbourhood Plan (Pages 113 - 120)
16. To note the Quercus 7 Ltd Shareholder Agreement And Quercus Housing Ltd Guarantor Agreement (Pages 121 - 186)
17. To note the outgoing Chairman's Report. (Pages 187 - 188)

#### EXEMPT INFORMATION

At the time of preparing this agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public.

The Annual Meeting of the Council will be followed immediately by a special meeting of the Cabinet and the Licensing Committee to appoint to subcommittees, and other organisations within their remits.

To assist in the speedy and efficient despatch of business, Members wishing to obtain factual information on items included on the Agenda are asked to enquire of the appropriate Contact Officer named on a report prior to the day of the meeting.

COUNCIL

Minutes of the meeting held on 25 April 2023 commencing at 7.00 pm

Present: Cllr. Hunter (Chairman)

Cllr. Layland (Vice Chairman)

Cllrs. Abraham, Andrews, Ball, Bayley, Bonin, Brown, Bulford, Dr. Canet, Cheeseman, Clack, Clayton, Penny Cole, Perry Cole, Collins, G. Darrington, P. Darrington, Dickins, Dyball, Edwards-Winser, Esler, Eyre, Fleming, Fothergill, Griffiths, Grint, Harrison, Hogarth, Hudson, Kitchener, Layland, London, Maskell, McArthur, McGarvey, McGregor, Nelson, Pender, Pett, Purves, Reay, Thornton, Waterton and Williams

Apologies for absence were received from Cllrs. Barnett, Morris, Raikes, Roy, Williamson and Streatfeild

52. To approve as a correct record the minutes of the meeting of the Council held on 21 February 2023 and the Extraordinary Meeting held on 4 April 2023

Resolved: That the Minutes of the meeting of Council held on 21 February 2023 and of Extraordinary Council held on 4 April 2023, be approved and signed by the Chairman as a correct record.

53. To receive any declarations of interest not included in the register of interest from Members in respect of items of business included on the agenda for this meeting.

No additional declarations of interest were received.

54. Chairman's Announcements

The Chairman announced that she had been delighted to attend the launch of 27- 37 High Street, the Swanley Business Hub along with fellow District & Local Councillors. It was anticipated that the Hub would be open at the beginning of May 2023. Following the morning events attending the Hub that evening she attended the Making it Happen Community Awards. There were many fantastic nominees and she was delighted to present the certificates to all the nominees. Every certificate and award was well deserved. The Chairman also highlighted to Members that Run, Walk, Push against dementia was taking place on Sunday 14 May 2023, and encouraged Members to support the event.

Keeping on the health theme the Chairman announced that Lullingstone Park Golf Course reopened to the public on Saturday 22 April, under the management of

Everyone Active. Both the Edenbridge and Sevenoaks Leisure Centres would reopen on Monday 1 May with a celebratory Community Open Day, also under Everyone Active.

The Chairman was thrilled to announce that the Council had been awarded “Platinum” status once again from Investors in People. This was the fifth time in a row the Council had achieved the top-level accreditation from the organisation, which was a fantastic achievement and she congratulated staff for achieving the prestigious award. Sevenoaks was one of only two local authorities to hold the status.

In other exciting news, Historic England had invited the Council to be the first, and only, Local Authority in the UK to undertake Heritage Crime Officer Training, which would help the Council safeguard the rich heritage of the District.

The Chairman reminded Members of her fundraiser in aid of Sevenoaks Volunteer Transport Group, and encouraged their participation.

55. To receive any questions from members of the public under paragraph 17 of Part 2 (The Council and District Council Members) of the Constitution.

No questions had been received.

56. To receive any petitions submitted by members of the public under paragraph 18 of Part 2 (The Council and District Council Members) of the Constitution.

No petitions had been received.

57. Matters considered by the Cabinet and/or Scrutiny Committee:

**a) Sevenoaks District Community Safety Partnership Strategy & Action Plan 2023-24**

Councillor Fleming proposed and Councillor Dyball seconded the recommendation from Cabinet. The report sought the adoption of the Community Safety Partnership Strategy & Action Plan.

Members spoke to the motion, and in reply the Leader advised that he was aware of the increase in shoplifting cases within the Town and had raised this with the Police & Crime Commissioner. He expressed the importance of shops reporting any thefts as every effort was used to ensure that action was taken, and in a recent case, thieves had been apprehended and jailed.

Resolved: That the 2023 – 24 Sevenoaks District Community Safety Strategy & Action Plan, be adopted.

**b) Environmental Protection Service Plan 2023/24**

## Council - 25 April 2023

Councillor Fleming moved and Councillor McArthur seconded the recommendation from Cabinet. The report sought the adoption of the Service Plan for 2023/24.

Resolved: That the Environmental Protection Service Plan, be approved.

**c) White Oak Residential**

Councillor Fleming moved and Councillor Dickins seconded the recommendation from Cabinet to approve the provision of £21, 852, 476 in the Capital Programme to deliver the scheme which was to be funded as noted in the financial implications to the report.

Members debated the recommendation and it was moved by Councillor Clayton and duly seconded that the motion, be amended to include, “subject to the inclusion of affordable housing, within the scheme.”

Members discussed the amendment, highlighting the Council’s priority for affordable housing in the District and that the developer itself could set a precedent. In the Leader’s right of reply he advised that paragraph 4, says that profit from the residential phase was required to part contribute to the construction of the new leisure centre, which any other developer would not be doing. It was usual for the Council to request developers demonstrate the community benefit, which he believed the new leisure centre facilities demonstrated a community benefit in one of the areas in the district with two of the highest levels of deprivation and health inequalities. Two 100% affordable housing schemes had been delivered in Swanley, one with 17 units on the high street.

The amendment was put to the vote and it was lost.  
The original motion was put to the vote.

Resolved: That the provision of £21, 852, 476 in the Capital Programme to deliver the scheme which was to be funded as noted in the financial implications to the report, be agreed.

58. To consider any questions by Members under paragraph 19.3 of Part 2 (The Council and District Council Members) of the Constitution, notice of which have been duly given.

One question had been received from a Member in accordance with paragraph 19.3 of Part 2 (The Council and District Council Members) of the Constitution.

Question 1: Cllr Purves

“At the Extraordinary Meeting on 4 April, it was agreed that up to £1.83 million would be budgeted by SDC for costs associated with the failure of Sencio.

This funding to be borrowed from earmarked reserves which would need to be repaid. A solution to repay the reserves to be agreed before conclusion of the 2024/25 budget setting process.

That £1.83 million now is £2 million according to the letter of 18 April from the Health and Communities Manager, to fund a deep clean, maintenance, safety and running costs for the three sites for two years, plus £330 thousand identified by Evelyn Partners for pensions, so the figure now in the region of £2.3 million.

So, £1.83 million agreed at the Extraordinary Meeting by SDC would appear to be woefully insufficient.

Is c. £2.3 million going to be the final figure for SDC to find and how is this money going to be repaid to the Reserves?"

Response: Leader of the Council

"In the letter sent on 18 April, the amount was rounded up by officers and they apologise if this had caused any confusion. At a specially convened meeting of the Council on Tuesday 4 April 2023, Councillors agreed to start the process of appointing a new interim leisure provider to run the facilities for up to two years together with £1.83m borrowing from earmarked reserves.

The £330,000 for pensions mentioned in the Evelyn Partners creditors report relates to unpaid amounts at that time. That is not the final position of Sencio within the Kent Pension Fund. We were awaiting to hear from the Kent Pension Fund as to what the full position was when Sencio ceased trading and what the impact on SDC, if any may be.

As highlighted in the report appendix presented at the April meeting of the Council, the cost envelope of £1.83m reflects known costs. The appendix stipulated that the £1.83m did not include pension and loan liabilities, procurement, consultancy or legal costs. These figures were presently unknown, therefore any final figure would be based on current and up to date information being received.

As agreed by Council earlier this month: This funding would be borrowed from earmarked reserves in the short-term and would need to be repaid. A solution to repay the reserves would need to be agreed before the conclusion of the 2024/25 budget setting process.

Therefore it would be for Members to decide how the money is going to be paid to reserves. Once Everyone Active had been trading for several months, with open book accounting in operation, a more accurate position would be known. However I am pleased to announce that since the beginning of this week the reception areas at both Sevenoaks and Edenbridge Leisure Centres opened for Memberships and that was going well. Lullingstone Golf Course had already opened and there were golfers already enjoying both courses."

Supplementary question: Cllr Purves

In the same letter, it says unfortunately Sencio Memberships were not transferrable, and many will be losing money through no fault of their own, an unknown figure but should this council not reimburse those residents and include it in the budget, why should they lose out.

Response: Leader of the Council

Cllr Fleming replied stating that he was sure most Members' would recall this being debated at the Extraordinary meeting and the proposer at that point, was unable to also give a number of memberships or an amount for the council to agree on. As it had been said, Sencio were a separate entity to the Council and a separate operator which as recently as January 2023 had told the Council, they had turned a corner and were out of the woods. As mentioned, the Council was also a creditor of Sencio and we were also looking to recover costs. On the Council's website there was advice for those who had Memberships for how they could try and recover their money as well.

In accordance with the Constitution, no further discussion was allowed.

59. To consider any motions by Members under paragraph 20 of Part 2 (The Council and District Council Members) of the Constitution, notice of which have been duly given.

No motions had been received.

60. To receive the report of the Leader of the Council on the work of the Cabinet since the last Council meeting.

The Leader of the Council reported on the work that he and the Cabinet had undertaken in the period of 6 February 2023 – 31 March 2023. He took the opportunity to thank all Members' for their work, especially for the last 4 years, in navigating through a pandemic and it had demonstrated the best of the Council and the work which Councillors do in their individual wards.

In response to a question the Leader advised that it was for the new operators of the leisure centres to determine their payment policies as they would at their other centres across the UK.

61. Annual report on Special Urgency decisions

The report was noted.

62. To receive reports from the Chairmen of the Audit and Scrutiny Committees on the work of the Committees since the last Council meeting.

- a) **Audit Committee Annual Report 2022/23**

The Chairman of Audit Committee commended his report to the Council, thanking Members and Officers for their work. There were no questions.

**b) Scrutiny Committee Annual Report 2022/23**

The Chairman of Scrutiny Committee commended his report to the Council, thanking Members and Officers for their work. A Member requested as part of questions, if in the future it would be known in Sencio had any on demand loan facilities that could be called in at very short notice. Officers noted the question.

THE MEETING WAS CONCLUDED AT 7.45 PM

CHAIRMAN



## RETURNING OFFICER'S REPORT

Council – 19 July 2022

**Report of:** Chief Executive

**Status:** For Information

**Key Decision:** No

**Contact Officer:** Charlotte Sinclair, Ext. 7165

**Recommendation to Council:** That the report be noted.

**Reason for recommendation:** To provide Members with details of Councillors elected in the District Council elections.

### Introduction and Background

- 1 At the four yearly election of District Councillors held on Thursday, 4 May 2023, the persons listed in the appendix to this report were duly elected to serve on the Sevenoaks District Council.

### Key Implications

#### Financial

There are no specific financial implications arising from this report.

#### Legal Implications and Risk Assessment Statement

There are no specific legal implications arising from this report.

#### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

#### Net Zero 2030

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

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### **Appendices**

Appendix A – District Councillors (District Warding Arrangements)

### **Background Papers**

District Council Election 2023

**Dr. Pav Ramewal**

**Chief Executive & Returning Officer for Sevenoaks District**

## Appendix A

## DISTRICT COUNCILLORS - District Warding Arrangements

Ward	Members
Ash And New Ash Green	3 Cllr Mark Lindop (Green Party) Cllr Shani Manamperi (Green Party) Cllr Laura Manston (Green Party)
Brasted Chevening & Sundridge	3 Cllr Michelle Alger (Liberal Democrat) Cllr Sandra Robinson (Liberal Democrat) Cllr Nigel Williams (Conservative)
Cowden & Hever	1 Cllr James Barnett (Conservative)
Crockenhill & Well Hill	1 Cllr Rachel Waterton (No Party Description)
Dunton Green & Riverhead	2 Cllr Kim Bayley (Conservative) Cllr Graham Clack (Conservative)
Edenbridge North & East	2 Cllr Angela Baker (Conservative) Cllr James Morgan (Liberal Democrat)
Edenbridge South & West	2 Cllr Alan Layland (Conservative) Cllr Margot McArthur (Conservative)
Eynsford	1 Cllr Michael Barker (Green Party)
Farningham, Horton Kirby & South Darenth	2 Cllr Laurence Ball (Conservative) Cllr Alan White (Conservative)
Fawkham & West Kingsdown	3 Cllr Emily Bulford (Conservative) Cllr Lynda Harrison (Conservative) Cllr Sean Malone (Conservative)
Halstead, Knockholt & Badgers Mount	2 Cllr John Grint (Conservative) Cllr Gary Williamson (Conservative)
Hartley & Hodsoll Street	3 Cllr Larry Abraham (Conservative) Cllr Penny Cole (Conservative) Cllr Perry Cole (Conservative)
Hextable	2 Cllr Christine Hudson (Independent) Cllr Darren Kitchener (Independent)
Kemsing	2 Cllr Chris Haslam (Conservative) Cllr Simon Reay (Conservative)

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Leigh & Chiddingstone Causeway	1	Cllr Michael Silander (Liberal Democrat)
Otford & Shoreham	2	Cllr John Edwards-Winser (Conservative) Cllr Irene Roy (Conservative)
Penshurst, Fordcombe & Chiddingstone	1	Cllr Richard Streatfield (Liberal Democrat)
Seal & Weald	2	Cllr Roddy Hogarth (Conservative) Cllr Julia Thornton (Conservative)
Sevenoaks Eastern	2	Cllr Tony Clayton (Liberal Democrat) Cllr Elizabeth Purves (Liberal Democrat)
Sevenoaks Kippington	2	Cllr Chloe Gustard (Liberal Democrat) Cllr Nicholas Varley (Liberal Democrat)
Sevenoaks Northern	2	Cllr Alan Leaman (Liberal Democrat) Cllr Claire Shea (Liberal Democrat)
Sevenoaks Town & St. John's	3	Cllr Susan Camp (Liberal Democrat) Cllr Victoria Granville (Liberal Democrat) Cllr David Skinner (Liberal Democrat)
Swanley Christchurch & Swanley Village	3	Cllr Clare Barnes (Conservative) Cllr Michael Horwood (Conservative) Cllr Nina Scott (Conservative)
Swanley St. Mary's	2	Cllr Lesley Dyball (Conservative) Cllr Cathy Morgan (Conservative)
Swanley White Oak	3	Cllr Glynnis Darrington (Conservative) Cllr Paul Darrington (Conservative) Cllr Jasmine Ferrari (Conservative)
Westerham & Crockham Hill	2	Cllr Diana Esler (Conservative) Cllr Kevin Maskell (Conservative)

### Political Composition:

Conservative	33
Liberal Democrats	14
Green Party	4
Independent	2
No party description	1
TOTAL	54



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**APPENDIX U - SCHEME OF DELEGATIONS OF EXECUTIVE FUNCTIONS  
BY THE LEADER OF THE COUNCIL (MAY 2021)**

1. **Scope of the Scheme of Delegations of Executive Functions by the Leader of the Council**
  - 1.1 This Scheme of Delegations is made pursuant to paragraph 9.2 of Part 2 of the Council’s Constitution which requires that a written record of delegations of executive functions be presented by the Leader of the Council at the first meeting of the Council following whole Council elections.
  - 1.2 Thereafter this Scheme of Delegations of Executive Functions may be amended at any time by the Leader of the Council on written notice to the Chief Executive 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 body, Committee or the Cabinet as a whole. The changes will be reported to the next ordinary meeting of the Council.
  - 1.3 This Scheme of Delegations has regard to the Council’s Constitution and should be read in the context of the procedure rules contained in Part 4 of the Constitution. Should there be any conflict between this Scheme of Delegations and the Council’s Constitution then the Constitution will prevail.
2. **Role**
  - 2.1 The Cabinet (the Executive) will carry out all of the District Council’s functions which are not the responsibility of any other part of the District Council, whether by law or under the Constitution. Please see table below for those functions delegated to Officers of the Council:

Function	Delegation of functions
Any function relating to contaminated land.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services
The discharge of any function relating to the control of pollution or the management of air quality.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services
The service of an abatement notice in respect of a statutory nuisance.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services

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Function	Delegation of functions
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the Authority's area.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services
The inspection of the Authority's area to detect any statutory nuisance.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services
The investigation of any complaint as to the existence of a statutory nuisance.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services
The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services
The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Deputy Chief Executive and Chief Officer Planning & Regulatory Services

### 3. Form and Composition

3.1 The Cabinet will consist of the Leader of the Council together with further Members appointed by the Leader of the Council (the Leader). The membership of the Cabinet and individual portfolios will be reported to the Annual Meeting of the Council.

### 4. Leader

4.1 The Leader will be a Member elected to the position of Leader by the Council at the first meeting of the Council following whole Council elections. The Leader will chair the Cabinet (if present) and will hold office until:

- (a) he/she resigns from the office; or
- (b) he/she is no longer a Member; or
- (c) the expiry date of his/her fixed term of office as Leader, which is the date of the post-election annual meeting which follows his/her election as Leader (e.g. for a Leader elected at the Annual Council in May 2011, the period of election will continue to the Annual Meeting in May 2015); or
- (d) he/she is removed from office by resolution of the Council.

4.2 In the event of the Leader being removed from office by resolution of the Council, the new Leader may be appointed at the same or a subsequent meeting.

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**5. Other Executive Members**

- 5.1 The Leader will appoint one member of the Executive as Deputy Leader, who will hold office until the end of the Leader's term of office, unless:
- (a) he/she resigns from the office; or
  - (c) he/she is no longer a Councillor; or
  - (d) he/she is removed from office by the Leader, who must give written notice of any removal to the Chief Executive. The removal will take effect two clear working days after receipt of the notice by the Chief Executive.
- 5.2 Where a vacancy occurs, the Leader will appoint another Deputy Leader.
- 5.3 If for any reason the Leader is unable to act or the office of Leader becomes vacant (and pending the election of a new Leader) the Deputy Leader shall discharge all roles and functions of the Leader.
- 5.4 If, for any reason, both the Leader and Deputy Leader are unable to act or both offices become vacant, the Executive shall act in the Leader's place or arrange for another Member of the Executive to act in his/her place.
- 5.5 Other Cabinet members shall be appointed by the Leader who shall notify the Council of their appointment and they shall hold office until:
- (a) they resign from office; or
  - (b) they are no longer Members; or
  - (c) they are removed from office on the expiry date of their appointed term of office, save that the Leader may remove the Cabinet Member from office at an earlier date if he/she so decides. The Leader must give written notice of any early removal of a Cabinet Member to the Chief Executive and the removal will take effect two clear working days after receipt of the notice by the Chief Executive.

**6. Delegation to Executive and Portfolio Holders**

**Introduction**

- 6.1 The Cabinet and Portfolio Holders or Officers must take all decisions within the context of the Budget and Policy Framework.

**Who may Make Executive Decisions?**

- 6.2 All key decisions will be taken by the Executive as a whole.
- 6.3 Individual members of the Cabinet may take decisions which are not key decisions.

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### Principles of Delegation

6.4 The Executive should focus on:

- (a) co-ordination of decisions with a corporate-wide implication;
- (b) major or key decisions;
- (c) decisions which are recommendations on change in policy - and hence need Council approval;
- (d) monitoring progress on key tasks; and
- (e) developing new policy.

6.5 Portfolio Holders have full delegated authority from the Executive to take all decisions within the remit of their portfolio (outlined in the Annex to Appendix H of the Constitution (attached to this scheme of delegations)) except:

- (a) key decisions which:
  - (i) result in the District Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates i.e. decisions which exceed £50,000 in value (but procurement decisions within the budget e.g. refuse vehicles can be undertaken within delegated powers); or
  - (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the District Council.
- (b) decisions outside the agreed policy framework;
- (c) decisions which cut across two or more portfolios; and
- (d) proposals for new or amended policies or strategies.

**Note: The fact that a decision could be made by a Portfolio Holder would not preclude that individual bringing the matter to the Cabinet for decision.**

### Portfolios

6.6 Portfolio Holders should be aware that the allocation of functions indicates an area of responsibility but does not automatically grant decision-making powers in that area. It is within the remit of each Portfolio Holder to:

- (a) provide direction and support to Chief Officers and Heads of Service in the management of the resources supporting their respective portfolios - including approval for filling vacancies and other minor

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- personnel changes within agreed budgets;
- (b) oversee partnership working and external relationships within their portfolio areas; and
- (c) keeping their colleagues informed of significant or important issues as they emerge and develop.

#### **Further Delegation of Executive Functions**

- 6.7 Where the Cabinet, a Committee of the Cabinet (if one is established) or an individual member of the Cabinet is responsible for an executive function, they may delegate further to joint arrangements or an Officer.
- 6.8 Unless the Council directs otherwise, if the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to a Committee of the Cabinet or to an Officer.
- 6.9 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.
- 6.10 Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.
- 6.11 The Leader may amend the scheme of delegation relating to executive functions at any time during the year. To do so, the Leader must give written notice to the Chief Executive 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 Executive as a whole. The Chief Executive will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- 6.12 Where the Leader seeks to withdraw delegation from a Committee, notice will be deemed to be served on that Committee when he/she has served it on its Chairman.
- 6.13 Where a Cabinet member would normally exercise executive functions delegated to him/her in respect of any matter but is unable to do so because of absence or indisposition, a decision on the matter may be taken by the Leader, by the Cabinet or by a Committee of the Cabinet.
- 6.14 Where a Cabinet member would normally exercise executive functions delegated to him/her in respect of any matter but has a prejudicial interest in that matter as defined in the Members' Code of Conduct he/she shall not exercise those delegated powers in respect of that matter. A

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decision on the matter shall be taken by the Cabinet or a Committee of the Cabinet and the normal rules for declaration of interests at meetings shall apply.

### **Conflicts of Interest**

- 6.15 Where the Leader has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct.
- 6.16 If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct.
- 6.17 If the exercise of an executive function has been delegated to a Committee of the Cabinet, an individual Member or an Officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Member' Code of Conduct.

## **PART 3 -STANDARDS COMMITTEE**

### **1. Establishment**

1.1 The Council will establish a Standards Committee.

### **2. Composition**

2.1 Standards Committees have to comply with the political balance rules under the Local Government Act 1972.

### **3. Membership**

3.1 The Standards Committee will be composed of:

- Seven Members other than the Leader of the Council and no more than one Member selected from a particular Parish Boundary.
- Only one Member out of the above seven Members to be an Executive Member without being a Chair of the Committee as Standards is a Council function as opposed to an Executive function (s.27(8), Part 1, Chapter 7 of the Localism Act 2011.
- Up to two co-opted Members of a Parish or Town Council (a Parish/Town Council Member)

### **4. Voting**

4.1 All Sevenoaks District Council members of the Committee will be entitled to vote at meetings of the Committee.

4.2 Any Co-opted Parish or Town Council representatives would not have voting rights.

### **5. Quorum**

5.1 The quorum of the Standards Committee will be three voting members.

### **6. Number of meetings**

6.1 At least one meeting will be held each year.

### **7. Role and Function (Terms of Reference)**

7.1 To discharge the functions as set out in Part 1, Chapter 7 of the Localism Act 2011 including:

- (a) to promote and maintain high standards of conduct by Members and Co-opted Members of the District Council and to make recommendations to Council on improving standards;

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- (b) to advise and assist Parish/Town Councils and Parish/Town Councillors to maintain high standards of conduct and to make recommendations to Parish/Town Councils on improving standards;
- (c) to advise the District Council on the adoption of or revisions to its Code of Conduct;
- (d) to advise, train or arrange to train Members, Co-opted Members of the District Council on matters relating to the Code of Conduct;
- (e) to assist the Members and Co-opted Members of the District Council to observe their respective Codes of Conduct;
- (f) to monitor and assess the operation and effectiveness of the District Council Code of Conduct and to review and manage the Arrangements for dealing with Code of Conduct Complaints;
- (g) to advise on local ethical governance protocols and procedures;
- (h) to maintain oversight of the District Council's arrangements for dealing with Code of Conduct complaints;
- (i) to act as an advisory body in respect of any ethical governance matter;
- (j) to monitor and review the procedures for the Register of Members' Interests including reviewing interests other than Disclosable Pecuniary Interests (DPIs) called Non Pecuniary Interests (NPIs);
- (k) to receive reports from the Monitoring Officer on the number and nature of complaints received and action taken as a result in consultation with the Independent Person;
- (l) to receive the Monitoring Officer's annual report which includes a summary of the District Council's ethical governance arrangements;
- (m) to appoint a Sub-Committee being a Standards Assessment Working Party to consider complaints of an extremely serious nature or other similar exceptional circumstance that may exist as set out within the procedures entitled "Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011";
- (n) to appoint a Sub-Committee being a Standards Hearing Sub Committee following an investigation and finding that a breach of the Code of Conduct has occurred and no informal resolution can be found in accordance with "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011";
- (o) delegated authority to grant dispensations pursuant to S33(2) of the Localism Act 2011 only if, after having had regard to all relevant circumstances, it is considered that:

- without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business (s.33(2)(b) of Part 1, Chapter 7 of the Localism Act 2011;
- granting the dispensation is in the interests of persons living in the authority's area (s.33(2)(c) of Part 1, Chapter 7 of the Localism Act 2011;
- it is otherwise appropriate to grant a dispensation (s.33(2)(e) of Part 1, Chapter 7 of the Localism Act 2011.

## **8. Standards Assessment Working Party (Terms of Reference)**

- 8.1 It is recognised that complaints may be received which are of an extremely serious nature or other similar exceptional circumstances exist as set out within the procedures entitled "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011". In such a situation the Monitoring Officer can set up a Working Party comprising three members of the Standards Committee.
- 8.2 The Working Party will examine thoroughly the contents of the complaint and after consultation with the Independent Person make recommendations to the Monitoring Officer on whether an investigation should take place.
- 8.3 The Working Party will produce a written summary of its consideration of the complaint to include the main points considered, its conclusion on the complaint and the reasons for that conclusion.

## **9. Standards Hearings Sub-Committee (Terms of Reference)**

- 9.1 A Sub-Committee summoned by the Monitoring Officer comprising three voting Members of the Standards Committee having a quorum of three established to conduct Hearings into allegations referred to it by the Monitoring Officer that a Member or Co-opted Member (the Subject Member) has failed to comply with the relevant Code of Conduct appertaining to that Subject Member.
- 9.2 To hold a hearing and make a determination in relation to a complaint referred to it by the Monitoring Officer alleging a breach of the Code of Conduct appertaining to the Subject Member.
- 9.3 Where the Sub-Committee determines that a Subject Member has failed to comply with the Subject Member's Code of Conduct to determine what action to take in respect thereof including the power to make recommendations to the Subject Member's Council and power to instruct the Monitoring Officer to publicise its decision on the District Council's web site and/or newspaper circulating in the locality.

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- 9.4 To give notice in writing of any of its determinations including the reasons for such determination.

### **10. Standards Sub-Committee for Granting Dispensations**

- 10.1 The Sub-Committee can be summoned by the Monitoring Officer to grant dispensations in accordance with its delegated powers referred to above at paragraph 7.1(n).
- 10.2 The Sub-Committee will comprise three voting Members of the Standards Committee having a quorum of three.
- 10.4 A written record of the Sub-Committee decision will be made and given to the Monitoring Officer. The written record will specify the reasons for the Sub-Committee's decision and if a dispensation is granted the written record will evidence the name of the Member or Co-opted Member receiving the dispensation and the period for which it has effect.

### **11. Codes and Protocols**

- 11.1 High standards lie at the root of the Council's activities and the work of the Standards Committee is supported by policies and protocols including:
- Members' Code of Conduct
  - Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011
  - Procedure for Making a Recommendation for the Appointment of an Independent Person
  - Protocol on Gifts and Hospitality
  - Members' Register of Interest Form
  - Powers to Grant Dispensations
  - Guidance of Disclosure of Confidential Information by Members



## **PART 4 - EXECUTIVE**

### **1. Role**

- 1.1 The Executive (known as the Cabinet) will carry out all of the District Council's functions which are not the responsibility of any other part of the District Council, whether by law or under this Constitution.

### **2. Form and Composition**

- 2.1 The Cabinet will consist of the Cabinet Leader together with at least 2, but not more than 9, Members appointed to the Cabinet by the Council Leader. It will usually be Chaired by the Leader. The membership of Cabinet can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

### **3. Leader**

- 3.1 The Leader will be a Member elected to the position of Leader by the Council. The Leader will hold office until:
- (a) he/she resigns from the office; or
  - (b) he/she is no longer a Member; or
  - (c) the expiry date of his/her fixed term of office as Leader, which is the date of the post-election annual meeting which follows his/her election as Leader (e.g. for a Leader elected at the Annual Council in May 2011, the period of election will continue to the Annual Meeting in May 2015); or
  - (d) he/she is removed from office by resolution of the Council.
- 3.2 In the event of the Leader being removed from office by resolution of the Council, the new Leader may be appointed at the same or a subsequent meeting.

### **4. Other Cabinet Members**

- 4.1 The Leader must appoint one of the Executive as Deputy Leader, who will hold office until the end of the Leader's term of office, unless:
- (a) he/she resigns from the office; or
  - (b) he/she is no longer a Councillor; or
  - (c) he/she is removed from office by the Leader, who must give written notice of any removal to the Chief Executive. The removal will take effect two clear working days after receipt of the notice by the Chief Executive.
- 4.2 Where a vacancy occurs, the Leader must appoint another Deputy Leader.

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- 4.3 If for any reason the Leader is unable to act or the office of Leader becomes vacant (and pending the election of a new Leader) the Deputy Leader shall discharge all roles and functions of the Leader.
- 4.4 If, for any reason, both the Leader and Deputy Leader are unable to act or both offices become vacant, the Cabinet shall act in the Leader's place or arrange for another Member of the Executive to act in his/her place.
- 4.5 Other Cabinet members shall be appointed by the Leader who shall notify the Council of their appointment and they shall hold office until:
  - (a) they resign from office; or
  - (b) they are no longer Members; or
  - (c) they are removed from office on the expiry date of their appointed term of office, save that the Leader may remove the Cabinet Member from office at an earlier date if he/she so decides. The Leader must give written notice of any early removal of a Cabinet Member to the Chief Executive and the removal will take effect two clear working days after receipt of the notice by the Chief Executive.

## **5. Cabinet Procedure Rules**

### Who may Make Executive Decisions?

- 5.1 The Leader will decide how executive functions are to be exercised.
- 5.2 The Leader may provide for Executive functions to be discharged by:
  - i) the Executive as a whole;
  - ii) a Committee of the Executive;
  - iii) an individual Member of the Executive;
  - iv) an officer; or
  - v) joint arrangements.

### Delegation by the Leader

- 5.3 At the first Annual Meeting of the Council after a whole Council election, the Leader will present to the Council a written record of delegations made by him/her for inclusion in the Council's scheme of delegation set out below. The document presented by the Leader will contain the following information about Executive Functions in relation to the coming year:

- (a) the names and addresses 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 Executive Functions to Area Committees, any other authority or any joint arrangements and the names of those Cabinet members appointed to any joint committee for the coming year; and
- (e) the nature and extent of any delegation to Officers with details of any limitation on that delegation, and the title of the Officer to whom the delegation is made.

Further Delegation of Executive Functions

- 5.4 Where the Cabinet, a Committee of the Cabinet (if one is established) or an individual member of the Cabinet is responsible for an Executive Function, they may delegate further to joint arrangements or an Officer.
- 5.5 Unless the Council directs otherwise, if the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to a Committee of the Cabinet or to an Officer.
- 5.6 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.
- 5.7 Even where Executive Functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.
- 5.8 The Council's Scheme of Delegation and Executive Functions:
  - (a) Subject to (b) below the Council's scheme of delegation will be subject to adoption by the Council and may only be amended by the Council.
  - (b) The Leader may amend the scheme of delegation relating to Executive Functions at any time during the year. To do so, the Leader must give written notice to the Chief Executive 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

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Cabinet as a whole. The Chief Executive will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.

- (c) Where the Leader seeks to withdraw delegation from a Committee, notice will be deemed to be served on that Committee when he/she has served it on its Chairman.
- (d) Where a Cabinet member would normally exercise Executive Functions delegated to him/her in respect of any matter but is unable to do so because of absence or indisposition, a decision on the matter may be taken by the Leader, by the Cabinet or by a Committee of the Cabinet.
- (e) Where a Cabinet member would normally exercise Executive Functions delegated to him/her in respect of any matter but has a Disclosable Pecuniary interest in that matter as defined in the Members' Code of Conduct (Appendix Q - Members' Code of Conduct) he/she shall not exercise those delegated powers in respect of that matter. A decision on the matter shall be taken by the Cabinet or a Committee of the Cabinet and the normal rules for declaration of interests at meetings shall apply.

### 5.9 Conflicts of Interest:

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct. (Appendix Q - Members' Code of Conduct)
- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct. (Appendix Q - Members' Code of Conduct)
- (c) If the exercise of an Executive Function has been delegated to a Committee of the Cabinet, an individual Member or an Officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Member' Code of Conduct. (Appendix Q - Members' Code of Conduct)

5.10 The Cabinet will meet normally 10 times per year at times to be agreed by the Leader. The Cabinet shall meet at the Council's main offices or another location to be agreed by the Leader.

5.11 Except in those cases where the Cabinet or a Committee of the Cabinet is discussing confidential or exempt information under the Access to Information Procedure Rules (Appendix A - Access to Information Procedure

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Rules), every meeting of the Cabinet or Committee of the Cabinet at which decisions are to be made will be held in public.

- 5.12 The quorum for a meeting of the Cabinet, or a Committee of it, shall be one half of the total number of members of the Cabinet or a Committee including the Leader or person presiding in the Leader's absence.
- 5.13 (a) 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 Procedure Rules (Appendix A - Access to Information Procedure Rules).
- (b) 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 applying to those taken by the Cabinet as a whole.

### **How are Cabinet Meetings Conducted?**

- 5.14 Who Presides? If the Leader is present, he/she will preside. In his/her absence, the Deputy Leader will preside. In the absence of both the Leader and Deputy Leader, then a person appointed to do so by those present shall preside.
- 5.15 Who May Attend?
- (a) Local Members will be invited to appropriate meetings of the Cabinet when issues are being discussed which affect their particular areas and to speak on them.
- (b) The Chairman may invite any Member of the Council who is not a member of the Cabinet to speak on any particular matter. The Chairman shall extend such an invitation to a Member who has moved a motion which has been referred to the Cabinet.
- (c) There will be a period of 15 minutes set aside for questions from Members.
- 5.16 What Business? At each meeting of the Cabinet the following business will be conducted:
- (a) consideration of the minutes of the last meeting;
- (b) declarations of interest, if any;
- (c) matters referred to the Cabinet (whether by an Advisory Committee, the Scrutiny Committee, the Audit Committee or by the Council) for

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reconsideration by the Cabinet in accordance with the provisions contained in the appropriate Procedure Rules or the Budget and Policy Framework Procedure Rules (Appendix B - Budget and Policy Framework Procedure Rules) of this Constitution;

- (d) consideration of reports from an Advisory Committee, the Scrutiny Committee or the Audit Committee; and
  - (e) matters set out in the agenda for the meeting, which shall indicate those that are key decisions and those that are not in accordance with the Access to Information Procedure Rules (Appendix A - Access to Information Procedure Rules).
- 5.17 Consultation - All reports to the Cabinet from any member of the Cabinet or an Officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and Committees, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

### Who can put Items on the Cabinet Agenda?

- 5.18 The Leader will decide upon the schedule for the meetings of the Cabinet. He/she may put on the agenda of any Cabinet meeting any matter which he/she wishes, whether or not authority has been delegated to the Cabinet, a Committee of it or any Member or Officer in respect of that matter. The Chief Executive will comply with the Leader's requests in this respect.
- 5.19 Any member of the Cabinet may require the Chief Executive to make sure that an item is placed on the agenda of the next available meeting of the Cabinet for consideration. If he/she receives such a request the Chief Executive will comply.
- 5.20 There will be a standing item on the agenda of each meeting of the Cabinet for matters referred by the Advisory Committees, Scrutiny Committee and the Audit Committee and Cabinet will send a formal response to the next appropriate meeting of that Committee explaining how the comments from the Committee was taken into account when making a decision.
- 5.21 Any Member 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 Member who asked for the item to be considered.

- 5.22 The Chief Executive, the Monitoring Officer and/or the Section 151 Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the Chief Executive to call such a meeting in pursuance of their statutory duties. In other circumstances, where any two of the Chief Executive, the Monitoring Officer and/or the Section 151 Officer are of the opinion that a meeting of the Cabinet needs to be called 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, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

## **6. How Decisions are Made**

- 6.1 The Cabinet is the part of the Council which is responsible for most day-to-day decisions. When major decisions are to be discussed or made, these are published in the Cabinet's Notice of Key Decisions in so far as they can be anticipated.
- 6.2 All decisions which are to be discussed with Council Officers at a meeting of the Cabinet, will generally be open for the public to attend except where personal or confidential matters are being discussed.
- 6.3 The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework or recommend changes to policy, this must be referred to the Council as a whole to decide.

## **7. Responsibility for Functions**

- 7.1 The Leader will maintain a list setting out which individual members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the exercise of particular Executive Functions.

## **8. Support Groups to Cabinet**

- 8.1 The Cabinet may form advisory committees from time to time to assist with its work, especially with the formulation of policies within the Policy Framework. These advisory committees will be constituted on the basis of political proportionality and must not include members of the Scrutiny Committee to which they may also report direct. The membership and terms of reference of these advisory committees are set out in Appendix R - Cabinet Advisory Committees.

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## **PART 5 - SCRUTINY FUNCTION**

(Please also refer to Appendix C - Scrutiny Committee Procedure Rules)

### **1. Introduction**

- 1.1. There is one Scrutiny Committee to discharge the functions conferred by Section 9F of the Local Government Act 2000 to support the work of the Cabinet and the Council as a whole.

### **2. Role and Scope**

2.1 The role and scope of the Scrutiny Committee is:

- (a) to undertake and report on the Scrutiny role in relation to all matters within the Council's scope of responsibility;
- (b) to oversee the Council's compliance with the "Councillor Call for Action" pursuant to relevant legislation; and
- (c) to oversee the Council's compliance with the Police and Justice Act 2006.

### **3. Specific Functions**

3.1 The Scrutiny Committee has the power to:-

- (a) review and scrutinise the decisions by and performance of the Cabinet and/or Committees and Council Officers in relation to individual decisions and over time;
- (b) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (c) question members of the Cabinet and/or Committees and Chief Officers from the Council about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (d) make recommendations to the Cabinet and /or appropriate Committee and/or Council arising from the outcome of the scrutiny process;
- (e) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance;
- (f) question and gather evidence from any person (with their consent); and

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- (g) “call in” key decisions which have been taken but not yet implemented in accordance with Appendix C - Scrutiny Committee Procedure Rules.

### **4. Membership**

- 4.1 The Scrutiny Committee will comprise a permanent Chairman and Vice Chairman, and 9 other elected Members, that follow the political proportionality of the Council. No Members of the Committee may be members of the Cabinet, their deputies or members of any of the Cabinet Advisory Committees. The membership of the Committee can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

## **PART 6 - AUDIT COMMITTEE**

### **1. Introduction**

- 1.1 The Council will appoint the Audit Committee to discharge the functions conferred by the Accounts and Audit Regulations 2015 in relation to the matters set out below and specifically to consider the Council's Financial and Governance arrangements, relating to the system of internal control and the effectiveness of internal audit, the annual governance statement; including the arrangements for the management of business risks, in compliance with Regulations 3 and 6 of the Accounts and Audit Regulations 2015 and any subsequent legislation.
- 1.2 The number of meetings and Terms of Reference of the Audit Committee may be reviewed from time to time by the Governance Committee which may report to the Council.

### **2. Membership of the Committee**

- 2.1 All Members of the Council, except members of the Cabinet or their deputies and the Chairman of the Council, may be members of the Audit Committee. However, no Member may be involved in reviewing a decision in which he/she has been directly involved.
- 2.2 The Committee will be made up of 9 elected Members, one of which shall serve as Chairman, that follow the political proportionality of the Council. The Chairman will not be a member of any Cabinet Advisory Committee. The membership of the Committee can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.
- 2.3 The Audit Committee shall be entitled to recommend to Council the appointment of up to two additional co-opted non-voting members. Any co-opted members must have the necessary technical knowledge and skills to be of value to the business of the Committee.

### **3. Terms of Reference of the Audit Committee**

#### Audit Activity

- (a) To review, in collaboration with the Audit Manager, the Internal Audit Charter on an annual basis and to consider and approve any further development of the Council's Internal Audit Charter, Strategy or terms of reference such as shall be appropriate.
- (b) To consider and approve the annual internal audit plan, including a summary of internal audit activity regarding the level of assurance that it can give over the Council's internal control, corporate governance and risk management arrangements. Further, to commission work as required from both Internal and External Audit.

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- (c) To consider the Audit Manager's annual report and assurance opinion.
- (d) To consider quarterly progress reports from the Audit Manager regarding the progress of the Annual Internal Plan. The Committee may request to review any individual audit report should they or the Audit Manager deem it appropriate to do so.
- (e) To consider a report on the progress of all recommendations made by internal audit and other external regulatory or review agencies.
- (f) To receive and consider the annual report on the review of the effectiveness of the internal audit function.
- (g) To consider confidential reports on investigations carried out by Internal Audit of suspected fraud; corruption or bribery allegations within the Council or its partners.
- (h) To make proper arrangements regarding the appointment of the Council's External Auditor; to consider the appointed External Auditor's annual letter, relevant reports, and the report to those charged with governance.
- (i) To comment on the scope and depth of external audit work and to ensure it gives value for money.
- (j) To consider any external audit report resulting from the Statement of Accounts and any recommendations and comments received from the District Auditor.

### Regulatory Framework

- (k) To maintain an overview of the effective development and operation of corporate governance and risk management in the Council, and to monitor compliance with statutory duties and the Council's Constitution in respect of Financial and Contract Procedure Rules.
- (l) To monitor Council policies on 'Raising Concerns at Work'; the counter-fraud and counter-corruption strategy; the Bribery Act; and the Council's complaints process; including the Council's whistleblowing arrangements.
- (m) To consider and approve the Council's Annual Governance Statement and recommend its adoption to Council
- (n) To monitor the Council's arrangements for corporate governance and if necessary to recommend actions to ensure compliance with best practice; and to also consider compliance with the Council's own and other published standards and controls.
- (o) To receive and consider reports from the monitoring officer on lawfulness and/or maladministration; to review any issue referred by

the Chief Executive, a Chief Officer, or a Statutory Officer.

(p) To monitor the implementation of the Members' Allowance Scheme.

#### Accounts

(q) To review the annual Statement of Accounts. Specifically to consider whether appropriate accounting policies, including International Financial Reporting Standards, have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.

(r) To approve the Statutory Statement of Accounts when the deadline for approval does not allow approval by full Council.

(s) To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts, and comments received from the District Auditor.

### **4. Audit Committee Procedure Rules**

4.1 The Committee will conduct their proceedings in accordance with the applicable Committee protocols as specified within Section 33 of Part 2 of the Council's Constitution, and with the further Procedure Rules set out below.

#### Appointment of Sub-Committees/Working Groups

4.2 The Committee may appoint Sub-Committees or working groups. These may be appointed for a fixed period or until the next Annual Council meeting.

#### Procedure at Meetings of the Audit Committee

4.3 The Audit Committee shall consider the following business:

- (a) minutes of the last meeting;
- (b) declarations of interest;
- (c) responses of the Council, Cabinet or Council Committees to the Committee's reports or recommendations; and
- (d) the business otherwise set out on the agenda for the meeting.

#### Meetings of the Audit Committee

4.4 There shall be four ordinary meetings of the Committee in each year. In addition, other meetings may be called from time to time as and when appropriate. A meeting of the Committee may be called by the Chairman of the Committee, by a quarter of the members of the Committee or by the Chief Executive (in consultation with the Chairman or Vice-Chairman, if available) if he considers it necessary or appropriate.

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- 4.5 The Audit Committee shall periodically set aside time during a meeting where any matters pertaining to the remit of the Committee may be discussed with the Audit Manager without the presence of other officers of the Council. The Chairman of the Committee will also meet informally with the Audit Manager and other relevant officers as appropriate prior to all ordinary meetings.

### Work Plan

- 4.6 The Audit Committee will be responsible for setting its own Work Plan and in doing so shall take into account the wishes of all members on the Committee and in consultation with key officers of the Council.

### Agenda Items

- 4.7 Any member of the Audit Committee shall be entitled to give notice to the Chief Executive that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. On receipt of such a request the Chief Executive will ensure that it is included on the next available agenda and the Chairman will be informed.
- 4.8 The Audit Committee shall also respond, as soon as work plans permit, to requests from the Council and if it considers it appropriate, the Cabinet or other Committees, to review particular areas of Council activity relevant to the functions of the Committee.

### Reports and Recommendations from the Audit Committee

- 4.9 Once it has formed recommendations, the Audit Committee will submit these in writing to the Chief Executive for consideration by the Cabinet, Council or the relevant Committee. Whenever possible a response to the submitted report and/or recommendations of the Committee will be formed within two months of it being submitted to the Chief Executive.

### Members and Officers Attending Committee

- 4.10 In discharging its terms of reference, the Audit Committee may require any member of the Cabinet, the Chairman of a Committee, the Chief Executive, and/or any Chief Officer to attend before it to answer questions in relation to matters within their remit. For the avoidance of doubt, such a person may be required to answer questions on the Council's relationships with partner organisations, contractors and/or other public bodies, providing that person is responsible for managing that relationship as part of their duties. It is the duty of those persons to attend if so required.
- 4.11 Where any Member or Officer is required to attend the Audit Committee under this provision, the Chairman of the Committee will inform the Chief Executive. The Chief Executive shall inform the Member or Officer in writing giving at least five clear working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which

he/she is required to attend and whether any papers are required to be produced for the Committee. Where the Committee will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for preparation of that documentation.

- 4.12 Where the Member or Officer is unable to attend on the required date, then the Committee shall in consultation with the Member or Officer arrange an alternative date for attendance to take place as soon as practically possible.

Attendance by Others

- 4.13 In discharging its terms of reference, the Audit Committee may review the performance/governance of partner organisations, contractors and/or other public bodies. It may also invite people other than those people referred to in paragraph 4.10 to provide it with a report, address it and/or answer questions that may be appropriate to the Committee's remit.

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## **PART 7 - DEVELOPMENT CONTROL COMMITTEE**

(Please also refer to Appendix N - Development Control Protocol)

### **1. Terms of Reference of the Committee**

- (a) All planning, listed building and advertisement applications.
- (b) Revocation, modification and discontinuance orders and planning agreements relating to planning applications.
- (c) Enforcement of planning control; including the issue of Enforcement notices, listed building Enforcement notices, stop notices and abatement notices, and Enforcement and prosecution of contraventions of tree preservation orders, including the requirement for replacement planting.
- (d) Preservation and planting of trees, including the consideration of appeals against tree preservation orders and applications made thereunder.
- (e) All matters arising out of the operation of the Hedgerow Regulations 1997 or any subsequent changes thereto; and,
- (f) All decisions of the Council as Hazardous Substance Authority.

### **2. Membership of the Committee**

19 Members of the Council to be chosen according to political proportionality rules. The Membership of the Committee can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

### **3. Procedure at Development Control Committee and Site Inspections**

- (1) *This code will be applied in such a way that the right of the Chairman of the Committee to control the debate will be maintained.*
- (2) *“Local Member” means the Member for the District Council ward affected by a planning application which is to be included on an agenda for consideration by the Development Control Committee.*
- (3) *The agenda for the Development Control Committee will be dispatched a minimum of 5 working days before the meeting eg on the Wednesday of the preceding week for a Thursday Committee meeting. It is incumbent on Members of the Committee to ensure that they remain impartial and receptive to all points of debate before reaching a decision to vote on an application.*

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- 3.1 The Chairman, Vice Chairman and other Members, whether or not Members of the Committee, should recognise the effect that their behaviour can have on the public's perception of the Council and should conduct themselves accordingly. Members should represent the interests of the District as a whole.
- 3.2 Members should remain at meetings of the Committee until the end of the meeting unless they have a compelling reason not to do so.
- 3.3 Where a planning application has been submitted by the District Council and the appropriate Cabinet Member (responsible Portfolio Holder) is a Member of the Committee, that Member is strongly advised to leave the meeting when the matter is considered and not take part in the discussion or voting. Members should also be informed when an application on Council-owned land is to be considered by the Committee even if the applicant is not the District Council.
- 3.4 The Development Control Committee operates in a quasi-judicial manner. Accordingly, Members who enter the meeting during discussion of an application, or are not present during the whole of the discussion, should not vote on the application as they will not have heard all the arguments for and against the proposal. Members must make declarations of Interest, Lobbying and Pre-determination before any applications are debated. Copies of lobbying material received should where practicable be forwarded to the Chief Officer Planning and Regulatory Services.
- 3.5 Any Local Member who wishes to reserve an item for debate at Development Control Committee is asked to notify the Chairman/Vice Chairman prior to the meeting.

Subject to the Chairman's right to control the debate:

- (a) Any reports deferred for any reason from previous meetings of the Committee will normally be reserved for debate.
- (b) The Chairman will indicate those applications in respect of which members of the public have asked to speak, which shall automatically be reserved for debate.
- (c) When a Local Member has indicated to the Chairman of the Committee that s/he would wish to address the Committee on a particular application, the application will be reserved by the Chairman for subsequent discussion.
- (d) The Chairman will then read out the details of each remaining planning application from the index to the report, so that Members of the Committee who wish to move an amendment to the Chief Officer Planning and Regulatory Services' recommendation or make a

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comment on any particular application may so indicate, when such applications will automatically be reserved for debate.

- (e) The Chairman will then put all unreserved items to the vote en bloc; and,
- (f) The Chairman will then deal with items before the Committee in the following order:
  - (i) Items deferred from previous meetings of the Committee.
  - (ii) Items with public speakers.
  - (iii) Items reserved by Members of the Committee.
  - (iv) Enforcement cases.
  - (v) Amendments or variations to existing permissions; and,
  - (vi) Objections to Tree Preservation Orders.

3.6 In respect of any item reserved for debate the following procedure will be followed:

- (a) The Chairman will read out the application reference and address. The Officer will introduce the item and outline the key considerations and constraints, summarise the consultation responses and representations and provide the recommendation.
- (b) Address to Committee:- Speakers, who have previously registered to do so are invited to address the Committee in the following order, for a maximum of 3 minutes, (Local Members will have 4 minutes):
  - (i) A member of the public wishing to speak against the application.
  - (ii) The applicant, agent or another member of the public wishing to speak in favour of the application.
  - (iii) The Local Council representative (Town Council or Parish Council)
  - (iv) The Local Member(s) (whether or not a Member of the Committee) wishing to speak for a maximum of 4 minutes speech time. (Normal rules relating to motions and amendments as set out in the Constitution apply).
- (c) Those addressing the Committee including the local member(s) will not normally participate further in respect of that item. However, at

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the Chairman's discretion any of the initial speakers or local members may be asked a question of clarification. Any local Member who is a member of the Committee and speaks at the start of the item and has not uttered a prejudicial view will continue to be allowed to debate and vote on the item.

- (d) Members of the Committee will have the opportunity to ask questions of the Officers present.
- (e) Normal discussion of the Planning merits will then take place.
- (f) If a Member wishes to raise a new aspect to the debate on the item as a result of information brought to light during the debate then they will be allowed to do so at the discretion of the Chairman.
- (g) Members are requested not to speak at length, or repeat views on items where they are in full agreement either with the Officers' report or with the views of a Member who has spoken earlier in the discussion.
- (h) The vote will be taken after a motion has been moved and seconded, and after the Chairman, or other mover of a motion, has summed up. The Chairman will advise the meeting on the result of the vote including whether planning permission has been granted, refused etc.
- (i) The Legal Officer will inform the Chairman (unless already requested) of a need for him/her to advise the Committee in respect of any issues that arise from the debate, to ensure that the decision is based upon accurate and relevant law and to advise the Committee with regard to the legal impact of any proposed recommendation or motion.

### Decisions Contrary to Officer Recommendation

- 3.7 All Members are encouraged to raise any queries or issues they may have regarding a specific application report with the appropriate Area Team Manager as soon as possible, and in any event before the Chairman's briefing. This will enable Officers to consider the issues raised and discuss them with the Chairman.
- 3.8 Under normal circumstances a Member, having considered the Officers report and who has any factual questions or concerns about an aspect of that report, may contact the Development Control Manager or the Chief Officer Planning and Regulatory Services. This will enable such matters to be discussed at the Chairman's briefing, that normally takes place 2 working days before the Committee meeting, and to prepare for any additional advice for the meeting. If a Member's concerns relate to matters which require a visual assessment, the Area Team Manager or the

Chief Officer Planning and Regulatory Services may discuss the desirability of arranging a Committee Site Inspection with the Chairman. Committee Members are encouraged to attend these Site Inspections whenever possible.

- 3.9 On receipt of concerns from a Committee Member, the Development Control Manager or the Chief Officer Planning and Regulatory Services may choose to withdraw the report from the agenda to allow for further discussion or re-assessment.
- 3.10 A Planning Officer if so requested should assist in giving general policy reasons for refusal or conditions for approval to be attached to any permission. In the event of an appeal or a judicial review, it is imperative that the correct grounds for refusal or conditions for approval be cited on the published notice of decision.
- 3.11 In the event of a motion contrary to the Officer's recommendation being formally moved, the Officer(s) present will have the opportunity to address the Committee on the implications of such a decision having regard to the provisions of the Development Plan and all other material considerations, inclusive of implications for any subsequent appeal, before a vote on the motion is taken. Where appropriate the Officer may recommend to the Chairman (whose sole decision it shall be whether to accept that recommendation) that a decision on the application be deferred to enable a further report to be presented to the Committee addressing these issues raised by the debate and the implications.
- 3.12 Where a decision to grant or refuse permission contrary to the Officer recommendation occurs the reasons for such a decision taken by Committee should be clearly minuted. In the event of an appeal where the Committee has made a decision contrary to Officer advice, the appropriate Local Member or a Member of the Committee is expected to be actively involved in the Appeal if by written representation and to attend any Hearing or Public Enquiry when such is held.

#### Report Deferrals

- 3.13 Any decision to defer a report should be taken BEFORE any other decision to approve or refuse the report. Should the Committee be minded to refuse/approve the report pending deferral to await further information, then, when the report comes back to the Committee, debate must centre around the effect of the additional information on the proposal keeping in mind the opinion to approve or refuse voiced in the first instance. Public speakers may not speak again.
- 3.14 Should a report be deferred for further information without the Committee's opinion on whether it is minded to approve or refuse, then a

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debate may take place on the whole of the report together with the additional information.

- 3.15 If a report is withdrawn or deferred without the opportunity for a registered public speaker to present their views then the public speaker(s) will be given the opportunity to address the Committee when the item is re-presented for decision.
- 3.16 Members may feel that the application should be viewed on site before a decision is made in which case an amendment/resolution for a Site Inspection is put to the Committee and, if approved, a set procedure is then followed at the Site Inspection.

### Site Inspections

- 3.17 A single Site Inspection time will be used for applications deferred by Committee and those identified for a pre-meeting inspection. This inspection will usually take place on the day of the Committee meeting.
- 3.18 Sites for pre-meeting inspections should be identified to the Chairman by Development Control Committee or Local Members at the earliest possible opportunity and in any event a full 3 working days before the Committee meeting, eg by 5pm on a Monday when the Committee meeting is at 7pm on a Thursday.
- 3.19 The Site Inspection will be open for all Development Control Committee and Local Members to attend.
- 3.20 No representations will be heard at Site Inspections and no recommendation will be formulated or a vote taken. The purpose is to view relevant features on or around the site.
- 3.21 The inspection will then inform the debate at the following Development Control Committee meeting.
- 3.22 Members' Site Inspections will be carried out where applications are to be determined by the Development Control Committee. The Chairman, in consultation with the Chief Officer Planning and Regulatory Services, will normally identify the need for any Site Inspections in advance of the meetings. Members who believe that a Site Inspection is appropriate in a particular case are encouraged to contact the Chief Officer Planning and Regulatory Services as soon as possible. This will include selecting appropriate viewpoints. Only exceptionally should an item be deferred for a Site Inspection. All Site Inspections will only be arranged where the proposal to hold a Site Inspection fits at least one of the following criteria.
- 3.23 A Site Inspection may be determined to be necessary if;

- i. Particular site factors are significant in terms of weight attached to them relative to other factors and it would be difficult to assess those factors without a Site Inspection.
  - ii. The characteristics of the site need to be viewed on the ground in order to assess the broader impact of the proposal.
  - iii. Objectors to and/or supporters of a proposal raise matters in respect of site characteristics, the importance of which can only reasonably be established by means of a Site Inspection.
  - iv. The scale of the proposal is such that a Site Inspection is essential to enable Members to be fully familiar with all site-related matters of fact.
  - v. There are very significant policy or precedent issues and where site-specific factors need to be carefully assessed.
- 3.24 When requesting the Chairman of the Development Control Committee to authorise a Site Inspection, the person making such a request (whether the Chief Officer Planning and Regulatory Services or an elected Member) must state under which of the above five criteria the Inspection is requested and must also provide supporting justification.
- 3.25 The purpose of a Site Inspection is to view the site and its surroundings and to relate the application proposals to the site. Officers will explain the submitted drawings. Neither the applicant nor any supporters or any objectors should take part. Where an applicant has to be present to allow access to the site, the visiting Members should stand away from him or her (or if necessary, ask the Applicant to stand away) and should not engage in any discussions.
- 3.26 Members should avoid any discussion of the merits of the case on site, on the journey to/from the site, or anywhere other than the Committee meeting.

Rules for Addresses to the Committee at Meetings of Development Control Committee

- 3.27 Addresses to the Committee will be allowed on planning applications being considered by the Development Control Committee. Public speaking will not be permitted on Enforcement items, Tree Preservation Orders, or applications for works to trees.
- 3.28 Registering to Speak - Apart from Local Members, those wishing to speak must contact the District Council before 5pm on the day of the meeting at the latest. However at the Chairman's discretion, late registration may be accepted until the start of the meeting. Local Members have until the start of the meeting to register. Only one public speaker against the application

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and one public speaker supporting the application will be permitted except where the Chief Officer Planning and Regulatory Services or Development Control Manager instructs otherwise e.g. for special meetings of the Development Control Committee.<sup>1</sup>

- 3.29 Main Objector - the first objector (e.g. the objector whose request is received first by the Council) will be the public speaker and subsequent objectors will be so advised.
- 3.30 Main Supporter - where an applicant or agent indicates a desire to speak they will be given preference over other supporters.
- 3.31 Local Member(s) - will be able to speak for a maximum of 4 minutes.
- 3.32 Local Council - a representative of the Town or Parish Council(s) in which an application site is situated.
- 3.33 Time Limits - Only the main objector and main supporter may speak, each being allowed 3 minutes. A Local Council representative will be able to speak for a maximum of 3 minutes. A Local Member may speak for a maximum of 4 minutes. After the speaker has spoken there will not normally be an opportunity for any speaker to participate or address any of the issues raised in the subsequent debate. However, at the Chairman's discretion any of the initial speakers or local members may be asked a question of clarification. Any local Member who is a member of the Committee and speaks at the start of the item and has not uttered a prejudicial view will continue to be allowed to debate and vote on the item.
- 3.34 Visual Aids -All speakers are permitted to use up to 3 still images (such as plans, drawings, photos, etc) which will be displayed in the meeting during the speaker's speaking time. No other visual aids may be used. All speakers who wish to have permitted visual aids displayed must provide them to Development Services Team before 5pm at the latest the day before the meeting e.g. if the meeting is to be held on a Thursday then contact must take place before 5pm on the preceding Wednesday.  
  
*(Written information is not permitted to be used as a "visual aid" by public speakers.)*
- 3.35 Those applications in respect of which members of the public have asked to speak shall automatically be reserved for debate at the Committee.

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<sup>1</sup> As an exception, a Local Member who is also a Member of the Committee may indicate a wish to address the Committee as a Speaker, during the declarations of interest or predetermination, as set out in the Agenda.



- 3.36 If a report is withdrawn from the agenda or deferred without the opportunity for a registered public speaker to present their views then the public speaker(s) will be given the opportunity to address the Committee when the item is re-presented for decision.
- 3.37 If an application is deferred after addresses to the Committee have taken place, then public speaking will not be permitted when the application is re-presented for decision. If an objector or supporter has not exercised their right to speak in the first instance then their right to speak is waived when the application is re-presented for decision.

Training

- 3.38 Members must not participate in decision making at meetings dealing with planning matters unless they have undertaken suitable training, including any training designated by the Cabinet as mandatory.
- 3.39 Members are encouraged to attend Planning training sessions, which will be provided from time to time, as these are designed to extend their knowledge of planning procedures, policies and practice.

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## **PART 8 - LICENSING COMMITTEE**

### **1. Licensing Committee**

1.1 Composition: Thirteen Members of the District Council reflecting the political proportionality of the Council

1.2 Terms of Reference

- (a) Except as provided in the Licensing Act 2003 and the Gambling Act 2005, the discharge of all functions of the District Council as licensing authority prescribed by those acts;
- (b) the issue, renewal, transfer, suspension and revocation of hackney carriage, private hire vehicle, driver and operator licenses;
- (c) the discharge of relevant functions relating to the licensing of sex establishments
- (d) the discharge of relevant functions relating to the Police Reform and Social Responsibility Act 2011; and
- (e) the discharge of all other functions relating to licensing and registration in so far as they are the responsibility of the District Council.

### **2. Licensing Hearing Sub-Committees**

2.1 Each municipal year the Licensing Committee will establish Licensing Hearing Sub-Committees. The Chief Executive will call a meeting of one of the sub-committees whenever there is business to be transacted.

Composition: Each Sub-Committee will contain three Members of the Licensing Committee. Any member of the Licensing Committee may act as a substitute on any of the Licensing Sub-Committees.

2.2 Terms of Reference

Licensing Act 2003:

- (a) determination of application for the grant/ renewal of a personal licence where an objection notice has been given by the Police;
- (b) consideration of Police objection notice following conviction of personal licence holder;

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- (c) determination of application for the variation of a designated premises supervisor where a notice has been received from the Police;
- (d) determination of application for the transfer of a premises licence where a notice has been received from the Police;
- (e) determination of application for:
  - (i) premises licence;
  - (ii) club premises certificate;
  - (iii) provisional statement;
  - (iv) variation of premises licence / club premises certificates;
  - (v) review of a licence following an application by a senior police officer;where relevant representations have been made;
- (f) determination of application for the review of a premises licence/club premises certificate;
- (g) determination on review of premises licence following closure order;
- (h) consideration of Police or Environmental Health objection notice given in response to a temporary event notice; and
- (i) consideration of Police notice given in response to an interim authority notice.

### Gambling Act 2005:

- (a) determination of application for the grant/ variation/ transfer/ reinstatement of premises licence where relevant representations have been received.;
- (b) determination on review of premises licence;
- (c) determination of application for provisional statement where relevant representations have been received;
- (d) consideration of notice of objection to temporary use notice;
- (e) determination of application for the grant/ renewal of family entertainment centre gaming permit, club gaming permit, club machine permit, licensed premises gaming machine permit, gaming

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machine permit where relevant representations have been received;  
and

- (f) cancellation of club gaming permit, club machine permit, licensed premises gaming machine permit where relevant representations have been received.

Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009

- (a) determination of application for the grant/ renewal/transfer/variation or revocation of a sex shop, sex cinema or sexual entertainment venue licence

Town Police Clauses Act 1847, Public Health Act 1875 and Local Government (Miscellaneous Provisions) Act 1976

- (a) to exercise the Council's powers and duties in relation to the licensing of hackney carriages and private hire vehicles, including the licensing of vehicles, drivers and operators, the control of numbers of hackney carriages, the licensing of private hire operators and the granting of permits for small buses where the matter has been referred by the delegated officer.

### **Procedures at Sub-Committees of the Licensing Committee**

#### **3. Licensing Act 2003**

- 3.1 Hearings shall be conducted in accordance with this Procedure Note which the Sub-Committee may vary at their discretion if considered in the public interest subject to The Licensing Act 2003 (Hearings) Regulations 2005.
- 3.2 The quorum for a Sub-Committee shall be two members.
- 3.3 At the commencement of each hearing the Sub-Committee shall elect one of its members as Chairman.
- 3.4 The order of business at hearings shall be:
  - (a) Election of Chairman.
  - (b) Declarations of interests.
  - (c) Chairman explains the procedure to be followed at the hearing, including the setting of equal time limits for all parties and the granting of adjournments.
  - (d) Chairman ascertains who is assisting or representing the parties.

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- (e) Officer presentation of report
- (f) Applicant (or his/her representative) addresses the Sub-Committee.
- (g) Applicant questioned by members. At the discretion of the Sub-Committee, other parties may be permitted to question the applicant.
- (h) Any representatives of Public or Statutory Bodies who have made representations in respect of the application (or their representative) address the Sub-Committee. No issues other than those relevant to their representations may be raised.
- (i) Members question each party at the conclusion of their address. At the discretion of the Sub-Committee, the applicant may be permitted to question other parties.
- (j) Other persons who have made representations in respect of the application (or their representative) address the Sub-Committee. No issues other than those relevant to their representations may be raised.
- (k) Members question each party at the conclusion of their address. At the discretion of the Sub-Committee, the applicant may be permitted to question other parties.
- (l) Sub-Committee may offer the parties a short adjournment to discuss in the absence of the Sub-Committee whether a solution acceptable to all the parties can be put to the Sub-Committee.
- (m) Applicant (or his/her representative) makes closing address.
- (n) Sub-Committee may grant a short adjournment. The parties may not speak to members regarding the application during adjournments.
- (o) The Sub-Committee considers the application and motions put to accept or reject the application in the terms requested or to grant the application subject to specified conditions. Reasons are to be given for motions.
- (p) The parties will usually be informed of the decision at the Hearing with a decision notice issued thereafter in accordance with Regulation 26 of the 2005 Regulation, along with details of any applicable appeals process.

4. Local Government (Miscellaneous Provisions) Act 1982)
- 4.1 Hearings shall be conducted in accordance with this Procedure Note which the Sub-Committee may vary at their discretion if considered in the public interest and subject to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009).
- 4.2 Objectors' names or addresses will not be revealed to an Applicant without consent. However, attendance at a hearing by any Objector implies consent (Local Government (Miscellaneous Provisions) Act 1982 Schedule 3, para10 (17))
- 4.3 The quorum for a Sub-Committee shall be two members.
- 4.4 At the commencement of each hearing the Sub-Committee shall elect one of its members as Chairman.
- 4.5 The order of business at hearings shall be:
  - (a) Election of Chairman.
  - (b) Declarations of interests.
  - (c) Chairman explains the procedure to be followed at the hearing, including the setting of equal time limits for all parties and the granting of adjournments.
  - (d) Chairman ascertains who is present, including all parties, representatives and witnesses.
  - (e) Presentation of report by Licensing Officer
  - (f) The Sub-Committee will hear from:
    - a. the Applicant (or his/her representative);
    - b. any Public or Statutory Bodies who have made representations;  
and
    - c. any other objectors
  - (g) All parties may use witnesses and supporting documentation, so long as these have been detailed to the Sub-Committee prior to the hearing.
  - (h) No Public or Statutory Body or other objector may raise issues other than those relevant to their written objection, unless with the agreement of

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the Sub-Committee and provided that the Applicant is permitted an opportunity to deal with the objections.

- (i) Members will ask questions of each party (including their representative or witness) after they have spoken. At the discretion of the Sub-Committee the Applicant will be entitled to ask questions of the other parties or their witnesses after they have spoken. At the discretion of the Sub-Committee the other parties will be entitled to ask questions of the Applicant or their witnesses after they have spoken.
- (j) Sub-Committee may offer the parties a short adjournment to discuss in the absence of the Sub-Committee whether a solution acceptable to all the parties can be put to the Sub-Committee.
- (k) Applicant (or his/her representative) makes closing address.
- (l) Sub-Committee may grant a short adjournment to deliberate. The parties may not speak to Members regarding the application during adjournments.
- (m) The Sub-Committee considers the application and motions put to accept or reject the application in the terms requested or to grant the application subject to specified conditions. Reasons are to be given for motions.
- (n) The parties will usually be informed of the decision at the Hearing with a decision notice issued before the end of 7 working days starting the day after the last day of the hearing, along with details of any applicable appeals process.

5. The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

- 5.1 Hearings shall be conducted in accordance with this Procedure Note which the Sub-Committee may vary at their discretion if considered in the public interest subject to The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.

(Application for a premises licence under section 159; Application to vary a premises licence under section 187; Application for a premises licence to be transferred under sections 188 and 189; Application for a licence to be reinstated under sections 195 and 196; Application for a provisional statement under section 204; Review of a premises licence under section 201)

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- 5.2 The agenda will be published 10 working days before the date of the hearing
- 5.3 The quorum for a Sub-Committee shall be two members.
- 5.4 At the commencement of each hearing the Sub-Committee shall elect one of its members as Chairman.
- 5.5 The order of business at hearings shall be:
  - (n) Election of Chairman.
  - (o) Declarations of interests.
  - (p) Chairman explains the procedure to be followed at the hearing, including the setting of equal time limits for all parties and the granting of adjournments.
  - (q) Chairman ascertains who is present, including all parties, representatives and witnesses.
  - (r) Presentation of report by Licensing Officer
  - (s) In turn, beginning with the applicant, each party (or their representative) may
    - a. address the Sub-Committee and call witnesses on any matter relevant to the application/review;
    - b. receive questions from the Sub-Committee; and
    - c. receive questions from other parties, where this is considered appropriate by the Sub-Committee.

(Cross examination will not usually be permitted unless the Sub-Committee considered that it is required to properly consider the issue.)

- (t) All parties may use witnesses and supporting documentation, so long as these have been detailed to the Sub-Committee prior to the hearing.
- (u) Sub-Committee may offer the parties a short adjournment to discuss in the absence of the Sub-Committee whether a solution acceptable to all the parties can be put to the Sub-Committee. The parties may not speak to members regarding the application during adjournments.
- (v) Applicant (or his/her representative) makes closing address.

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- (w) Sub-Committee may grant a short adjournment to deliberate. The parties may not speak to Members regarding the application during adjournments.
- (x) The Sub-Committee considers the application/review and motions put to accept or reject the application in the terms requested or to grant the application subject to specified conditions. Reasons are to be given for motions.
- (l) The parties will usually be informed of the decision at the Hearing with a decision notice issued before the end of 5 working days starting the day after the last day of the hearing in accordance with Regulation 13 of the 2007 Regulations along with details of any applicable appeals process.

### 6. Town Police Clauses Act 1847, Public Health Act 1875 and Local Government (Miscellaneous Provisions) Act 1976

- 6.1 Hearings shall be conducted in accordance with this Procedure Note which the Sub-Committee may vary at their discretion if considered in the public interest.
- 6.2 The agenda will be published 5 working days before the date of the hearing
- 6.3 The quorum for a Sub-Committee shall be two members.
- 6.4 At the commencement of each hearing the Sub-Committee shall elect one of its members as Chairman.
- 6.5 The order of business at hearings shall be:
  - (a) Election of Chairman.
  - (b) Declarations of interests.
  - (c) Chairman explains the procedure to be followed at the hearing including, if necessary, limiting the time given to the parties and witnesses (to allow all parties to have a fair hearing but preventing any one person dominating the proceedings) for all parties and the granting of adjournments.
  - (d) Chairman ascertains who is present, including all parties, representatives and witnesses.
  - (e) Presentation of report by Licensing Officer

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- (f) The Sub-Committee will hear from:
  - a. those opposed to granting the license / those seeking the review (or their representative(s)) together with their witnesses; and
  - b. the Applicant (or their representative(s)) together with their witnesses.
- (g) All parties may use witnesses and supporting documentation, so long as these have been detailed to the Sub-Committee prior to the hearing. New information shall only be accepted at the Hearing if agreed by the Sub-Committee, if it would not cause significant undue prejudice to the other parties and if the other parties are given an appropriate opportunity to consider it and produce any response.
- (h) It is expected that witnesses will not be present for any part of the hearing until they have addressed the Sub-Committee and responded to any questions. This shall not apply if the witness is:
  - the Applicant; or
  - attending on behalf of a Public or Statutory Body.
- (i) Members will ask questions of each party (including their representative or witness) after they have spoken. The Applicant will be entitled to ask questions of the other parties or their witnesses after they have spoken. At the discretion of the Sub-Committee the other parties will be entitled to ask questions of the Applicant or their witnesses after they have spoken.
- (j) Sub-Committee may offer the parties a short adjournment to discuss in the absence of the Sub-Committee whether a solution acceptable to all the parties can be put to the Sub-Committee.
- (k) Those opposed to granting the licences / those seeking the review (or their representative(s)) make closing address.
- (l) The Applicant (or his/her representative) makes closing address.
- (m) Sub-Committee may grant a short adjournment to deliberate. The parties may not speak to Members regarding the application during adjournments.
- (n) The Sub-Committee considers the application and motions put to accept or reject the application in the terms requested or to grant the

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application subject to specified conditions. Reasons are to be given for motions.

- (o) The parties will usually be informed of the decision at the Hearing with a decision notice issued in due course along with details of any applicable appeals process.

References to the “Applicant” should be read as “Licensee” when appropriate.

## **PART 9 - GOVERNANCE COMMITTEE**

### **1. Terms of Reference of the Governance Committee**

#### Regulatory Framework

- 1.1. To review the number of meetings and Terms of Reference of the Audit Committee.
- 1.2. To consider the Council's compliance with its own and other published standards and controls.

#### Constitutional Matters

- 1.3. To advise the Council on all matters relating to any review of the Council's decision-making arrangements.
- 1.4. To advise the Council on all matters relating to any review of the Council's Constitution.

#### Members' Allowance Scheme

- 1.5. To receive the recommendations of the Joint Independent Remuneration Panel and make recommendations for change the Members' Allowance Scheme to the Council and, if required, to the Joint Independent Remuneration Panel.

#### Electoral Arrangements

- 1.6. To advise the Council on all matters relating to:
  - (a) Parliamentary, County, District and Parish/Town Council elections and referenda, including European Elections and England and Wales Police and Crime Commissioner Elections;
  - (b) the revision of parish boundaries;
  - (c) the overall number of Members of the District Council;
  - (d) the preferred number of Members for each District Council Ward;
  - (e) the number of Wards for the District of Sevenoaks;
  - (f) the names and boundaries of District Council Wards;
  - (g) carrying out Parish Governance Reviews under the Local Government and Public Involvement in Health Act 2007; and
  - (h) any matters ancillary thereto.

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### Members' Attendance

1.7 Delegated authority from Council to the Governance Committee to approve in advance reasons for failure to attend any meeting of the authority or executive throughout a period of six consecutive months from the date of a Member's last attendance as set out in s.85(1) and s.85(2B) of the Local Government Act 1972.

### 2. Membership of the Committee

1.2. The Governance Committee will comprise 7 elected Members, one of which shall serve as Chairman, that follow the political proportionality of the Council. The membership of the Committee can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

## **PART 10 - APPOINTMENTS COMMITTEE**

### **1. Terms of Reference**

- (a) To interview applicants for the post of Chief Executive and recommend appointment to Council; and
- (b) To interview and appoint to the post of Chief Officer(s).

### **2. Membership**

- 2.1 Ten Members of the Council to be chosen according to political proportionality rules but which shall include the Leader of the Council and relevant Portfolio Holders. The membership of Committee can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

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## **PART 11 - HEALTH LIAISON BOARD**

### **1. Terms of Reference**

- 1.1 To allow Members to co-operate and co-ordinate information on developments and progress in Health matters across the District.
- 1.2 In particular the Committee should aim to bring together views from Members in the following positions:
  - HealthWatch Kent
  - Housing and Health Cabinet Advisory Committee
  - Portfolio Holder for Housing and Health
  - Community Health Trust
  - West Kent Health and Wellbeing Board
  - Dartford, Gravesham and Swanley Health and Wellbeing Board
  - Kent County Council Health Overview and Scrutiny Board
  - Other positions of responsibility such as governors of Acute Trusts

### **2. Membership**

- 2.1 Eight Members of the Council to be chosen according to political proportionality rules. The membership of Committee can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

### **3. Meetings**

- 3.1 In any municipal year, The Health Liaison Board will aim to meet at least twice. However, should the need arise to hold additional meetings these will be agreed in consultation with the relevant Officer and Chairman of the Health Liaison Board.

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## **PART 12 - HOMELESSNESS REVIEW BOARD**

### **1. Terms of Reference**

- 1.1 Full powers of the Council to adjudicate and decide upon the following issues (where they have not been resolved through Officers' review) as allowed under Section 202(1) of the Housing Act 1996:
- (a) an applicant's eligibility for assistance (Sections 185-186);
  - (b) what duty (if any) is owed to the applicant if s/he is homeless or threatened with homelessness (Sections 190-193, 195-197);
  - (c) the cessation of the full housing duty where the applicant was previously subject to it (Sections 193(5) - (7));
  - (d) whether the conditions for referral to another authority are satisfied (Section 198(5));
  - (e) the duty owed in the case of a potential or actual referral (Sections 200(3) - (4));
  - (f) the suitability of accommodation offered in discharge of any duty owed (Sections 206 and 210).

### **2. Membership**

- 2.1 The membership of Board can be found at Appendix H - Membership of Council Committees, Cabinet and Advisory Committees.

### **3. Procedure for Homelessness Review Boards**

- 3.1 The procedure for the Board to carry out reviews is:
- (a) Should the appellant or his/her representative fail to attend or notify the Clerk to the Board they do not wish to attend, the Board may decide to continue the Review taking into account the views of the Head of Housing & Health (*the Housing Officer*) and any written submission supplied by the appellant. The appellant will be asked to submit a written representation whether or not he/she wishes to attend the hearing.
  - (b) The Chairman will introduce him/herself and other Members of the Board and the Clerk (*a member of the Democratic Services Team*) and the Secretary to the Board (*a member of the Legal Services Team*).
  - (c) The Chairman will take appearances from the Head of Housing & Health's representative (*the Housing Officer*) and the appellant or his/her representative who will both state their name and position and the names and positions of any witnesses they intent to call.

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- (d) Witnesses shall be present only when giving evidence. The appellant or his/her representative and the Head of Housing & Health's representative will however be present throughout the presentation of the case.
- (e) The Head of Housing & Health's representative will summarise the reasons for the decision.
- (f) The Head of Housing & Health's representative may call witnesses. Each witness in turn:
  - (i) gives evidence;
  - (ii) may be questioned by the appellant or his/her representative (the appellant's representative does not at this stage, make statements or comments, the opportunity to do so comes later);
  - (iii) may be questioned by Members of the Board;
  - (iv) may, if necessary be re-questioned by the Head of Housing & Health's representative.
- (g) The appellant or his/her representative summarises his/her case.
- (h) The appellant or his/her representative may call the appellant and any other witnesses. Each witness in turn;
  - (i) gives evidence;
  - (ii) may be questioned by the Head of Housing & Health's representative;
  - (iii) may be questioned by Members of the Board;
  - (iv) may, if necessary, be re-questioned by the appellant or his/her representative.
- (i) The Head of Housing & Health's representative sums up the Chief Officer's case.
- (j) The appellant or his/her representative sums up the appellant's case.
- (k) Members of the Board may ask the parties or, if necessary, any witnesses who may be recalled for this purpose, for any additional information or clarification required.
- (l) The parties, their representatives and any witnesses then present shall withdraw.
- (m) The Board will then deliberate in private, attended by the Clerk and the Secretary to the Board if required. If it intends to reach a decision, then it will either recall the parties, their representatives

and witnesses to announce its decision or will inform the parties in writing within five clear working days. The decision and the reasons for reaching such a decision will be confirmed in writing by the Chief Executive.

- (n) The Board may wish to adjourn to an appropriate date if it feels it did not have sufficient information to make a full and considered opinion. If the Board decides not to make a decision immediately, then its decision will be notified in writing to the applicant and his/her representative by the Chief Executive within five clear working days of the decision being made by the Board.
- (o) The Board will comprise of three elected Members. The Chairman shall be the Portfolio Holder with the responsibility for Homelessness and the remaining membership will be drawn from the Council ignoring, if necessary, proportionality rules.
- (p) No meeting of the Board shall take place unless the 3 Members are present.

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## PART 13 - OFFICER RESPONSIBILITIES AND DELEGATIONS

### 1. The Council’s Officers

1.1 The Council has people working for it (Officers) to give advice, implement decisions and manage the day-to-day delivery of its services. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between Officers and Members. (Appendix J - Protocol on Councillor and Officer Relations)

### 2. Management Structure

#### General

2.1 The full Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.

#### Chief Officers

2.2 The full Council will engage persons for the following posts, who will be designated Chief Officers except where indicated by an asterisk:

Post	Functions and areas of responsibility
Chief Executive*	<p>Overall corporate management and operational responsibility (and Head of Paid Service) (including overall management responsibility for all Officers)</p> <p>Provision of professional advice to all parties in the decision-making process.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p> <p>The Returning Officer and Electoral Registration Officer for the Council.</p> <p>Responsibility for Regeneration.</p>
Assistant Chief Executive*	<p>Electoral Registration and Elections, Deputy Electoral Registration Officer, Policy and Improvement</p>
Deputy Chief Executive and Chief Officer People and Places	<p>Community Plan, Community Safety, Safeguarding, Community Development and Empowerment, Health and Wellbeing, , Place-Making, Housing Standards, Private Sector Housing, Housing Needs, Homelessness, HERO, Gypsy Traveller sites, Housing Strategy and Policy, , Projects and Grants, and Leisure.</p>

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Post	Functions and areas of responsibility
Deputy Chief Executive and Chief Officer Customer and Resources	Corporate Projects, Customer Solutions, IT and Digital Services, HR and Payroll, Legal and Democratic Services, Governance, Facilities Management, Revenues and Benefits Service
Deputy Chief Executive and Chief Officer Finance and Trading	Audit and Corporate Governance, Internal Audit, Finance, Direct Services, Parking Services, Emergency Planning, CCTV and markets).
Deputy Chief Executive and Chief Officer Planning and Regulatory Services	Development Management, Planning Enforcement, Conservation, Local Plan, Planning and Transport Policy, Building Control, Dangerous Structures, Licensing, Environmental Health.
Strategic Head of Commercial and Property*	Regeneration, Property, Economic Development, Tourism.

2.3 The designations of these posts may be changed from time to time by the Cabinet on receipt of advice from the Chief Executive.

### Head of Paid Service and s. 151 Officer and Monitoring Officer

2.4 The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Chief Officer Finance and Trading	Section 151 Officer
Head of Legal & Democratic Services	Monitoring Officer

2.5 Such posts will have the functions described in paragraphs 3, 4 and 5 below.



Structure

- 2.6 The Chief Executive will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out at the end of this part of this Constitution.

Delegations to Dartford Borough Council

- 2.7 Pursuant to enabling legislation Council and Cabinet have delegated to Dartford Borough Council via its Head of Paid Service the discharge of all functions with regard to the Internal Audit Service as may be more particularly identified in Schedule 1 of the Partnership Working Agreement. Council and Cabinet have also agreed to place at the disposal of Dartford Borough Council for the purposes of their functions the services of officers employed by Sevenoaks District Council.

2.8

**3. Functions of the Chief Executive (as Head of Paid Service)**

Discharge of Functions by the Council

- 3.1 The Chief Executive will keep under review the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

Restrictions on Functions

- 3.2 The Chief Executive may not be the Council's Monitoring Officer but may hold the post of s.151 Officer if a qualified accountant.

**4. Functions of the Monitoring Officer**

Maintaining the Constitution

- 4.1 The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.

Ensuring Lawfulness and Fairness of Decision-Making

- 4.2 After consulting with the Chief Executive (the Head of Paid Service), the Monitoring Officer will report to the full Council or to the Cabinet in relation to an Executive Function - if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration.

- 4.3 Such a report will have the effect of stopping the proposal or decision being

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implemented until the report has been considered.

### Supporting the Standards Committee

- 4.4 The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- 4.5 Notwithstanding the duty of confidentiality, the Monitoring Officer shall be at liberty to disclose any information relating to the Council's affairs, and providing copies of any records or documents belonging to the Council to the Standards Committee for the purpose of investigation or determination of a complaint against a Member.

### Conducting Investigations

- 4.6 The Monitoring Officer may conduct investigations into allegations of Member Code of Conduct breaches and make reports or recommendations in respect of them to the Standards Committee. (See Appendix S of the Constitution 'Arrangements for Code of Conduct Complaints.)

### For Access to Information

- 4.7 The Chief Executive (the Head of Paid Service) will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

### Advising whether Cabinet Decisions are within the Budget and Policy Framework

- 4.8 The Monitoring Officer, in consultation with the Head of Paid Service and s.151 Officer, will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

### Providing Advice

- 4.9 The Monitoring Officer, in consultation with the Head of Paid Service and s.151 Officer, will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Members.

### Restrictions on Posts

- 4.10 The Monitoring Officer cannot be the Head of Paid Service and s.151 Officer.

## **5. Functions of the s.151 Officer (the Chief Officer Finance and Trading)**

Ensuring Lawfulness and Financial Prudence of Decision-Making

- 5.1 After consulting with the Monitoring Officer, the s.151 Officer will report to the full Council or to the Cabinet in relation to an Executive Function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

Administration of Financial Affairs

- 5.2 The s.151 Officer will have responsibility for the administration of the financial affairs of the Council.

Contributing to Corporate Management

- 5.3 The s.151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

Providing Advice

- 5.4 The s.151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Members and will support and advise Members and Officers in their respective roles.

Giving Financial Information

- 5.5 The s.151 Officer will provide financial information to the media, members of the public and the community.

Restrictions on Functions

- 5.6 The s.151 Officer may not be the Monitoring Officer but may hold the post of Head of Paid Service.

Other functions

- 5.7 To exercise the proper administration of the Council's financial affairs which shall include issues of insurance, discretions as to rating, housing benefits and Council Tax under section 151 of the Local Government Act 1972 and section 114 of the Local Government Finance Act 1988.

This authority is limited in the following cases:

- (i) the approval of sums exceeding £10,000 being transferred from an agreed estimate to another purpose other than for which it was approved shall be subject to approval by the relevant Portfolio Holder(s); and

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- (ii) the writing off of debts exceeding £5,000 and rent arrears exceeding £5,000 shall be subject to approval by the Finance & Resources Portfolio Holder. (See Appendix D of the Constitution 'Finance Procedure Rules.')

- 5.8 To exercise the budgetary control functions under the Council's Financial Procedure Rules.
- 5.9 To arrange all borrowings, financing and investment in line with the Council's Treasury Management Policy Statement.
- 5.10 To agree the terms of loans permitted under law.
- 5.11 To authorise the release of funds from contingencies as set out in the Revenue Budget.

### **6. Duty to provide sufficient resources to the Monitoring Officer, the s.151 Officer and the Returning Officer**

- 6.1 The Council will provide the Monitoring Officer, s.151 Officer and the Council's Returning Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

### **7. Conduct**

- 7.1 Officers will comply with the Officers' Code of Conduct (Appendix I - Code of Conduct for Employees) and the Protocol on Officer/Councillor Relations set out in (Appendix J - Protocol on Councillor and Officer Relations) or such other Protocols as may be adopted by the Council.

### **8. Employment**

- 8.1 The recruitment, selection and dismissal of Officers will comply with the Officer Employment Procedure Rules set out in (Appendix M - Officer Employment Procedure Rules).

### **9. Delegations to Officers**

#### Introduction - Overall Basis

- 9.1 This scheme delegates the powers and duties of the Council to Officers and shall be interpreted widely rather than narrowly and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of anything specified, including appointment and dismissal of staff (where that is not reserved to Members by the scheme of delegation to committees) and authorising the affixing of the Common Seal.
- 9.2 This scheme operates under sections 101 of the Local Government Act 1972 and 15 of the Local Government Act 2000 and all other enabling powers.

Overall Limitations

- 9.3 This scheme does not delegate to Officers:
- (a) any matter reserved to full Council;
  - (b) any matter, which by law, may not be delegated to an Officer; and
  - (c) the determination of policy (including extension of or amendment to an existing policy) and budgetary matters; and
  - (d) any matter expressly withdrawn from delegation by this scheme or, in a particular case, by the Council, Cabinet or Committee or Sub-Committee.
- 9.4 The exercise of a delegated power shall be subject to:
- (a) The Council's policies, procedures and protocols, including the Budget and Policy Framework (Appendix B - Budget and Policy Framework Procedure Rules).
  - (b) The requirements of the Constitution, including the Contracts Procedure Rules (Appendix E - Contracts Procedure Rules) and Financial Procedure Rules (Appendix D - Financial Procedure Rules);
  - (c) Any statutory restrictions;
  - (d) The right of the Council, Cabinet, Committee or Sub-Committee to decide any matter in a particular case; and
  - (e) Any restrictions, conditions or directions of the delegating body.
- 9.5 In exercising delegated powers, Officers shall:
- (a) have regard to any report by the Chief Executive in his capacity as Head of Paid Service or the Monitoring Officer under sections 4 and 5 of the Local Government and Housing Act 1989 or the Chief Finance Officer in his capacity as s.151 Officer under section 114 of the Local Government Finance Act 1988.
  - (b) not go beyond the provision in the revenue or capital budgets for their service except to the extent permitted by the Contracts Procedure Rules (Appendix E - Contracts Procedure Rules) or Financial Procedure Rules (Appendix D - Financial Procedure Rules).
  - (c) Where and when appropriate, report back to Cabinet, or appropriate Committee or Sub-Committee, as to the exercise of the delegated powers.

**10. Further Provisions:**

- 10.1 This scheme includes the power for Officers to delegate in writing all or some of the delegated functions to other Officers (described by name or post) either fully or under the general supervision and control of the delegating officer. Sub-delegations shall be recorded in a register kept by the Democratic Services Team under section 100G of the Local Government Act 1972. It shall be the responsibility of the Officer delegating any function to ensure that a copy of the delegation is forwarded to the Head of Legal & Democratic Services.
- 10.2 Before exercising delegated powers an Officer shall comply with the requirements for consultation with Members set out in this Constitution, including the limitations set out in this Scheme of Delegation , the Budget and Policy Framework Procedure Rules (Appendix B - Budget and Policy Framework Procedure Rules), the Access to Information Procedure Rules (Appendix A - Access to Information Procedure Rules), the Financial Procedure Rules (Appendix D - Financial Procedure Rules), and the Contracts Procedure Rules (Appendix E - Contracts Procedure Rules), and the Protocols (as set out in the appendices to this Constitution). It shall always be open to an Officer not to exercise delegated powers but to refer the matter to the Cabinet, Committee or Sub-Committee for decision.
- 10.3 In exercising delegated powers, Officers shall consult with such other Officers as they determine appropriate and shall have regard to any advice given.
- 10.4 This scheme shall operate from approval.
- 10.5 This scheme delegates to the holder of each post named in it the management of the resources made available for the duties of the post as specified in the terms of the post holder's appointment.
- 10.6 In each case the delegated authority does not authorise the post holder to make any planning application which would materially conflict with or prejudice an identified policy in an adopted Local Plan for the time being in force.
- 10.7 In each case, except where the Chief Executive is exercising delegated authority under paragraph 12 (d) below, none of the Officers named is authorised to make a formal response on behalf of the Council to any Government Consultation Paper, without reference first to the Cabinet, relevant Portfolio Holder or the relevant Committee provided that when the timescale does not allow for reference to a scheduled Cabinet or Committee meeting, Officers are authorised to respond, following consultation with the relevant member of the Cabinet (where the matter is an Executive function) or with the relevant Committee Chairman (where the matter is not an Executive function).
- 10.8 The powers delegated to Officers, other than the Chief Executive, in this scheme may also be exercised by the Chief Executive when he considers

such action to be appropriate so far as permitted by law.

- 10.9 Any reference to any Act of Parliament shall include reference to regulations, subordinate legislation and European Union legislation upon which either UK legislation is based, or from which powers, duties and functions of the Council are derived.
- 10.10 Reference to any enactment, regulation, order or byelaw shall include any amendment, re-enactment or re-making of the same.
- 10.11 Any post referred to below shall be deemed to include any successor post or a post which includes within the job description elements relevant to any particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded.

## **11. General Delegations to All Chief Officers Acting Individually**

- 11.1 The Chief Officers referred to within Part 13 of the Constitution are those set out in paragraph 2.2 above.
- 11.2 Chief Officers are empowered to carry out those specific functions of the Council delegated to them in this scheme of delegation forming Part 13 of the Constitution in addition to the following generic powers:
- 11.3 Deal with employment issues in accordance with the Council's procedures.
- 11.4 Within service budgets, accept tenders, place contracts and procure other resources within or outside the Council subject to compliance with the Council's Financial and Contract Procedure Rules.
- 11.5 Serve, receive and act upon notices and comply with any duty of the Council.
- 11.6 Exercise virement within the financial limits contained in the Financial Procedure Rules.
- 11.7 Provide services to other local authorities and organisations.
- 11.8 In exercising their delegated powers Chief Officers must act within the law, the Council's Constitution, its Financial and Contract Procedure Rules and other procedures and policies and within appropriate service budgets.
- 11.9 In exercising their delegated powers the Chief Officers will:
- consult the relevant Cabinet Portfolio Holder as appropriate;
  - consult any appropriate Chief Officer or relevant Head of Service/Service Manager, in particular where there are significant financial, legal, property or HR implications of the proposed action or decision.
- 11.10 In the event of a Chief Officer post being vacant, or in the absence of a

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Chief Officer, those delegated powers may be exercised by the relevant Head of Service/Service Manager so far as permitted by law.

- 11.11 Where this Constitution permits the exercise of delegated powers by Heads of Service/Service Managers, such exercise is subject to the same restrictions and requirements as are applicable to Chief Officers.

### **12. Delegation to the Chief Executive**

- (a) To be Head of the Paid Service under Section 4 of the Local Government and Housing Act 1989.
- (b) The power to incur expenditure in the event of a civil emergency and to make orders under the Public Order Act 1986.
- (c) To manage the co-ordination of budget processes, including overall strategy, planning and information.
- (d) In cases of urgency, after consultation with the Leader and Deputy Leader of the Council [and, where possible, the Leader(s) of the Opposition], to take any decision which could be taken by the Cabinet or by a Committee and to report such actions to Cabinet or Committee as appropriate.
- (e) To be the Returning Officer and Electoral Registration Officer for the Council, including to exercise powers in respect of the designation of polling places under the Representation of the People Act 1983.
- (f) To be the proper officer of the Council for the purposes of the Local Government Act 1972, The Local Authorities (Executive and Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Local Government (Miscellaneous Provisions) Act 1976.
- (g) To designate suitably qualified officers as Authorising Officers for the purpose of granting authorisations to exercise the powers made available to the Council by the Regulation of Investigatory Powers Act, 2000 in accordance with the changes to provisions made by the Protection of Freedoms Act 2012.
- (h) To exercise the granting of the higher level of internal authorisation under the Regulation of Investigatory Powers Act 2000 as set out in the Council's Surveillance Policy.
- (i) To be the proper officer of the Council for the purpose of Part II of the Local Authorities (Statutory Order) (England) Regulations 2001
- (j) As Head of Paid Service, to exercise any powers delegated to another Officer except those in respect of which a specific professional qualification is required by statute.
- (k) The Chief Executive, or in his absence, the Chief Officer People & Places to



give authorisation of a dispersal order under the Anti Social Behaviour Act 2003 Part 4 (Sections 30 and 31).

- (l) Pursuant to enabling legislation this Council via its Chief Executive has received and shall discharge all the functions of Dartford Borough Council with regard to the Revenues and Benefits Service as may be more particularly identified in Schedule 1 of the Partnership Working Agreement and Dartford Borough Council have agreed to place at the disposal of Sevenoaks District Council for the purposes of those functions the services of officers employed by Dartford Borough Council.
- (m) To grant exemptions on the political restrictions of officer posts under the Localism Act 2011
- (n) To have responsibility for the Council's general administration (including the sealing of documents), Committee structure and operation (including payment of Members' allowances and expenses) save that any adjustment to the Council's calendar of meetings as may be necessary shall only be exercised after consultation with the Leader of the Council or the appropriate Chairman. To be the proper officer of the Council for the purposes of sections 96, 225, 229 and Part VA, sections 115 and 146 of the Local Government Act 1972 and for the purposes of section 41 of the Local Government (Miscellaneous Provisions) Act 1976.
- (o) To manage central training and job evaluation.
- (p) To determine and issue guidelines to Officers for the management of human resources and in particular recruitment, training, conditions of service, rewards and discipline.
- (q) To permanently re-grade posts up to and including Chief Officer level.

### **13. Delegation to the Chief Officer Finance and Trading**

- (a) To exercise all the powers of management in the best interests of the Council with regard to land and property owned by the Council including authorising action for possession of any land or property.
- (b) To acquire and dispose of land that is necessary for the Council's current programme.
- (c) To have the responsibility for taking care of all securities and title deeds of all property held in the name of the Council.
- (d) To maintain an effective internal audit service
- (e) To act as lead officer for the Audit Committee
- (f) To act as the Risk Management Officer Champion and ensure appropriate risk management arrangements are in place across the Council.
- (g) To act as lead officer for maintaining effective corporate governance

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arrangements and the preparation of the Annual Governance Statement.

- (h) To make appropriate banking arrangements on behalf of the Council
- (i) To insure against risks where this is considered appropriate.
- (j) To receive and respond to expressions of interest under Community Right to Challenge, under Part 5, Chapter 2 of the Localism Act 2011.

### Direct Services

- (k) To operate the activities of Sevenoaks Direct Services.
- (l) To deal with any matters relating to the powers contained in the Clean Neighbourhood and Environment Act 2005.
- (m) To deal with any matters relating to the powers contained in the Environmental Protection Act 1990
- (n) To deal with any matters relating to the powers contained in the Refuse Disposal (Amenity) Act 1978
- (o) To exercise the functions of the Council with regard to environmental improvements and access to the Countryside.
- (p) To exercise functions relating to dangerous trees contained in the Local Government Miscellaneous Provisions Act 1976.
- (q) To take all necessary action to defend legal proceedings against the Council.

### General

- (r) To exercise as appropriate all relevant legislation as follows:
  - Local Government (Miscellaneous Provisions) Acts 1976 and 1982
  - Wildlife and Countryside Act 1981
  - Commons Act 1899
  - Local Authorities (Goods and Services) Act 1970
  - Localism Act 2011
  - Control of Pollution Act 1974
  - Environmental Protection Act 1990

### Amenities and Facilities Management

- (s) To operate playgrounds to ensure health and safety requirements are met, and to seek alternative management of playgrounds as appropriate.
- (t) To monitor and review the Council's grounds maintenance contract and ensure corrective action is taken when required.
- (u) To act under such Acts of Parliament as relate to the Facilities Management of the authority.

Parking etc

- (v) To carry out the Council's functions in relation to temporary road and footpath closures.
- (w) To carry on the functions associated with parking contraventions.
- (x) To exercise as appropriate all relevant legislation as follows:
  - Road Traffic Act 1988 and 1991
  - Road Traffic Regulation Act 1984
  - Traffic Management Act 2004
  - Town Police Clauses Act 1847
  - Highways Act 1980

Or such other Acts of Parliament as relate to the relevant statutory functions of Council as relates to Parking and matters related to traffic and roads.

**14. Delegation to Chief Officer Planning and Regulatory Services**

- (a) To exercise all the powers and duties of the Council as the Local Planning Authority (including the conduct of appeals) under all Town and Country Planning legislation, subject to the following exceptions:
  - (1) Where an application is submitted to Sevenoaks District Council for determination, it shall be referred to the Development Control Committee if any of the following apply.
    - (i) In the opinion of the Chief Officer Planning and Regulatory Services, the application is of a significant, controversial or sensitive nature.
    - (ii) It is proposed to determine an application which in the opinion of the said Chief Officer Planning and Regulatory Services, would set a significant precedent.

- (iii) A written request for consideration by the Development Control Committee, supported by an appropriate planning reason<sup>1</sup>, has been received from a Member of the Council no later than the expiry date of the consultation, or such lesser period as may be notified by the Chief Officer Planning and Regulatory Services in relation to any application where a decision could not otherwise be made by Committee before the statutory deadline for determination.

Where amended plans and/or information of a significant nature (as determined by the Chief Officer Planning and Regulatory Services) are received on an application, an additional call-in period will be given, the period for which will be specified by the Chief Officer Planning and Regulatory Services to suit the circumstances of each case.

- (iv) A written request for consideration by the Development Control Committee, supported by an appropriate planning reason, has been received from a Member of the Council relating to an application in their Ward no later than seven calendar days following notification by the Chief Officer Planning and Regulatory Services of a proposed recommendation which is contrary to representations received in support of, or in objection to, an application from the Town or Parish Council for the area (subject to the arrival of such representations within the statutory consultation period).
  - (v) An application known to have been submitted by, or on behalf of, a Member or an Officer of the District Council, or a member of their family<sup>2</sup>.
- (2)
- (i) Where the Council is a consultee (e.g. when the planning application has been submitted to Kent County Council as the Mineral Planning or Education Authority, or to an adjoining planning authority) and the application is considered to be significant, controversial, or sensitive in nature then the Chief Officer Planning and Regulatory Services shall if requested by a Member or Members report the matter to the next Development Control Committee.
  - (ii) Where the Council is a consultee (e.g. when the planning application submitted by Kent County Council as the Mineral Planning or Education Authority, or to an adjoining planning

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<sup>1</sup> A 'Planning Reason' includes accordance with a relevant Development Plan Policy or a material planning consideration. The Chief Officer Planning and Regulatory Services or Development Control Manager will offer advice if necessary on an appropriate planning reason.

<sup>2</sup> A 'member of their family' shall include a partner (someone they are married to, civil partner or other person who they live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of their partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

authority) and when timeframes do not allow and the application is considered to be significant, controversial, or sensitive in nature then the Chief Officer Planning and Regulatory Services shall if requested by a Member or Members seek the views of the Local Ward Member, the Leader and other relevant Portfolio Holders and Deputies.

- (3) Enforcement action shall be referred to the Development Control Committee if either of the following apply.
  - (i) A request for consideration by the Development Control Committee, supported by an appropriate planning reason, has been received from a Local Member; or
  - (ii) The Chairman or Vice Chairman of the Development Control Committee requires the case to be considered by the Development Control Committee.
- (4) Where permission has been refused under delegated powers, an appeal has been lodged and new information has been received that leads Officers to conclude that refusal of permission can no longer be substantiated at appeal, the matter will be referred back to Members to enable the original delegated refusal to be reviewed.

If sufficient time is available, local Members will be asked to agree to a decision no longer to oppose the scheme following the procedure for delegated decisions and if the local Members do not agree the matter will be referred to the Development Control Committee including, if necessary, an emergency meeting.

If the appeal timetable does not allow for the above process to be completed in time, the review of the delegated decision will be referred to a Panel of three Members of the Committee for decision, after consultation with the local Members.

The Chief Executive will call a meeting of one of the Panels whenever there is business to be transacted.

A Panel will contain three Members of the Development Control Committee. Either the Chairman or Vice-Chairman of the Development Control Committee will be one of the Members of the panel and the other Members of the Panel will be selected sequentially in alphabetical order. Local Members should not normally be part of the Panel but will have the right to address the Panel for a maximum of 3 minutes.

Any Member of the Development Control Committee may act as a substitute on a Panel. Democratic Services must be notified by the Members concerned of any substitutions at least one working hour prior to a Panel meeting.

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The Chairman or Vice-Chairman of the Development Control Committee, whichever is present, will be the Chairman of the Panel.

The quorum for a Panel meeting shall be three Members.

The procedure will not apply to the review of individual reasons for refusal where the decision to refuse permission does not change.

- (5) The Chief Officer Planning and Regulatory Services to institute, conduct and settle legal proceedings on behalf of the Council in any Court of Law, Tribunal or other body in respect of any breach or contravention of the Planning Acts and regulations made thereunder (including actions for injunctions).
- (b) To take all necessary action to defend legal proceedings against the Council.
- (c) To exercise all relevant legislation where appropriate as follows:
- The Town and Country Planning Act 1990
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Town and Country Planning (Control of Advertisements) (England) Regulations 2007
  - the Town and Country Planning (General Permitted Development) Order 1995
  - Planning & Compulsory Purchase Act 2004
  - Planning and Compensation Act 1991
  - Countryside and Rights of Way Act 2000.
  - Growth and Infrastructure Act 2013
  - the Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions of the planning authority

### Building Control

- (d) To exercise all the Council's powers and duties with regard to Building Control under the Building Act 1984 and regulations made thereunder.
- (e) To take all necessary action to secure compliance with the Building Act 1984 and regulations made thereunder, including the service of statutory notices.

- (f) To institute, conduct and settle legal proceedings on behalf of the Council in any Court of Law, Tribunal or other body in respect of any breach or contravention of the Building Act 1984 and regulations made thereunder (including actions for injunctions).

Environmental Services

- (g) To be the Council's proper officer for the purposes of matters relating to food safety and infectious diseases save that where such designation requires a medical or other specialist qualification, to be authorised to designate suitable persons as proper officer for that purpose.
- (h) To exercise all the functions of the Council with regard to matters relating to environmental health, including public health, food hygiene and health and safety, animal welfare (including the authorisation of legal proceedings).
- (i) To exercise all the functions of the Council with regard to matters relating to contaminated land (including the authorisation of legal proceedings) and air quality.
- (j) To deal with all matters relating to high hedges under Part 8 of the Anti-Social Behaviour Act 2003

Licensing

- (k) To authorise legal proceedings in respect of any contravention arising from the Licensing Act 2003, the Gambling Act 2005 and the Charities Act 2006.
- (l) To determine all applications for a personal licence, where no objections have been made
- (m) To determine all applications for a premises licence/club premises certificate under the Licensing Act 2003, where no relevant representations have been made.
- (n) To determine all applications for a provisional statement under the Licensing Act 2003, where no relevant representations have been made.
- (o) To determine all applications to vary premises licences/club premises certificates under the Licensing Act 2003, where no relevant representations have been made.
- (p) To determine all applications to vary designated personal licence holders, except where there is a police objection.
- (q) To determine all requests to be removed as designated personal licence holders.
- (r) To determine all applications by way of Interim Authority Notices except where there is a police objection.

## Agenda Item 9

- (s) To determine whether representations submitted are irrelevant, frivolous, or vexatious
- (t) To determine all applications for Minor Variations to premises/club premises licences.
- (u) To determine all applications for removal of the mandatory condition to have a Designated Premises Supervisor at Community Premises.
- (v) To make a representation to applications for Premises Licence or Club Premises Certificate under the Licensing Act 2003.
- (w) To make an application for a premises licences or club premises certificate to be reviewed without having to wait for another Responsible Authority to make an application.
- (x) To determine all applications for a premises licence/club premises certificate under the Gambling Act 2005, where no relevant representations have been made.
- (y) To determine all applications for a provisional statement under the Gambling Act 2005, where no relevant representations have been made.
- (z) To determine all applications to vary premises licences/club premises certificates under the Gambling Act 2005, where no relevant representations have been made.
- (aa) To maintain the Licensing Register.
- (bb) To exercise the Council's powers and duties in relation to the licensing of hackney carriages and private hire vehicles, including the licensing of vehicles, drivers and operators, the control of numbers of hackney carriages, the licensing of private hire operators and the granting of permits for small busses.
- (cc) To exercise all the Council's functions with regard to hypnotism street collections (including the variation of any conditions imposed on any licence)

### Additional Functions

- (dd) To carry out the retaining of walls near streets.
- (ee) To exercise as appropriate all relevant legislation as follows:
  - Animal Boarding Establishments Act 1963
  - Animal Welfare Act 2006
  - Animals Act 1941
  - Breeding of Dogs Act 1973 & 1991



- Dogs (Fouling of Land) Act 1996
- Clean Air Act 1993
- Control of Pollution Act 1974
- Control of Dogs Order 1991
- Criminal Justice and Public Order Act 1994
- Anti- Social Behaviour Act 1972
- Dangerous Dogs Act 1991
- Dangerous Wild Animals Act 1976
- Environment Act 1995
- European Communities Act 1972
- Food Safety Act 1984 and 1990
- Food Hygiene (England) Regulations 2006
- Food and Environment Protection Act 1985
- Guard Dogs Act 1975
- Health Act 2006
- Health and Safety at Work etc. Act 1974
- National Assistance (Amendment) Act 1951
- National Assistance Act 1948
- Noise Act 1996
- Noise and Statutory Nuisance Act 1993
- Offices, Shops and Railway Premises Act 1963
- Performing Animals (Regulations) Act 1925
- Pet Animals Act 1951
- Pesticides Act 1995
- Pollution Prevention and Control Act 1990
- Police and Criminal Evidence Act 1984

## Agenda Item 9

- Prevention of Damage by Pests Act 1949
- Public Health (Amendment) Act 1907 and 1961
- Public Health Act 1936, 1925, 1961
- Public Health (Control of Diseases) Act 1984
- Refuse Disposal (Amenity) Act 1978
- Riding Establishments Act 1964 & 1970
- Scrap Metal Dealers Act 2013
- Christmas Day Trading Act 2004
- Sunday Trading Act 1847
- Goods Vehicle (Licensing of Operators) Act 1995
- Towns Improvement Clauses Act 1847
- Town Police Clauses Act 1847
- The Water Supply (Water Quality) Regulations 2010
- Water Industry Act 1991
- Wildlife and Countryside Act 1981
- The Private Water Supply Regulations 2009
- Zoo Licencing Act 1981
- House to House Collections Act 1939
- Local Government Act 1972
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982
- Commons Act 1899
- Local Authorities (Goods and Services) Act 1970
- Sunbeds Regulation Act 2010
- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions of the Environmental services authority.

**15. Delegation to the Strategic Head of Commercial and Property  
(\* not designated a Chief Officer)**

- (a) To be responsible for the implementation and co-ordination of the Council's regeneration policies.
- (b) To be responsible for the implementation of Economic Development Policy and Programmes.
- (c) To be responsible for Strategic and Operational Tourism.
- (d) To exercise all the powers of management in the best interests of the Council with regard to land and property owned by the Council including

**16. Delegations to the Chief Officer People and Places**

Communities and Business

- (a) To be responsible for the implementation and co-ordination of the Council's duties and functions under the Crime and Disorder Act 1998 as amended, including the authorisation of seeking appropriate orders under the Act.
- (b) To manage the Council's contractual relationship with Everyone Active and to operate the Council's leisure facilities that are not under the management of the Leisure Trust, including seeking alternative management of leisure facilities or funding or assistance from the National Lottery Fund save that where support or rejection for such assistance arises from a town or parish council, the Local Member(s) shall be consulted.
- (c) In partnership, facilitate arts (arts development in partnership with Kent County Council) within Council policies and manage the Council's contractual relationship for the operation of the Stag (formerly known as Sevenoaks Playhouse).
- (d) To undertake the Council's involvement in the Integrated Care System, Integrated Care Partnerships and the implementation of Health Policy.
- (e) To be responsible for the implementation, with other partners, of the Sevenoaks District Community Plan on behalf of the Council.
- (f) The responsibility, with other partners, for the implementation of the Voluntary Sector Compact.
- (g) To facilitate youth development and safeguarding within the Council's policies.
- (h) To operate the Council's capital schemes in parishes and other grant schemes.
- (i) To authorise and maintain a list of assets of community value and to make

## Agenda Item 9

adjudications and decisions in relation thereto.

(j) To exercise where appropriate all other relevant legislation as follows:

- Anti-Social Behaviour Act 2003 and consequential amendments
- Police Reform Act 2002
- Police & Justice Act 2006
- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions for Community Safety.

(n) To exercise where appropriate all other relevant legislation as follows:

- Landlord and Tenant Act 1954
- Landlords and Tenant Covenants Act 1995
- The Construction (Design and Management) Regulations 2007
- The Control of Asbestos Regulations 2012
- Equality Act 2010
- The Local Government (Miscellaneous Provisions) Act 1976
- Local Authorities (Goods and Services) Act 1970
- The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007
- Localism Act 2011

or such other Acts of Parliament as relate to the Property Services functions of the authority

### Housing Services

(o) To exercise all the relevant functions of the Council as a housing authority, including the Homelessness and Housing advice service, responsibility for the Council's Housing Strategy and policies and the enabling role.

(p) The power to authorise Housing staff (Housing advice and Homelessness) under Part VII Housing Act 1996, Housing Act 2002, Prevention from Eviction Act 1977, Police and Criminal Evidence Act 1984 and National Assistance Act 1948.

(q) To exercise where appropriate all other relevant legislation as follows:

- Housing Acts 1977, 1985, 1988, 1989, 1996, 2002 and 2004
- Local Government Acts 1933 & 1972
- Landlord and Tenant Act 1985
- National Assistance Act 1948
- Local Government (Miscellaneous Provisions) Act 1976 & 1982
- Criminal Justice and Public Order Act 1994
- Rent (Agricultural) Act 1976
- Protection from Eviction Act 1977
- Police and Criminal Evidence Act 1984
- The Kent Acts
- Localism Act 2011
- Homelessness Reduction Act 2017

or such other Acts of Parliament as relate to the relevant statutory functions of the Housing Authority.

#### Housing Standards

(r) To exercise all the relevant functions of the Council as a housing authority, including the standard and fitness of properties, Energy Conservation issues and the management of unauthorised encampments and of the Council's gypsy site.

(s) The power to authorise Housing staff (Housing advice and Homelessness) under the Police and Criminal Evidence Act 1984.

(t) To exercise where appropriate all other relevant legislation as follows:

- Houses, Grants, Construction and Regeneration Act 1996
- Housing Acts 1985 and 2004
- Environmental Protection Act 1990
- Local Government Acts 1933 & 1972
- Caravan Sites and Control of Development Act 1960
- Caravan Sites Act 1968

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- Building Act 1984
- The Water Supply (Water Quality) Regulations 2010
- The Water Industry Act 1991 as amended
- The Private Water Supply Regulations 2009
- Prevention of Damage by Pests Acts 1949
- Public Health Acts 1936 & 1961
- Public Health Control of Disease Act 1984 as amended
- Landlord and Tenant Act 1985
- Local Government (Miscellaneous Provisions) Act 1976 & 1982
- Criminal Justice and Public Order Act 1994
- Home Energy Conservation Act 1995 as amended
- Land Drainage Act 1991
- Mobile Homes Act 1975 and 1983
- Police and Criminal Evidence Act 1984
- The Local Government (Miscellaneous Provisions) Act 1976
- The Kent Acts
- Localism Act 2011

or such other Acts of Parliament as relate to the relevant statutory functions of the Housing Authority.

### **19. Delegations to Chief Officer Customer and Resources**

(a) To be responsible for the following functions

- Customer services
- Democratic Services
- Facilities Management
- Human Resources and Payroll
- ICT
- Legal Services

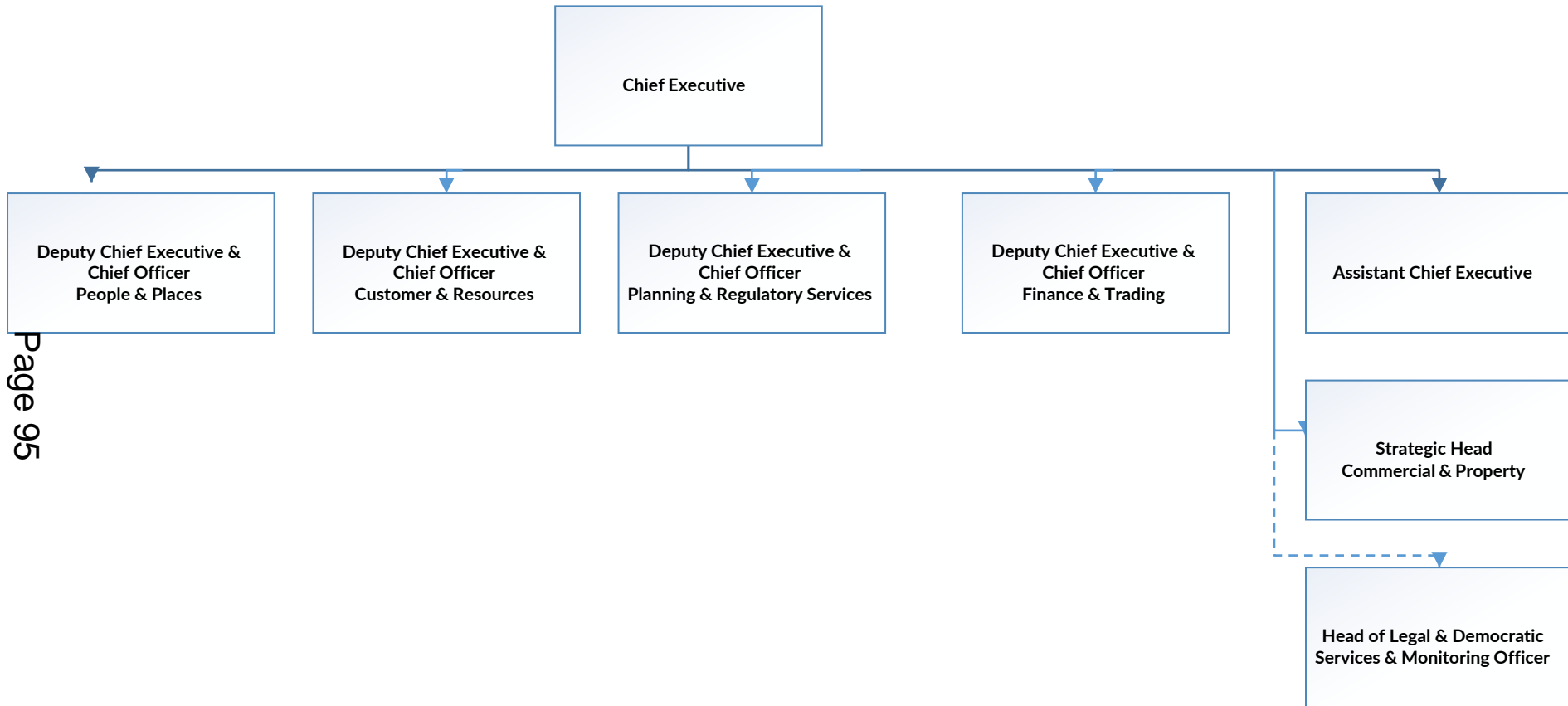
- Land charges
  - Street naming and numbering
  - Revenues and Benefits
- (b) To act under such Acts of Parliament as relate to the Facilities Management of the authority.
- (c) To institute and conduct legal proceedings where sufficient evidence exists when this is in the Council's interest or arising out of its functions and to take such action as is considered appropriate with regard to any such proceedings as being in the Council's interest.
- (d) To defend all proceedings brought against the Council including appeals against its decisions and to take such action as is considered appropriate with regard to any such proceedings.
- (e) To authorise Officers to represent the Council before all Courts and Tribunals.
- (f) To have responsibility for the Council's general administration (including the sealing of documents), Committee structure and operation (including payment of Members' allowances and expenses) save that any adjustment to the Council's calendar of meetings as may be necessary shall only be exercised after consultation with the Leader of the Council or the appropriate Chairman or Chairmen.
- (g) To have the responsibility for taking care of all securities and title deeds of all property held in the name of the Council.
- (h) The administration of benefits.
- (i) To maintain the collection of revenue, council tax and national non-domestic rates.
- (j) To act as the Proper Officer for the purposes of the Local Government Act 2000.
- (k) To amend the Constitution where necessary to reflect changes in the law or decisions of council bodies or to correct inaccuracies.
- (l) To prepare all contracts for the sale or purchase of Council Land and property and all leases, tenancy agreements or other agreements affecting Council land or property including easements or any interest in land.
- (m) To settle legal documents.
- (n) To sign the documents intended to give effect to decisions of a council body.
- (o) To sign any notice, demand or other document on behalf of the Council in connection with any actual or contemplated legal proceeding.

## Agenda Item 9

- (p) To settle any action in any court or tribunal in which the Council is a party or where legal proceedings are indicated providing that any settlement exceeding £50,000 will be subject to prior consultation with the Leader or Deputy Leader of the Council except in cases of urgency where the settlement is made on the advice of Counsel.
- (q) To act as the Proper Officer for the purposes of the Local Government Acts 1972 and 2000 and all Regulations made there under other than those Proper Officer functions delegated to the Chief Executive and s.151 Officer in connection with the administration of the Council's financial affairs.
- (r) To exercise where appropriate all other relevant legislation as follows:
  - Localism Act 2011or such other Acts of Parliament as relate to the relevant statutory functions of the authority.



# Organisational Structure Chart



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## APPENDIX F: The Council's Policy Framework

*(Review Date - September of each year)*

### Statutory

Air Quality Action Plan (Introduction of new plan/significant changes or material amendments to existing plan).

Allocation Policy (Register)

Annual Investment Strategy

Fraud and Corruption Strategy

Asset Management Plan

Audit Plan

Black and Minority Ethnic Groups (BME) Housing Strategy

Capital Strategy

Community Safety Strategy and Action Plan

Conservation Area Appraisals and Management Plans

Domestic Abuse Housing Strategy

Employment Stability Policy

Empty Homes Action Plan

Enforcement Policy -Housing Environmental Health, Licensing and Pest Control

Equal Opportunities Policy

Food Standards Agency Food Service Plan

Freedom of Information Publication Scheme

Gambling Act 2005 - Gambling Policy Statement

Home Energy Conservation Act (HECA)

Homelessness Strategy

Housing related Enforcement Policies

Housing Strategy

Kent Downs/High Weald Area of Outstanding Natural Beauty Management Plans

## Agenda Item 10

Kent Joint Municipal Waste Management Strategy

Medium Term Financial Strategy

Older Persons Housing Strategy

Pay Policy Statement

Private Sector Housing Strategy

Private Sector Renewal Policy

Revenue Budget

Risk Management Strategy

Safeguarding Policy and Action Plan

Sevenoaks District Council Major Emergency Framework Document 2006/07

Sevenoaks District Local Plan ( Core Strategy 2011 and Allocations and Development Management Plan 2015)

Sevenoaks District Sustainable Community Action Plan 2007-2010

Statement of Corporate Governance

Sub-Regional Homeless Strategy

Sub-Regional Housing Strategy

Surveillance Policy

Treasury Management Strategy

Younger Persons Housing Strategy

### Non-Statutory

Commercial Service Plan (Environmental Services)

Council Plan

Cultural Framework

Debt Management Strategy

Freedom of Information and Data Protection Charging Policy

Digital Strategy Medium Term Financial Strategy

Policy Document Giving Guidance for Charging and Trading Activities

Records Management Policy

Records Retention Policy

Sevenoaks District Play Strategy

Movement Strategy

Write off Policy (Local Tax and Benefits)

Young People's Action Plan

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**TO AGREE THE ALLOCATION OF SEATS TO POLITICAL GROUPS IN ACCORDANCE WITH THE POLITICAL BALANCE RULES**

**Annual Council – 23 May 2023**

**Report of:** Deputy Chief Executive and Chief Officer – Customer & Resources

**Status:** For Decision

**Key Decision:** No

**Contact Officer:** Charlotte Sinclair, Ext. 7165

**Recommendation to Council:** That Council

- (a) Note the political composition of the Council is: Conservative 33, Liberal Democrat 14, Green 4, Independent 4

Further recommendations will be on a follow up report once all the necessary information is known.

**Reason for recommendation:** Council is required to determine the constitution and political balance of the committees, joint committees and panels that have been set up for the purpose of discharging its functions.

**Introduction and Background**

- 1 The Council must allocate seats on committees and other prescribed bodies so as to give effect to the political balance rules.
- 2 Section 15 of the Local Government & Housing Act 1989 sets out 4 rules, and requires authorities to apply them in descending order of priority.
  - The first rule is that, where some or all of the members of an authority have formed into two or more political groups, then no Committee may comprise just members from one political group.
  - The second rule is that, where a majority of members of Council are members of one political group, that political group must have a majority of the seats on each Committee.
  - The third rule provides that, without being inconsistent with the first two rules, the number of seats allocated to each political group on all the Committees taken together be as near as possible proportionate to their strength on Council.

## Agenda Item 11

- The fourth rule provides that, so far as is consistent with Rules 1 to 3, each political party must be allocated that number of seats on each Committee taken individually as is proportionate to their strength on the Council. However, as set out above, this is subject to the need to give the majority a majority on each Committee.
- 3 Any seats left unallocated go by default to any members who are not members of any political group. A political group must comprise at least 2 members.
  - 4 The Council can only depart from these rules by passing a resolution with no member voting against the resolution.
  - 5 The political proportionality rules also apply to certain outside bodies dealing with local government matters to which the council appoints three or more representatives.
  - 6 The political composition of the Council is as follows:

	Conservative Group	Liberal Democrats Group	Green Party	Independent
Members	33	14	4	4

Any political groupings have yet to be formally advised.

### **Bodies to which proportionality does not or need not apply**

- 7 Cabinet is exempt from the rules.
- 8 The Sevenoaks Joint Transportation Board is also exempt from the rules. Firstly, in the terms of reference it states itself to be a “non-statutory forum”. It also does not make decisions itself, but merely recommends to the relevant executives. If it could uphold this then it would not be subject to the rules at all.
- 9 However, under the 1989 Act, even if it were a statutory committee then the whole Board would be exempt from political proportionality under the Local Government (Committees and Political Groups) Regulations 1990. As Reg. 16A refers to area committees and 16B to joint area committees. The provisions differ slightly in each. However, in essence they explain that, for example, where a County Member is elected from each division and an equal number of District Councillors then we would not need to apply the proportionality rules.

### **Achieving Political Balance**

- 10 This will be notified in the follow up report. Only Members who have formed political groups qualify for committee seats.



## Outside organisations

- 11 With regard to representation on outside bodies, political proportionality rules should be applied in certain circumstances under the Local Government and Housing Act 1989 Section 15(7) and where there are more than three members. There are only two outside bodies appointed by Cabinet that fall into this category:

## Other Options Considered and/or Rejected

None – the Council is required under Section 15 of the Local Government and Housing Act 1989 to review the representation of different political groups on bodies to which it makes appointments whenever there is a change in political representation. The Act requires that the review should be held at the Annual Meeting or as soon as practicable after that meeting or the change has occurred.

## Key Implications

### Financial

There are no financial implications directly arising from the recommendations contained within this report.

### Legal Implications and Risk Assessment Statement

There is a specific duty imposed on the Council to review each year at the Annual meeting, or as soon as practicable thereafter, the representation of different political groups. The legislation provides that the Council may make alternative arrangements to the 'proportionality' principles within this report only by a unanimous vote. However a political group may decide to offer a seat on a committee or panel to another political group. This does not affect the proportionality principles as it remains within the gift of that political group to determine how it wishes to exercise that discretion, if at all.

The recommendations in this report are in accordance with the power set out within Section 15 of the Local Government and Housing Act 1989.

The Council has a statutory duty to review at its Annual meeting, or as soon as practicable thereafter, the representation of different political groups. The proposals detailed in this report support that duty.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## Agenda Item 11

### Net Zero 2030

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

#### Conclusion

A full follow up report will be circulated prior to the meeting once all the further necessary information is known.

#### **Appendices**

Appendix – seat allocation as agreed by the group Leaders for recommendation to Council (to follow)

#### **Background Papers**

None

**Jim Carrington-West**

**Deputy Chief Executive and Chief Officer – Customer & Resources**

**APPOINTMENT OF CHAIRMEN, VICE CHAIRMEN AND MEMBERSHIP OF COMMITTEES 2023/24**

**Annual Council – 23 May 2023**

**Report of:** Deputy Chief Executive and Chief Officer Customer & Resources

**Status:** For Decision

**Key Decision:** No

**Contact Officer:** Charlotte Sinclair, Ext.7165

**Recommendation to Annual Council:** That the appointments of Chairmen, Vice Chairmen and membership of Committees for 2023/24, attached as an Appendix to this report, be approved.

**Introduction and Background**

- 1 At each Annual meeting of Council and beginning of the Municipal year, Members are asked to agree the Chairmen, Vice Chairmen and membership of Committees in line with the Council's Constitution and decision making structure.

**Key Implications**

Financial

None directly arising from this report.

Legal Implications and Risk Assessment Statement

None directly arising from this report.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Net Zero 2030

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

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### **Appendices**

Council Committee Memberships (To follow)

### **Background Papers**

[Council's Constitution](#)

**Jim Carrington-West**

**Deputy Chief Executive and Chief Officer Customer & Resources**

## CALENDAR OF MEETINGS FOR THE MUNICIPAL YEAR 2023/24

### Annual Council – 23 May 2023

**Report of:** Deputy Chief Executive and Chief Officer Customer & Resources

**Status:** For Decision

**Key Decision:** No

**Contact Officer:** Charlotte Sinclair, Ext. 7165

**Recommendation to Annual Council:** That the Calendar of ordinary meetings for the municipal year 2023/24 be confirmed.

### Introduction and Background

- 1 The initial draft calendar of meetings for the municipal year 2023/24 was agreed at Council on 15 November 2022 to go forward to the meeting of Annual Council for formal adoption. In consultation with relevant Chairmen there have been a few changes made during the municipal year 2023/24. The final draft is attached as an Appendix to this report.
- 2 The calendar tries to avoid meetings on Mondays and Wednesdays, but due to the full meeting schedule cannot be avoided completely. It also attempts to keep meetings away from school holidays as much as is possible, and apart from Development Control Committee keeps August free of formal meetings.
- 3 Whilst best endeavours will be maintained to avoid evening meetings on Mondays and Wednesdays it is necessary to look at these dates if additional meetings are called. All additional meeting dates are set up in consultation with the relevant Committee Chairman.

### Key Implications

#### Financial

None directly arising from this report.

#### Legal Implications and Risk Assessment Statement

The Council is under a legal duty to hold an Annual Meeting during a particular period and to set a Council Tax by a specific date. The calendar proposed here meets those requirements.

## Agenda Item 13

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### Net Zero 2030

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

#### **Appendices**

Calendar of meetings for the municipal year 2023/24

#### **Background Papers**

None

**Jim Carrington-West**

**Deputy Chief Executive and Chief Officer Customer & Resources**

# SEVENOAKS DISTRICT COUNCIL - CALENDAR OF MEETINGS 2023/24

As at 03.04.23

	APRIL 2023			MAY 2023				JUNE 2023					JULY 2023			
MONDAY	17	24	1 PUBLIC HOLIDAY	8	15	22	29 PUBLIC HOLIDAY	5	12	19 Finance & Investment AC	26	3	10	17	24	
TUESDAY	18	25 Council	2	9	16	23 Annual Council Sp. Cabinet, sp. Licensing Sp. Audit	30	6 Governance Committee	13 Cleaner & Greener Advisory Cttee	20 People & Places Advisory Committee	27 Improvement & Innovation Advisory Cttee	4 Audit Committee	11 Scrutiny Cttee	18 Council	25	
WEDNESDAY	19	26	3	10	17	24	31	7 Health Liaison Board (2pm)	14 Housing & Health Advisory Cttee	21	28	5	12	19	26	
THURSDAY	20 Cabinet	27 DCC	4 District & Parish Council Elections	11	18	25	1 DCC	8 Sevenoaks Joint Transportation Board	15 Cabinet	22 DCC	29 Licensing Cttee	6 Development & Conservation Advisory Cttee	13 Cabinet	20 DCC	27	
FRIDAY	21	28	5	12	19	26	2	9	16	23	30	7	14	21	28	

	AUGUST 2023				SEPTEMBER 2023					OCTOBER 2023				NOVEMBER 2023	
MONDAY	31	7	14	21	28 PUBLIC HOLIDAY	4	11	18	25	2	9	16	23	30	6
TUESDAY	1	8	15	22	29	5 Finance & Investment Advisory Cttee	12 Housing & Health Advisory Cttee	19 Cabinet	26 Audit Committee	3 People & Places Advisory Committee	10 Cleaner & Greener Advisory Cttee	17	24	31 Development & Conservation Advisory Cttee	7 Scrutiny Cttee
WEDNESDAY	2	9	16	23	30	6	13	20 Sevenoaks Joint Transportation Board	27	4	11	18	25	1	8
THURSDAY	3	10	17 DCC	24	31	7 DCC	14 Licensing Cttee	21	28 DCC	5 Improvement & Innovation Advisory Cttee	12 Cabinet	19 DCC	26	2 Finance & Investment Advisory Cttee	9 Cabinet
FRIDAY	4	11	18	25	1	8	15	22	29	6	13	20	27	3	10

Key (Most meetings start at 7pm UNLESS indicated otherwise and are held at the Council Offices in Argyle Road - please check the Council website for details.)

- Council
- Development Control Committee
- Licensing Committee
- Audit Committee
- Scrutiny Committee
- Governance Committee
- Standards Committee
- Cabinet
- Finance & Investment Advisory Committee
- Improvement & Innovation Advisory Committee
- Housing & Health Advisory Committee
- People & Places Advisory Committee
- Cleaner & Greener Advisory Committee
- Development & Conservation Advisory Committee
- Joint Transportation board
- Health Liaison Board - 2pm

# SEVENOAKS DISTRICT COUNCIL - CALENDAR OF MEETINGS 2023/24

As at 03/04/2023

	NOVEMBER 2023		DECEMBER 2023					JANUARY 2024				FEBRUARY 2024		
MONDAY	13	20	27	4	11	18	25 PUBLIC HOLIDAY	1 PUBLIC HOLIDAY	8	15	22	29	5	12
TUESDAY	14 Council	21 Housing & Health Advisory Cttee	28 Sevenoaks JTB	5 Improvement & Innovation Advisory Cttee	12 Development & Conservation Advisory Cttee	19	26 PUBLIC HOLIDAY	2 HLB (2pm)	9 Scrutiny Cttee	16 Licensing Cttee	23 Housing & Health Advisory Cttee	30 Governance Committee	6	13
WEDNESDAY	15	22	29 Community Infrastructure Levy (CIL) Spending Board	6	13	20	27	3	10	17	24	7	14	
THURSDAY	16 DCC	23 Cleaner & Greener Advisory Cttee	30 People & Places Advisory Cttee	7 DCC	14 Cabinet	21	28	4 DCC	11 Finance & Investment Advisory Cttee	18 Cabinet	25 DCC	23 Audit	8 Cabinet	15 DCC
FRIDAY	17	24	1	8	15	22	29	5	12	19	26	2	9	16
	MARCH 2024					APRIL 2024				MAY 2024				
MONDAY	19	26	4	11	18	25	1 PUBLIC HOLIDAY	8	15	22	29	6 PUBLIC HOLIDAY	13	20
TUESDAY	20 Budget Council	27 Standards (Reserve Council)	5 People & Places Advisory Cttee	12 Licensing Cttee	19 Scrutiny Cttee	26 Development & Conservation Advisory Cttee	2	9	16 Audit Committee	23 Council	30	7	14 Annual Council Sp. Cabinet Sp. Licensing Sp. Audit	21
WEDNESDAY	21	28	6 JTB	13	20	27	3	10	17	24	1	8	15	22
THURSDAY	22 Cleaner & Greener Advisory Cttee	29 Improvement & Innovation Advisory Cttee	7 DCC	14 Cabinet	21 Finance & Investment Advisory Cttee	28 DCC	4	11	18 Cabinet	25 DCC	2	9	16	23
FRIDAY	23	1	8	15	22	29 PUBLIC HOLIDAY	5	12	19	26	3	10	17	24

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Key (Most meetings start at 7pm and are held at the Council Offices in Argyle Road - please check the Council website for details.)

- |                               |   |   |
|-------------------------------|---|---|
| Council                       | Cabinet                                     | Development & Conservation Advisory Committee |
| Development Control Committee | Finance & Investment Advisory Committee     | Joint Transportation board                    |
| Licensing Committee           | Improvement & Innovation Advisory Committee | Health Liaison Board - 12pm                   |
| Audit Committee               | Housing & Health Advisory Committee         |   |
| Scrutiny Committee            | People & Places Advisory Committee          |   |
| Governance Committee          | Cleaner & Greener Advisory Committee        |   |
| Standards Committee           |   |   |



## APPOINTMENTS TO OTHER ORGANISATIONS 2023/24 – NON-EXECUTIVE

Annual Council – 23 May 2023

**Report of:** Deputy Chief Executive & Chief Officer Corporate Services

**Status:** For Consideration

**Key Decision:** No

**Contact Officer:** Charlotte Sinclair Ext. 7165

**Recommendation to Council:**

That the attached Appendix (to follow) setting out appointments to other organisations for the municipal year 2023/24 be confirmed.

### Introduction and Background

- 1 It is the responsibility of the Annual Meeting of the Council to confirm the Council's non-executive appointments to other organisations.

### Key Implications

#### Financial

Attendance at meetings of Outside Bodies to which an Elected Member has been appointed by the Council constitutes an approved duty and there are costs involved.

#### Legal Implications and Risk Assessment Statement.

Appointments to represent the Council on outside bodies are made in accordance with s.111 Local Government Act 1972 where the Council is satisfied that such appointments are necessary to, conducive to, or calculated to facilitate the discharge of their statutory functions. In not appointing to those Outside Bodies listed within the Appendix, there is a risk that the Council's designated representation on such organisations would not be fulfilled.

#### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

#### Net Zero 2030

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact

## Agenda Item 14

regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

### **Conclusions**

Members are requested to consider and approve the attached appointments.

### **Appendices**

Appendix A – List of proposed appointments to other organisations (to follow)

### **Background Papers**

None

**Jim Carrington – West**

**Deputy Chief Executive and Chief Officer – Customer & Resources**

## SEVENOAKS TOWN NEIGHBOURHOOD DEVELOPMENT PLAN

Full Council – 23 May 2023

**Report of:** Deputy Chief Executive, Chief Officer - Planning & Regulatory Services

**Status:** For Decision

**Key Decision:** No

**Executive Summary:** This report recommends that the Sevenoaks Town Neighbourhood Development Plan (STNDP) is 'made' (adopted) following a favourable local referendum result and is used to help determine planning applications in the town.

**This report supports the Key Aim of:**

Protecting the Green Belt

Supporting and developing the local economy

Supporting the wellbeing of residents, businesses and visitors

Ensuring that Sevenoaks remains a great place to live, work and visit

**Contact Officer:** Hannah Gooden, Ext. 7178

**Recommendation to Full Council:**

1. Following a favourable local Referendum result, the Sevenoaks Town Neighbourhood Development Plan 2020-2038, incorporating the Examiner's modifications, as presented to local Referendum, be "made" (adopted) with immediate effect and form part of the Council's Development Plan, to help determine planning applications in the Neighbourhood Area.
2. The STNDP Decision Statement (post-Referendum) shown at Appendix A be published.

**Reason for recommendation:** To 'make' (adopt) the Sevenoaks Town Neighbourhood Development Plan.

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### Introduction

- 1 The Sevenoaks Town Neighbourhood Development Plan (STNDP) has been successful at examination, with the independent examiner recommending that the STNDP should proceed to referendum, subject to a number of recommended modifications.
- 2 The Report presented to Cabinet on 9 February 2023 set out the independent examiner's recommendations and the proposed modifications to be made to the STNDP, which were made with the involvement of Sevenoaks Town Council following receipt and consideration of the examiner's report. The following documents referred to in this report can be accessed via:  
[https://www.sevenoaks.gov.uk/downloads/download/922/sevenoaks\\_town\\_neighbourhood\\_plan\\_examination\\_documents](https://www.sevenoaks.gov.uk/downloads/download/922/sevenoaks_town_neighbourhood_plan_examination_documents)
  - The Examiner's Report
  - (pre-Referendum) Decision Statement
  - Referendum version of the STNDP (and summary)
- 3 It was agreed by Cabinet to note the examiner's report dated 21 December 2022, the recommended modifications and the (pre-Referendum) Decision Statement and progress the STNDP to referendum.
- 4 Cabinet also agreed that in the event the referendum result on the STNDP is positive (more than 50% of the vote) that the Council formally 'makes' (adopts) the STNDP, so that it has effect as part of the statutory Development Plan for the Neighbourhood Area and that this will be passed to Full Council.

### Background

- 5 Sevenoaks Town Council, as the Qualifying Body, applied for Sevenoaks Parish to be designated a Neighbourhood Area under Part 2 of the Neighbourhood Planning (General) Regulations 2012. It was designated as a Neighbourhood Area in October 2013.
- 6 Following consultation on a draft (pre-submission) Plan, the STNDP was submitted to the District Council and in accordance with Regulation 16 of the Neighbourhood Planning (General) Regulations 2012, Sevenoaks District Council publicised the Plan from 4th August to 22nd September 2022.
- 7 The Plan was submitted for examination on 23 September 2022. Sevenoaks District Council appointed David Hogger BA MSc MRTPI MCIHT at Intelligent Plans and Examinations (IPE) to examine the Plan. He published his final report on 21 December 2022, concluding that the STNDP, subject to certain modifications proposed in his report, did meet the basic conditions as set out in legislation and is compatible with Schedule 4B of the Town and Country Planning Act 1990 and could therefore proceed to local referendum.
- 8 On 9 February 2023, Cabinet resolved that the Neighbourhood Plan (as amended in line with the Examiner's proposed modifications) should proceed

to local Referendum. This decision was published on the SDC website. The 'referendum area' was determined to be the Sevenoaks Town Council administrative boundary, to ensure the community has the final say on whether the neighbourhood plan comes into force or not.

### The Referendum

9 A Referendum was held on 4 May 2023 in tandem with the local elections. The referendum question was 'Do you want Sevenoaks District Council to use the Neighbourhood Plan for Sevenoaks Town to help it decide planning applications in the Neighbourhood Area?' The designated neighbourhood area followed that of the Sevenoaks Town Council parish boundary.

10 The results of the referendum were:

Yes = 4294 (73%)

No = 1292 (22%)

Void/Rejected = 285 (5%)

Electorate: 15,185

Ballot Papers Issued: 5,871

Turnout: 38.66%

11 The outcome of the referendum for the STNDP is a positive one, it being endorsed to use the STNDP to decide planning applications within the Sevenoaks Town Council parish boundary.

12 Planning Practice Guidance (PPG)

<https://www.gov.uk/guidance/neighbourhood-planning--2#the-neighbourhood-planning-referendum>

sets out that if the majority of those who vote in a referendum are in favour of the draft neighbourhood plan, then the neighbourhood plan must be 'made' (adopted) by the local planning authority within 8 weeks of the referendum. A neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum (that is, more than 50% of the votes cast being in favour of the draft neighbourhood plan).

13 It is the case that in these circumstances the neighbourhood plan must be made by the local planning authority (that is the neighbourhood plan is adopted). There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. These are where it considers that the making of the neighbourhood plan would breach, or otherwise be incompatible with, any EU or human rights obligations (see section 61E (8) of the Town and Country Planning Act 1990 Act as amended). Paragraph: 064 Reference ID: 41-064- 20170728 1.13

## Agenda Item 15

- 14 It is concluded that the Plan, including its preparation, does not breach and would not otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). This includes compliance with the basic condition regarding compliance with the Habitat Regulations.
- 15 The Cabinet decision of 9 February 2023 included as part of resolution 5 that in the circumstances where the referendum result is positive, that the Sevenoaks Town Neighbourhood Development Plan can, post-referendum, go directly to be considered at Full Council, with a recommendation for it to be 'made' (adopted).

### **Conclusion**

- 16 Paragraph 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 requires the Council to 'make' a Neighbourhood Plan if more than half of those voting in a referendum have voted in favour of the Plan being used to help to decide planning applications in the area. This needs to be achieved within eight weeks of the referendum result.
- 17 The Council has also assessed and concluded that the Plan, including its preparation, does not breach and would not otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). This includes compliance with the basic condition regarding compliance with the Habitat Regulations.
- 18 Therefore, it is proposed that Full Council be recommended to formally 'make' the STNDP with immediate effect, as per the recommendations in this report.
- 19 The principal effect of this is that the STNDP is now part of the statutory 'development plan' for the area (Sevenoaks Town Council Parish boundary) after a positive referendum pursuant to s38 (3A) of the Planning and Compulsory Purchase Act 2004. This means it is now a material consideration in the determination of planning applications in Sevenoaks Town Council Parish area.
- 20 The post-referendum decision to make the STNDP will need to be publicised and notified to those who had asked to be advised (see Appendix A).

### **Other options Considered and/or rejected**

Note the referendum result, but do not agree the Decision Statement to 'make' (adopt) the STNDP. As noted, there are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. These are where it considers that the making of the neighbourhood plan would breach, or otherwise be incompatible with, any EU or human rights obligations. This is not the case and therefore it is considered that the STNDP should be made (adopted).

## **Key Implications**

### Financial

The Council has claimed £20,000 from central government (available when a pre-referendum decision statement is issued), largely to cover the cost of holding the referendum.

### Legal Implications and Risk Assessment Statement.

Accepting the recommendations in this report will fulfil the Council's duties under the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Housing and Planning Act 2016, and the Neighbourhood Planning Act 2017. The recommendations also comply with the Neighbourhood Planning (General) Regulations 2012 as amended.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users. Furthermore, the Public Sector Equality Duty applies to town councils: Sevenoaks Town Council is responsible for demonstrating due regard to this throughout the production of the Neighbourhood Development Plan.

### Net Zero Implications

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment. Section 3.2 of the Basic Conditions Statement submitted with the STNDP provides information to demonstrate how the Plan is in Conformity with Sustainable Development.

#### **Appendices**

Appendix A - STNDP Decision Statement (post-Referendum)

#### **Background Papers**

All background documents are available on the STNDP examination page:

[https://www.sevenoaks.gov.uk/info/20069153/sevenoaks\\_town\\_neighbourhood\\_plan](https://www.sevenoaks.gov.uk/info/20069153/sevenoaks_town_neighbourhood_plan)

**Richard Morris - Deputy Chief Executive and Chief Officer - Planning and Regulatory Services**

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## SEVENOAKS DISTRICT COUNCIL

### SEVENOAKS TOWN NEIGHBOURHOOD PLAN 2020 -2038: DECISION STATEMENT

#### 1. Summary

Following a favourable Referendum result, notice is given that Sevenoaks District Council, at its meeting on 23 May 2023, 'made' the Sevenoaks Town Neighbourhood Plan 2020 - 2038, meaning the Neighbourhood Plan comes into force with immediate effect.

Since a positive referendum on 4 May 2023, the Neighbourhood Plan has had full weight and forms part of the statutory Development Plan for the area and, as such, is a key policy document in the determination of planning applications for development with Sevenoaks Town Parish boundary.

The 'made' Development Plan can be viewed on the Council's website at: [https://www.sevenoaks.gov.uk/info/20069153/sevenoaks\\_town\\_neighbourhood\\_plan](https://www.sevenoaks.gov.uk/info/20069153/sevenoaks_town_neighbourhood_plan)

#### 2. Background

Sevenoaks Town Council, as the Qualifying Body, applied for Sevenoaks Parish to be designated a Neighbourhood Area under Part 2 of the Neighbourhood Planning (General) Regulations 2012. It was designated as a Neighbourhood Area in October 2013.

Following consultation on a draft (pre-submission) Plan, the Plan was submitted to the District Council and in accordance with Regulation 16 of the Neighbourhood Planning (General) Regulations 2012, Sevenoaks District Council publicised the Plan from 4th August to 22nd September 2022.

The Plan was submitted for examination on 23 September 2022. Sevenoaks District Council appointed David Hogger BA MSc MRTPI MCIHT at Intelligent Plans and Examinations (IPE) to examine the Plan. He published his final report on 21 December 2022, concluding that the Plan, subject to certain modifications proposed in his report, did meet the basic conditions as set out in legislation and is compatible with Schedule 4B of the Town and Country Planning Act 1990 and could therefore proceed to local referendum. The 'referendum area' was determined to be the Sevenoaks Town Council administrative boundary.

#### 3. Decision and Reasons

With the incorporation of the Examiner's modifications, the District Council agreed that the Neighbourhood Plan met the basic conditions and other requirements and could be put forward for a local Referendum. This was held on 4 May 2023. The referendum question was 'Do you want Sevenoaks District Council to use the

## Agenda Item 15

Neighbourhood Plan for Sevenoaks Town to help it decide planning applications in the Neighbourhood Area?’ The designated neighbourhood area followed that of the Sevenoaks Town Council parish boundary.

The outcome was that 4294 (73%) of the people who voted were in favour of the Plan.

Paragraph 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that the District Council must ‘make’ the Neighbourhood Plan if more than half of those voting have voted in favour of the Plan, unless (under Para. 38A(6)) this would breach or would otherwise be incompatible with an EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

In line with the outcome of the Referendum and having further considered whether making the Neighbourhood Plan would breach or would otherwise be incompatible with any EU obligation or any of the Convention rights, the District Council resolved, at its meeting on 23 May 2023 that:

*Following a favourable local Referendum result, the Sevenoaks Town Neighbourhood Development Plan 2020-2038, incorporating the Examiner’s modifications, as presented to local Referendum, be “made” (adopted) with immediate effect and form part of the Council’s Development Plan, to help determine planning applications in the Neighbourhood Area.*

#### 4. Availability of documents

The ‘made’ Sevenoaks Town Neighbourhood Development Plan, Declaration of Referendum results and related documents can be viewed on the Council’s website at:

[https://www.sevenoaks.gov.uk/info/20069153/sevenoaks\\_town\\_neighbourhood\\_plan](https://www.sevenoaks.gov.uk/info/20069153/sevenoaks_town_neighbourhood_plan)

The report to Full Council in relation to the ‘making’ of the Neighbourhood Plan can be viewed at:

<https://cds.sevenoaks.gov.uk/ieListDocuments.aspx?CId=160&MId=2941&Ver=4&J=8>

For further information, please contact the Planning Policy Team by email at:

[planning.policy@sevenoaks.gov.uk](mailto:planning.policy@sevenoaks.gov.uk)

**QUERCUS 7 LTD SHAREHOLDER AGREEMENT AND QUERCUS HOUSING LTD  
GUARANTOR AGREEMENT**

**Annual Council – 23 May 2023**

**Report of:** Chief Executive

**Status:** For Decision

**Key Decision:** No

**Contact Officer:** Charlotte Sinclair, Ext.7165

**Recommendation to Annual Council:** That the Quercus 7 Ltd Shareholder Agreement and the Quercus Housing Ltd Guarantor Agreement be noted.

**Introduction and Background**

- 1 Members are asked to note the above agreements between the Council and its standalone companies.

**Key Implications**

Financial

None directly arising from this report.

Legal Implications and Risk Assessment Statement

None directly arising from this report.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Net Zero 2030

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

## Agenda Item 16

**Appendices**

Shareholder Agreement; Guarantor Agreement

**Background Papers**

None

**Pav Ramewal**

**Chief Executive**

**DATED** \_\_\_\_\_ **2023**

**(1) SEVENOAKS DISTRICT COUNCIL**

**and**

**(2) QUERCUS 7 LIMITED**

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**SHAREHOLDER'S AGREEMENT RELATING TO QUERCUS 7 LIMITED**

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Sevenoaks District Council  
Council Offices  
Argyle Road  
Sevenoaks  
Kent TN13 1HG

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**THIS SHAREHOLDER'S AGREEMENT** is made by Deed on 2023

**BETWEEN:**

- (1) **SEVENOAKS DISTRICT COUNCIL** of Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG (**the Council**);
- (2) **QUERCUS 7 LIMITED** to be registered at Companies House and whose registered office will be Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG (**the Company**)

**BACKGROUND**

- (A) The Company has been established as a company limited by shares for the purpose of carrying on the Business as set out in this Agreement and the Council is the sole shareholder of the Company.
- (B) The parties have agreed to enter into this Agreement for the purpose of regulating their relationship with each other.

**OPERATIVE PROVISIONS**

**1.0 DEFINITIONS AND INTERPRETATION**

1.1 The words and expressions used in this Agreement (including in the Background above) shall have the following meanings:

- 'Annual General Meeting'** an annual meeting of the shareholder called in accordance with the Articles and clause 10 of this Agreement;
- 'Applicable Law'** Any applicable law (whether criminal, civil or administrative), whether common law, judgment, court order, statute, statutory instrument, regulation, directive, European Community decision (insofar as legally binding), by-law or treaty;
- 'Articles'** the articles of association of the Company as may be amended from time to time in accordance with the Articles;
- 'Auditors'** the auditors appointed pursuant to clause 3.1.1 and any other auditors of the Company appointed from time to time;

## Agenda Item 16

<b>'Bank'</b>	such bank as the Board shall appoint from time to time;
<b>'Board'</b>	the board of Directors of the Company or the Directors present at a duly convened meeting of the Board at which a quorum is present in accordance with the Articles;
<b>'Board Approval'</b>	any approval or resolution passed by a simple majority at a meeting of the Board, where the requisite quorum is present;
<b>'Board Chair'</b>	the chair of the Board, appointed from time to time in accordance with clause 10.5;
<b>'Business'</b>	the business of fulfilling the Objectives together with such other business or businesses as may receive Member Approval and as is set out in the Business Plan from time to time;
<b>'Business Day'</b>	any day other than a Saturday or Sunday or a public or bank holiday in England;
<b>'Business Plan'</b>	the business Plan of the Company from time to time as more particularly described in clause 6.3 and which is formulated and approved in accordance with clause 6 including, for the avoidance of doubt, the First Business Plan;
<b>'Business Plan Period'</b>	each period of 36 months commencing on 1 April in each year and ending on 31 March 36 months thereafter during the period of this Agreement or any such period as the Council shall agree;
<b>'Cabinet'</b>	means the Cabinet of the Council in accordance with the Council's constitution as may be amended from time to time;
<b>'Companies Act 2006'</b>	the Companies Act 2006 (as amended from time to time);
<b>'Company Intellectual Property'</b>	any Intellectual Property developed or created by an employee or any personnel on secondment to the Company whilst acting on behalf of the Company or any that the Council creates or



organises the development of on behalf of the Company, or which is developed or created by third parties on the Company's behalf, including any logos, advertising or marketing material;

- 'Completion'** the performance by the parties of their respective obligations under clause 3;
- 'Confidential Information'** the information set out in clause 15.1;
- 'Controlled Company Legislation'** Part V of the Local Government and Housing Act 1989, the Local Authorities Companies Order 1995, the Local Government Act 2003 and Part 12 of the Local Government and Public Involvement in Health Act 2007 and any substitute, replacement or similar legislation in force from time to time;
- 'Council Director'** a director who is either an elected member or current employee of the Council;
- 'Council'** members represented by Cabinet or a Portfolio Holder or Full Council in accordance with The Local Authorities (Functions and Responsibilities)(England) Regulations 2000;
- 'Director'** any person duly appointed as a Director of the Company in accordance with this Agreement and the Articles whether they are a Council Director or an External Director and "Directors" means all such persons;
- 'Director's Undertaking'** the undertaking to be given by each Director in substantially the same form set out in Schedule 1;
- 'External Director'** a Director who is not a Council Director;
- 'Financial Regulations'** the financial regulations set out in Schedule 2 as may subsequently be amended with the approval of The Trading Board;
- 'Financial Year'** each financial year of the Company following the date of this Agreement commencing on 1 April and ending on 31 March and, in the case of the first Financial Year, commencing on the date of this Agreement and ending on 31 March 2017;

## Agenda Item 16

<b>‘First Business Plan’</b>	the document annexed at Appendix 1 approved by the Council on 31 <sup>st</sup> March 2015 as the first Business Plan of the Company (referred to as the Business Case in the document);
<b>‘First Business Plan Period’</b>	the period from the date of this Agreement until 31 <sup>st</sup> March 2017;
<b>‘General Meeting’</b>	the Annual General Meeting or any other meeting where a resolution is proposed for the Council to vote on in its capacity as sole shareholder of the Company;
<b>‘Intellectual Property’</b>	<p>all intellectual and industrial property rights including patents, Know-How, registered trade marks, registered designs, utility models, applications for the rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;</p> <p>delivered by hand, posted or sent by fax but shall not be valid if sent by e-mail;</p>
<b>‘In Writing’</b>	
<b>‘Key Documents’</b>	this Agreement, the Articles, the First Business Plan and each subsequent Business Plan, the Financial documents supporting the Business Plan and "Key Document" shall mean any of them as the case may be;
<b>‘Know How’</b>	all knowledge, experience, data, technical or commercial information, inventions which includes description of formulae, business plans, research, research products, information access, networking administration, facilitation and planning;
<b>‘Material Matters’</b>	the matters specified in Schedule 3 of this Agreement in respect of the Company;

<b>'Member Approval'</b>	the approval of the Council, which may be given by The Trading Board in accordance with its terms of reference, in accordance with clause 12;
<b>'Member IP'</b>	any Intellectual Property owned by or licensed to the Council, excluding Company Intellectual Property;
<b>'Net Losses'</b>	the accumulated aggregate net losses of the Company for a Financial Year as shown in the accounts for such Financial Year;
<b>'Net Profits'</b>	the accumulated aggregate profits of the Company available for distribution (in accordance with the Companies Act 2006) for a Financial Year as shown in the accounts for such Financial Year after the deduction of Net Losses and the corporation tax payable by the Company on such profits;
<b>'Objectives'</b>	the objectives set out in Schedule 4 as may be amended from time to time with Member Approval;
<b>'Policies'</b>	the contract and financial rules, regulations and policies to which the Company is subject from time to time as such rules, regulations and policies may be required by law or as they may be adopted (and, if applicable, amended) from time to time with Member Approval, such reference to include the Financial Regulations;
<b>'Statutes'</b>	the Companies Acts (as defined in section 2 of the Companies Act 2006) and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company;
<b>'Term'</b>	the period during which this Agreement continues in force pursuant to clause 15;
<b>'The Trading Board'</b>	the Cabinet or a sub committee of Cabinet of the Council established to oversee the trading activities of the Company, whose terms of reference and governance arrangements are set out in Schedule 5;

## Agenda Item 16

**‘Written Resolution’** a written resolution of the Council pursuant to clause 12.

1.2 In this Agreement, a reference to:

1.2.1 parties will be construed as a reference to the parties to this Agreement and their statutory successors (or any of them as the context may require);

1.2.2 a statutory provision includes a reference to:

1.2.2.1 any modification, consolidation, amendment or re-enactment of the provision for the time being in force;

1.2.2.2 all statutory instruments, orders, bylaws or regulations made under it or deriving validity therefrom; and

1.2.2.3 any statutory provisions of which it is a modification, consolidation or re-enactment,

provided that the provisions of this clause 1.2.2 shall not operate so as to increase the liability of any party hereto beyond that which would have existed had this clause 1.2.2 been omitted from this Agreement.

1.2.3 a person includes a reference to any body corporate, unincorporated association or partnership, government or government body, trust, firm, state, statutory authority or non-departmental public body (whether or not having a separate legal personality);

1.2.4 the singular will include the plural and the masculine will include the feminine and the neuter and vice versa where the context so admits;

1.2.5 a clause, Schedule or Appendix, unless the context requires otherwise, is a reference to a clause of, Schedule to, or Appendix to, this Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;

1.2.6 a document being “in the agreed terms” will be construed as references to that document in the form agreed and initialised by or on behalf of the parties; and

1.2.7 a Key Document shall be construed as including any variation of it made with Member Approval.

1.3 The Schedules and Appendices form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedule and Appendices.

- 1.4 The Index and headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 1.5 In this Agreement the words “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context.

## **2. CONSIDERATION**

In consideration of the mutual agreements and undertakings set out in this Agreement the parties have granted the rights and accepted the obligations set out in this Agreement.

## **3. COMPLETION**

Completion shall take place after the execution of this Agreement when the parties shall take, or procure to be taken the following steps (to the extent not already taken):

- 3.1 the appointment of the auditors of the Company;
- 3.2 the appointment of the bankers of the Company; and
- 3.3 the change of accounting reference date of the Company to 31 March.

## **4. DIRECTOR'S UNDERTAKING**

Following the execution of this Agreement, the Council shall procure (insofar as they are able) that (to the extent not already achieved) each Director appointed from time to time shall enter into a Director's Undertaking with the Company and the Council and shall deliver an executed copy of the same to the Company.

## **5. CONDUCT OF THE COMPANY'S AFFAIRS**

- 5.1 The business of the Company shall be the Business.
- 5.2 The parties agree that the Company, for so long as this Agreement remains in full force and effect, shall:
  - 5.2.1 carry on the Business in accordance with the Key Documents;
  - 5.2.2 adhere to the Policies;
  - 5.2.3 comply with the Key Documents; and
  - 5.2.4 procure the attendance of one of the Directors and/or the Board Chair and/or such other appropriate representative of the Company at meetings of The Trading Board to report on the progress of the Company as against the Business Plan.

**6. BUSINESS CASES**

6.1 The Council and the Company acknowledge and agree that:

6.1.1 the Company shall at all times have a Business Plan;

6.1.2 notwithstanding any other provision of this Agreement, the Business Plan shall require the prior written approval of the Cabinet prior to such Business Plan being adopted, amended, varied or upgraded by the Company pursuant to this clause 6.

6.2 The Board shall be responsible for preparing, reviewing and updating the Business Plan in accordance with this clause 6 and such Business Plan (as appropriate) shall be approved by the Board prior to being delivered to The Trading Board for consideration and recommendation for approval by the Cabinet pursuant to this clause 6 and the provisions of Schedule 5.

6.3 The Business Plan of the Company (which shall include such other supporting documents as the Board shall determine) shall set out the overall strategic delivery plans of the Company for the forthcoming Business Plan Period and shall include, for the Financial Year in which such Business Plan is adopted, a detailed revenue and capital expenditure budget, identified projects for delivery, details of funding and resource commitments to the delivery of such projects and such other item or items The Trading Board may from time to time specify together with a summary of the assumptions on which they are based.

6.4 The Board shall be responsible for preparing, reviewing and updating the Business Plan prior to the end of the expiry of each Financial Year as follows:

6.4.1 at least 90 Business Days before the end of each Financial Year, the Board shall (in accordance with this Agreement) review and update the Business Plan in order to report on the progress made under the Business Plan to date and any variations to the Business Plan that the Company requires for the remainder of the Business Plan Period to The Trading Board; and

6.4.2 The Trading Board shall (if they consider it appropriate to do so) recommend to the Cabinet that any amendments or variations to the Business Plan, be approved subject always to the provisions of clauses 6.8 and 6.9.

6.5 Notwithstanding any other provision of this clause 6, following the requisite approval of an updated Business Plan by the Cabinet, such Business Plan shall become the Business Plan for the remainder of the Business Plan Period.

6.6 Towards the end of the current Business Plan Period the Board shall be responsible for preparing a new Business Plan for the next Business Plan Period for approval as follows:

- 6.6.1 at least 90 Business Days before the end of the current Business Plan Period, the Board shall submit a new Business Plan to The Trading Board for approval;
- 6.6.2 The Trading Board shall (if they consider it appropriate to do so) recommend to the Cabinet that the new Business Plan be approved;
- 6.6.3 the Company shall adopt the new Business Plan for the next Business Plan Period following approval of the same by the Cabinet.

6.7 For such period as an updated or new Business Plan is not approved and adopted by the Company in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.

6.8 The Trading Board shall use all reasonable endeavours to agree such draft Business Plan or variations to the Business Plan submitted to them and recommend the same to the Cabinet for approval as soon as reasonably practicable, and, in any event, prior to the beginning of the relevant Financial Year or Business Plan Period.

6.9 In the event that the Company wishes to carry out an area of activity (with an annual value in excess of £50,000) that forms part of the Business but is not included in the current Business Plan it shall submit to the Trading Board a specific business plan for that activity. The Trading Board shall approve the same if it sees fit subject to Cabinet approval.

## **7. PROFITS AND LOSSES**

7.1 Subject to clause 7.2, the Net Profits of the Company in any one Financial Year shall be retained by the Company for the forthcoming Financial Year.

7.2 Subject to the provisions of the Statutes and the Articles, if, on a winding up of the Company in accordance with clause 15.1 or other dissolution of the Company, there remains, after the satisfaction of all debts and liabilities of the Company, any property or operating surplus whatsoever, the same shall be paid to the Council.

## **8. MANAGEMENT OF THE COMPANY**

8.1 The Council shall delegate the control of the affairs of the Company to the Board, except as otherwise provided in this Agreement and the Articles and subject to clause 8.2 and provided that the authority of the Board shall be subject to any Material Matter requiring Member Approval.

8.2 The Board shall have the power to establish panels, committees or delivery groups to deal with any matters it shall deem appropriate to be dealt with by such panels, committees or delivery groups.

## **9. OBLIGATIONS OF THE COMPANY**

9.1 The Council shall exercise all voting rights and other powers of control available to it in the Company (so far as the Council is legally able) to procure that and the Company will procure that:

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- 9.2 the Company shall transact all its business on arm's length terms;
- 9.3 the business of the Company consists exclusively of the Business and that the Company shall not involve itself in any other business or activities in pursuance of the Objectives;
- 9.4 the Company fully complies with its obligations under the Key Documents and carries out its duties with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene;
- 9.5 the Company shall not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and services by such means and from and to such persons as it thinks fit;
- 9.6 the Company shall adopt standing orders to regulate the letting of contracts and the selection and evaluation of contractors consistent with the obligations imposed on the Council in relation to procurement and that the Company's procurement of works, suppliers and services complies with all laws which relate to the EU public procurement framework;
- 9.7 the Company shall adopt the Financial Regulations;
- 9.8 the Company carries out and conducts its business and affairs in a proper and efficient manner in accordance with its objects and the provisions of this clause 8;
- 9.9 subject to clauses 8.2 and 11, all business of the Company (other than Material Matters) shall be undertaken and transacted by the Directors;
- 9.10 the Company shall maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;
- 9.11 the Company may purchase and maintain for any Director (including an alternate), officer or auditor of the Company insurance against any such liability as is referred to in section 310(1) of the Companies Act 1985 and sections 232 – 237 of the Companies Act 2006, subject to the provisions of the Companies Act 1985 and the Companies Act 2006, against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a Director (including an alternate), officer or auditor;
- 9.12 the Company shall not acquire, dispose, hire, lease, license or take licences of any assets, goods, rights or services otherwise than at the best value reasonably obtainable in the circumstances;



- 9.13 the Company shall keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
- 9.14 save to the extent otherwise agreed by The Trading Board, the Company shall prepare and provide to The Trading Board, by no later than 20 Business Days following the end of the 3 month period to which they relate, a financial statement and unaudited management accounts for the Company containing such information as The Trading Board shall agree from time to time for such relevant 3 month period.
- 9.15 the Company shall prepare its accounts and its management accounts in accordance with the Statutes and in accordance with historical cost convention and with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
- 9.15.1 the Company shall:
- 9.15.1.1 prepare the accounts in respect of each accounting reference period as are required by statute;
- 9.15.1.2 procure that such accounts are audited as soon as practicable after the end of the period to which they relate and in any event not later than 3 months after the end of the relevant accounting reference period; and
- 9.15.1.3 provide The Trading Board with annual audited accounts within 12 weeks from the end of the period to which they relate;
- 9.16 as soon as practicable and in any event within 15 Business Days of the end of each quarter, the Company shall send to The Trading Board a report showing progress against the Business Plan;
- 9.17 the Company fully complies with any obligations which it may from time to time have under or pursuant to any Key Document and/or pursuant to Applicable Law;
- 9.18 the Company opens a bank account and that such account shall not be used for any purpose other than for a purpose directly related to the Business and all money transactions relating to the Business shall be recorded and conducted by means of credits to or withdrawals from such account;
- 9.19 if the Company requires any approval, consent or licence for carrying on the Business, the Company will use all reasonable endeavours to maintain the same in full force and effect and the Council shall provide such assistance as the Company may reasonably request of them to facilitate the Company obtaining the requisite approval, consent or licence provided that this shall not require the Council to exercise or fetter the exercise of any of its statutory powers;
- 9.20 the Company conducts the Business in accordance with the Key Documents, provided that The Trading Board may approve the introduction of any project or

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scheme into the Business of the Company at any time notwithstanding the fact that such project has not been included in the Business Plan for the relevant Financial Year;

- 9.21 the Company, as soon as practicable upon becoming aware of the same, provides The Trading Board the full details of any actual or prospective change in circumstances which has had or could have a material affect on the financial position or affairs of the Company;
- 9.22 the Company uses it's reasonable endeavours to take such steps and do such things as may be reasonably requested by The Trading Board to assist them in complying with its duties and obligations under the Controlled Company Legislation;
- 9.23 the Company maintains (where such information is not contained within the Business Plan) cash flow projections, project briefs, time lines and reporting mechanisms, such information to be supplied to The Trading Board from time to time upon request.

### **10. DIRECTORS AND MEETINGS**

- 10.1 The appointment, removal, dismissal and conduct of the Directors shall be regulated in accordance with this Agreement and the Articles.
- 10.2 Subject to the Articles, the Council shall be entitled from time to time to appoint all the Directors by notice in writing to the Company and also to remove any such Director appointed by it.
- 10.3 In accordance with the Articles, an External Director shall be appointed by the Council for a term of three years and at the end of the three year term the External Director shall be deemed to have retired as a Director unless the Council reappoints them for a further three year term.
- 10.4 An External Director shall not serve more than nine years as a Director.
- 10.5 The Council agrees that any person appointed to the Board in accordance with the Articles as a Director must have sufficient knowledge, understanding and experience to contribute appropriately in connection with the matters with which the Board will deal. The Directors may appoint a Director to Chair their meetings, in accordance with paragraph 13 of the Articles.
- 10.6 Board Meetings shall be held at regular intervals as the Board shall determine from time to time provided that a Board Meeting is held at least once in every 3 month period.
- 10.7 Non-voting observers or attendees as The Trading Board shall agree (with Board Approval from time to time) shall be entitled to attend meetings of the Board in a non-voting observer role ("Observers"). For the avoidance of doubt, Observers shall not be Directors of the Company.

- 10.8 Each Director will be entitled whilst he or she holds that office to make full disclosure to the Council of any information relating to the Company which may come into his or her possession as a Director and which the Council may reasonably require including (for the avoidance of doubt) Confidential Information but each Council shall only use such information in connection with its interest in the Company and the Business and shall not (unless it is under a legal or regulatory obligation to do so and then only to the extent so required) use that information in any way which is or may be detrimental to the Company.
- 10.9 The Company shall have an Annual General Meeting at which it shall report those matters that The Trading Board require to be reported on annually and it shall invite all Councillors of the Council to attend the Annual Meeting which will be held at the end of a Full Council Meeting with Members being asked to endorse such report

## **11. FINANCING THE BUSINESS**

- 11.1 The Council shall not be obliged to:
- 11.1.1 provide any funding to the Company other than on commercial terms, in accordance with State Aid Rules; or
  - 11.1.2 guarantee or provide security for any indebtedness of the Company.
- 11.2 Any expenditure by the Company in any form (electronic or otherwise) must be made in accordance with the Financial Regulations and must only relate to matters covered by the Business Plan. For such time as the Company shall not have adopted the Financial Regulations any expenditure made by the Company shall require the prior approval of each Director.
- 11.3 No new accounts will be opened by the Company, or amendments made to the mandate under which the Company operates its account with the Bank or any other account or facility opened with the Bank or any other bank or financial institution without the prior written consent of the Board.

## **12. MEMBER APPROVAL**

- 12.1 Every Material Matter shall require Trading Board Approval before such matter is then actioned by the Board on behalf of the Company, provided always that the Board may approve a Material Matter subject to obtaining Member Approval. For the avoidance of doubt, once a Material Matter has received Member Approval, the Board must approve and action such Material Matter save that the Board shall not be required to approve or action any such Material Matter where the Board considers that to do so would no longer be in the best interests of the Company.
- 12.2 In voting for or against a resolution, the Council and The Trading Board shall at all times act in good faith.
- 12.3 Member Approval shall be evidenced by:

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- 12.3.1 In respect of anything not being a Material Matter, a resolution passed by the Council acting by The Trading Board or one of its members authorised to act on behalf of the same; or
- 12.3.2 In respect of Material Matters: letters or electronic communication addressed to the Company from The Trading Board, or the Cabinet as required, signed by the chair confirming approval of the matter in question, or a resolution passed by The Trading Board or the Cabinet as required.
- 12.4 Any resolution of the Council (except for Material Matters) shall be validly made without the need for any meeting if contained in a written resolution signed by the chair of The Trading Board, apart from matters outside approved budgets
- 12.5 For the purposes of a General Meeting the Council shall act and be represented by its duly authorised representative, who shall be a member of The Trading Board, and the Council or The Trading Board shall give the Company written notice of its duly authorised representative.

### **13. PARTIES' RIGHTS AND OBLIGATIONS**

- 13.1 The Council shall not have any personal obligation for the debts and liabilities of the Company.
- 13.2 The Council will account fully and promptly to the Company for any payment received by the Council from any third party in respect of services provided to that third party by or on behalf of the Company.
- 13.3 Subject to clause 13.4 the Council and The Trading Board shall be permitted access to such information and documents of the Company as the Council may reasonably require in order to:
  - 13.3.1 satisfy itself that that Company has established and is maintaining and administering an internal control system necessary to ensure:
    - 13.3.1.1 the Company's effective and efficient operation by enabling it to manage significant business, operational, financial, compliance and other risks to achieve the Objectives;
    - 13.3.1.2 the quality of the Company's internal and external reporting; and
    - 13.3.1.3 the Company's compliance with any Applicable Law;
  - 13.3.2 keep itself properly informed about the business and affairs of the Company;

- 13.3.3 allow it to comply with any obligations to which it is from time to time subject under any Applicable Law; and
- 13.3.4 allow it to comply with its obligations in relation to public sector requirements for transparency and accountability.
- 13.4 The Company shall make available the accounting records and any other books and records, information, plans or other documents (“Records”) for inspection by the Council and its duly authorised representatives (and by any other person to whom the Company or the Council is required pursuant to any statutory or regulatory obligation to disclose such Records including the internal or external auditors of the Council, their employees, the Audit Commission or any government organisation) and the taking of copies (at the reasonable expense of the Council) during normal business hours on reasonable advance notice being given.
- 13.5 The Company shall not be obliged to disclose or otherwise make available to the Council or other person (save for a governmental or regulatory body to which the Company or any Council has a statutory or regulatory obligation to disclose) any Records or other information if and to the extent that to do so would or may put the Company in breach of any confidentiality or other obligation by the Company to a third party or would cause the Company to be in breach of any Applicable Law. The Company will procure that in respect of any contract entered into by the Company with any third party on or after the date of this Agreement that the Company will use all reasonable endeavours to secure the permission of that third party to the disclosure of such contract to the Council but provided always that the obligations upon the Company to use reasonable endeavours to secure such permission will not be a pre-condition to the Company entering into any contract.
- 13.6 It is acknowledged that the Council may provide services (including the secondment of staff) to the Company during the Term provided that the provision of such services is in accordance with the Policies and the terms upon which such services will be provided (including remuneration) have received Board Approval.
- 13.7 The parties shall, to the extent permitted by Applicable Law, comply with and be bound by the provisions of this Agreement.

#### **14. TAX MATTERS**

- 14.1 The effective management of the Company shall be exercised in the United Kingdom and the parties shall use their respective best endeavours to ensure that the Company is treated by all relevant authorities as being resident for taxation purposes only in the United Kingdom.
- 14.2 The parties hereby agree that they will use reasonable endeavours to ensure that the Company is operated in a tax efficient manner.

## 15. TERMINATION

### 15.1 Termination

This Agreement shall continue in full force without limit in point of time until the earlier of:

15.1.1 the Council agreeing in writing to terminate this Agreement whereupon the provisions of clause 15.2.1 shall apply;

15.1.2 an effective resolution or binding order is passed for the winding up of the Company, whereupon the provisions of clause 15.2.2 shall apply.

### 15.2 Consequences of termination and retirement

15.2.1 In the event that this Agreement shall terminate pursuant to clause 15.1.1:

15.2.1.1 the provisions of this Agreement shall cease to have effect against the Council; and

15.2.1.2 this Agreement will terminate on the date agreed by the Council.

15.2.2 In the event that this Agreement shall terminate pursuant to clause 15.1.2:

15.2.2.1 the provisions of this Agreement shall cease to have effect against the Council upon the Council ceasing to be a member of the Company;

15.2.2.2 the Company shall be put into voluntary liquidation and the Council shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

(a) all existing contracts and commitments of the Company shall be completed so far as possible;

(b) no new contractual obligations shall be entered into by the Company; and

(c) the Company shall be wound up as soon as possible.

- 15.2.3 The termination of this Agreement pursuant to this clause 15 shall be without prejudice to any accrued rights and liabilities of the Council. The provision of clauses 20 and 33 shall survive termination or expiration of this Agreement.

## **16. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 16.1 Subject to the exceptions provided in clause 16.2, none of the parties shall, at any time, whether before or after the expiry or sooner termination of this Agreement without the consent of each of the other parties, divulge or permit its officers, employees, agents, advisers or contractors to divulge to any person (other than to any respective officers or employees of a party or a person to whom, in each case, disclosure of information is permitted by this Agreement and who require the same to enable them properly to carry out their duties):
- 16.1.1 any of the contents of this Agreement or any other document referred to in this Agreement.
- 16.1.2 any information which it may have or acquire (whether before or after the date of this Agreement) relating to the Business of the Company or otherwise in relation to the assets or affairs of the Company;
- 16.1.3 any information which, in consequence of the negotiations relating to this Agreement or any other document referred to in this Agreement or of a party being involved in the Company or its business in a manner whatsoever (including as a Member and as an appointer of a Director) or performing or exercising its rights and obligations under this Agreement or any other document referred to in this Agreement, any party may have acquired (whether before or after the date of this Agreement) with respect to the customers, business, assets or affairs of any other party.
- 16.2 The restrictions imposed by clause 16.1 shall not apply to the disclosure of any information by a party ("the Disclosing Party"):
- 16.2.1 which is now in or comes into the public domain otherwise than as a result of a breach of such undertaking of confidentiality; or
- 16.2.2 which is required by law (including, without limitation, by virtue of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004) to be disclosed to any person who is authorised by law to receive the same; or
- 16.2.3 such information is disclosed to any department or office of the Government or their advisors; or

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- 16.2.4 which is required to be disclosed by the regulations or any recognised exchange upon which the share capital of the Disclosing Party is or is proposed to be from time to time listed or dealt in; or
  - 16.2.5 to its legal advisors provided that such legal advisors are made aware of the confidentiality obligations contained in this Agreement and undertake to the Disclosing Party to maintain such information as confidential and further provided that such disclosure is only made to such legal advisors where legal advice is required to be taken by the Disclosing Party; or
  - 16.2.6 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Disclosing Party is a party in a case where such disclosure is required by such proceedings.
- 16.3 No announcement, advertisement, circular or other publication concerning or relating to:
- 16.3.1 the subject matter of this Agreement shall be made by any party (save as required by law) without the prior approval in writing of each of the Members as to the contents, form and timing thereof; or
  - 16.3.2 the business of the Company except in accordance with any communications strategy of the Company adopted by the Board from time to time.

## **17. VAT**

- 17.1 Where the fulfilment by any party of an obligation under this Agreement constitutes a supply of goods or services for VAT purposes, the appropriate VAT payments shall be made and invoices issued. Agreement to pay any money shall be regarded as exclusive of VAT and as requiring the additional payment of any VAT properly chargeable in exchange for a valid VAT invoice.

## **18. INTELLECTUAL PROPERTY**

- 18.1 Any Company Intellectual Property shall belong to and vest in the Company. If the Council creates or procures the creation of any Company Intellectual Property it shall assign such Company Intellectual Property to the Company, and in relation to any copyright, design right or database right, the Council shall assign by way of present assignment of future rights, any future copyright, design rights and database rights in the Company Intellectual Property to the Company.
- 18.2 The Company grants to the Council a non-exclusive, royalty-free licence to use such of the Company Intellectual Property as it may require, in order to carry out



its obligations under this Agreement and for the purpose of carrying on the Business.

- 18.3 The Council grants to the Company a non-exclusive, royalty-free licence of any of its Member IP, which is required by the Company to conduct the Business or as is otherwise required pursuant to this Agreement.

**19. NOTICES**

- 19.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, first class post or facsimile addressed to the recipient at its address or facsimile number as the case may be stated in clause 19.3 marked for the attention of the appropriate person specified in clause 19.3 (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this clause 19, to be received by the sender not less than 5 Business Days before the notice is despatched).

- 19.2 The notice, demand or communication will be deemed to have been duly served:

- 19.2.1 if delivered by hand, at the time of delivery;
- 19.2.2 if delivered by first class post, 48 hours after being posted (excluding days other than Business Days);
- 19.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.

- 19.3 The addresses, facsimile numbers and appropriate contacts for the parties are as follows:

Party	Address/facsimile number and contact
SEVENOAKS DISTRICT COUNCIL	Council Offices, Argyle Road, Sevenoaks, TN13 1HG Contact: Head of Legal and Democratic Services Fax number: 01732 227340

[COMPANY]	Council Offices, Argyle Road, Sevenoaks, TN13 1HG
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	Contact: Finance Director Fax number: 01732 227493
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A notice or other communication given under or in connection with this agreement is not valid if sent by e-mail.

19.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

**20. FAIRNESS CLAUSE**

20.1 In the event that any circumstance arises during the Term which is not within the contemplation of the parties at the date of this Agreement and not provided for in the Key Documents (or any of them) either expressly or impliedly then the parties agree that such matter shall be dealt with and resolved in such manner as shall operate between them for fairness and, so far as is possible, without detriment to the interests of any of them.

**21. CONFLICT**

21.1 Where the provisions of the Articles, the Policies (or any of them) conflict with or are inconsistent with the provisions of this Agreement then this Agreement shall prevail to the intent that the parties shall if necessary procure the amendment of the Articles, or the Policies (or any of them) to the extent required to enable the Company and its affairs to be administered as provided in this Agreement.

**22. EXERCISE OF POWERS**

22.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to use all reasonable endeavours to procure that it be done (including using its voting and other powers at any meeting of Founder Members to such effect) and words placing a party under a restriction include an obligation not to permit or allow so far as the same is possible infringement of that restriction.

**23. NO PARTNERSHIP OR AGENCY**

23.1 Nothing in this Agreement shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

**24. VARIATION**

24.1 Any variation to this Agreement shall only take effect if it is in writing and signed by both parties.

**25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

25.1 The parties do not intend that any of the provision of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**26. ENTIRE AGREEMENT**

26.1 This Agreement and the Articles constitute the entire agreement between the parties in relation to their respective subject matters (save, for the avoidance of doubt, any statutory provisions which are not overridden by the terms of this Agreement and/or the Articles or any of them or any part of them) and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to in this Agreement and/or the Articles. This clause 26 does not exclude or restrict the liability of a party for any representations made fraudulently by that party.

**27. WAIVER**

27.1 The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Agreement shall not affect such party's rights, powers or remedies in respect of any other default or any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.

27.2 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

27.3 For the avoidance of doubt and without prejudice to the generality of the foregoing, any failure by any party to comment upon or raise any objection to the fact that any matter referred to in clause 12 has been effected without the consent of the Council shall not be deemed to constitute consent to such action and nor shall be taking of any such action on any two or more occasions without such comment or objection be deemed to constitute accepted general practice.

**28. UNLAWFUL FETTER ON STATUTORY POWERS**

28.1 Notwithstanding any other provision contained in this Agreement the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

28.2 The parties recognise that it is a rule of public law that it is unlawful for the Council to fetter its discretion in carrying out its statutory duties and that they agree that notwithstanding anything apparently to the contrary in this Agreement the terms of this Agreement shall not have that effect on the Council's statutory duties.

**29. INVALIDITY/SEVERABILITY**

29.1 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

**30. ASSIGNMENT**

30.1 The Council shall not assign or transfer or purport to assign or transfer all or any of its rights or obligations hereunder or as the shareholder of the Company.

**31. COUNTERPARTS**

31.1 This Agreement may be executed in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

**32. DISPUTE RESOLUTION**

32.1 The Council undertakes and agrees to pursue a positive approach towards dispute resolution which seeks (in the context of these joint working arrangements) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the parties.

32.2 Any dispute arising out of this Agreement and which has unsuccessfully been settled by the parties between themselves within 60 Business Days, will be attempted to be settled by mediation. To initiate mediation, a party must give notice in writing ("a mediation notice") to the other parties to the dispute.

- 32.3 The parties will seek to agree the appointment of a mediator but failing agreement within 28 days of service of the mediation notice, the parties (or any of them) will ask the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator.
- 32.4 The parties will use their best endeavours to arrange and attend a mediation meeting within 60 Business Days of the appointment of a mediator.
- 32.5 If any party refuses at any time to participate in the mediation procedure and in any event if the dispute is not resolved in 90 days of the appointment of a mediator, then clause 20 shall apply.

**33. GOVERNING LAW AND JURISDICTION**

- 33.1 This Agreement shall be governed by and construed in all respects in accordance with English Law and the Courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, each party irrevocably submits to the jurisdiction of the Courts of England.

THIS AGREEMENT is executed as a deed and delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1  
DIRECTOR'S UNDERTAKING**

To: Quercus 7 Limited  
Sevenoaks District Council

From: [ ]

Dated [ ]

I hereby confirm that I have been supplied with a copy of the Shareholder's Agreement made between (1) Sevenoaks District Council, and (2) Quercus 7 Limited dated 2016 (the "Shareholder's Agreement") and undertake to the Company and the Council that:-

I will, so far as may be permitted by law and so long as I remain a Director of the Company, be bound by and comply with the terms and conditions of the Shareholder's Agreement (as the same may hereafter be amended from time to time), insofar as the same relate to me and to act in all respects as contemplated thereby, and I will (so far as aforesaid) do everything within my power as a Director to ensure that the Company complies with all its obligations thereunder.

Provided that there shall not attach to me any personal liability in relation to the pursuance of my obligations, save where such liability shall arise directly or indirectly out of my fraudulent activity, dishonesty, bad faith or negligence.

EXECUTED AND DELIVERED AS )  
A DEED BY [ ] )  
On the date stated above )  
in the presence of: )

**SCHEDULE 2  
FINANCIAL REGULATIONS**

<b>Estimated Value of Purchase</b>	<b>Minimum competition and documentation requirements</b>	
<b>Zero to £10,000</b>	<b>At least one quote in advance</b>	
<b>£10,000 up to £74,999</b>	At least three written quotes in advance	
<b>Over £75,000 up to EU Procurement Limit</b>	At least three written tenders, formal opening procedures, Cabinet approval and a written contract.	
<b>At EU Procurement Limit and above</b>	Advertisement and tenders in accordance with EU requirements, Cabinet approval and a written contract.	

**Purchase of Property**

Board decision with The Trading Board approval if contained within the Business Plan and Approved Budgets otherwise Cabinet approval between £50,000 and £500,000 and Full Council approval over £500,000

**For the avoidance of doubt the Financial Procedure Rules and Contract Procedure Rules must follow the Financial Procedure Rules and Contract Procedure Rules of Sevenoaks District Council as set out within the Constitution of Sevenoaks District Council.**

**SCHEDULE 3  
MATERIAL MATTERS**

1. Subject to paragraph 3 below, the Company can do anything that is contained in the Business Plan without any further approval from the Cabinet.
2. The approval of the Cabinet via the Trading Board (to be given in accordance with the terms of reference of The Trading Board) is required:
  - (a) For the adoption of the Business Plan and any variations to the Business Plan;
  - (b) Before the Company can carry out any activity that is not included in the Business Plan;
  - (c) Before the Company makes any amendment or variation to the Financial Regulations;
  - (d) Before the Company makes any amendment or variation to the Policies;
  - (e) In order to appoint or remove the Auditors;
  - (f) In order to appoint or remove a director in accordance with the Articles;
  - (g) To waive any of the confidentiality restrictions under this Agreement;
  - (h) Before entering into (or agreeing to enter into) any borrowing arrangement and giving any security in respect of such borrowing;
  - (i) Before creating or allowing to be created any encumbrance over any tangible or intangible asset (including any mortgage, charge, pledge, option, title retention, preferential right, equity or trust arrangement, lien (other than a lien arising by operation of law), right of set-off or any security interest whatsoever and howsoever created or arising;
  - (j) Entering into any grant funding agreement or applying for any other funding;
  - (k) Before making any application for planning permission or lodging an appeal against a planning authority;
  - (l) Any other matter that the Cabinet or Council shall advise the Company of in writing.



3. The specific approval of the Council is required for the following matters, regardless of whether they are included in the Business Plan:
- (a) Before the Company forms any subsidiary, acquires any interest in any other company, partnership, limited partnership, limited liability partnership, trust or other body (incorporated or otherwise) or enters into any joint ventures or partnerships
  - (b) Determining whether any Director (or any person recruited to work for the Company) shall be entitled to remuneration in connection with the performance of his or her duties for the Board and determining the level and terms upon which the remuneration will be payable.
  - (c) Before taking any step which will result or may result in the winding up of the Company including (but not limited to) making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or giving notice of the intention to appoint an administrator or filing a notice of appointment of an administrator unless in any case the Company is at the relevant time insolvent and the Council reasonably considers that it ought to be wound up.
  - (d) Before changing the registered office of the Company;
  - (e) Before changing the accounting reference date of the Company;
  - (f) Before changing the place of business of the Company;
  - (g) Any other matter that the Council shall advise the Company of in writing; and
  - (h) Issuing any further shares in the Company.

**For the avoidance of doubt The Trading Board can sign off material matters on behalf of the Council**

**SCHEDULE 4  
OBJECTIVES**

- 
- To enable the Council to move towards a more financially self sufficient position.
- 
- To operate development on a commercial basis as well as investing in residential property
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**SCHEDULE 5**  
**TERMS OF REFERENCE and GOVERNANCE ARRANGEMENTS OF THE TRADING BOARD**

The Trading Board shall have delegated authority to carry out on behalf of the Cabinet the following functions, namely:

- a) To monitor and report regularly on high level performance and report on areas of concern to the Cabinet;
- b) To receive and consider an annual business plan from the trading company including any information on profit and loss accounts;
- c) To receive and consider any variations from the approved annual business plans;
- d) To receive and consider reports on new business initiatives. It is proposed that the Council as shareholder should require the company to submit to The Trading Board a business plan for each new area of activity and to obtain The Trading Board's approval for every new contract outside the approved business plans, which the company proposes to enter with an annual value in excess of £50,000 up to £500,000 and thereafter Full Council approval would be necessary. ;
- e) To receive and consider periodic reports on the performance of key areas of business and main areas of business of each company. Such reports will initially be required quarterly in respect of the business area or contract which has been approved or exceeds the values set in paragraph d) above, but these values are to be subject to review by The Trading Board;
- f) To review any significant identified risks of the trading company on behalf of the Cabinet for the purposes of managing those risks;
- g) To receive and consider annual budget and capital spending plans for the company;
- h) To recommend to Cabinet whether or not to approve any applications from the trading companies for:
  - (i) consents to acquire or dispose of land outside the approved business plan;
  - (ii) consents to enter into third party loan agreements;
  - (iii) the transfer of Council assets including land;
  - (iv) the granting of loans from the Council; and
  - (v) approval of the business plans and variations;
- i) To receive and consider quarterly budget monitoring reports from the trading company;

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- j) To assist the trading company in the exploration of other trading opportunities with a view to achieving greater efficiency;
- k) To be responsible for ensuring that the Council's investment and or assets that may be transferred to or used by the established trading company is properly protected and used for the purposes approved of by the Cabinet;
- l) To ensure formal directions of the Council or Cabinet are brought forward to the trading company and agree the basis of implementation by the company; including making changes to the governance arrangements for the trading company;
- m) To appoint and remove the directors of the company (subject to the approval of the Leader of the Council);
- n) To act as the Council's (in its capacity as shareholder) nominated body to give all consents and approvals, including those that may be given under the shareholder agreement, subject to the approval of the Cabinet in respect of those matters set out in (h) above;
- o) To nominate a member of The Trading Board (subject to the approval of the Leader) to act as the representative of the Council at shareholder meetings of the trading company;
- p) The purpose of the Trading Board is to oversee the activities of the Company which require approval of the Council as Member, in line with these terms of reference and governance arrangements.

### Governance Arrangements

- q) The Trading Board will be made up of Members of the Cabinet;
- r) The quorum of The Trading Board will be three voting Members;
- s) All Members of The Trading Board will be entitled to vote at meetings;
- t) Voting will take place by a show of hands. If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.
- v) The Chairman of The Trading Board will be the Chairman of Cabinet and the Vice Chairman will be Appointed by the Trading Board.
- v) The Trading Board will meet at least each quarter.



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Signed on behalf of Sevenoaks District Council

.....

Signed on behalf of

Limited

.....Director

.....Secretary

**APPENDIX 1**

First Business Plan

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**Dated** \_\_\_\_\_ **2023**

- (1) SEVENOAKS DISTRICT COUNCIL**
- (2) QUERCUS HOUSING LIMITED**

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**GUARANTOR'S AGREEMENT RELATING TO  
QUERCUS HOUSING LIMITED**

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**THIS GUARANTOR'S AGREEMENT** is made by Deed on [ ] 2023

## **BETWEEN**

- (1) **SEVENOAKS DISTRICT COUNCIL** of Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG (**the Council**); and
- (2) **QUERCUS HOUSING LIMITED** a company limited by guarantee, registered in England and Wales with company number 11307980 and registered office Council Offices, Argyle Road, Sevenoaks, Kent, TN13 1HG (**the Company**)

## **BACKGROUND**

- (A) The Company has been established as a company limited by guarantee for the purpose of carrying on the Business as set out in this Agreement and the Council is the sole member of the Company.
- (B) The parties have agreed to enter into this Agreement for the purpose of regulating their relationship with each other.

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 The words and expressions used in this Agreement (including in the Background above) shall have the following meanings:

**Annual General Meeting** means an annual meeting of the member called in accordance with the Articles and clause 10 of this Agreement;

**Applicable Law** means any applicable law (whether criminal, civil or administrative), whether common law, judgment, court order, statute, statutory instrument, regulation, directive, European Community decision (insofar as legally binding), by-law or treaty;

**Articles** means the articles of association of the Company as may be amended from time to time in accordance with the Articles and this Agreement;

**Auditors** means the auditors appointed pursuant to clause 3.1.1 and any other auditors of the Company appointed from time to time;

**Bank** means such bank as the Board shall appoint from time to time;

**Board** means the board of Directors of the Company or the Directors present at a duly convened meeting of the Board at which a quorum is present in accordance with the Articles;

**Board Approval** means any approval or resolution passed by a simple majority at a meeting of the Board, where the requisite quorum is present;

**Board Chair** means the chair of the Board, appointed from time to time in accordance with clause 10.5;

**Business** means the business of fulfilling the Objectives together with such other business or businesses as have received Member Approval and as is set out in the Business Plan from time to time;

**Business Day** means any day other than a Saturday or Sunday or a public or bank holiday in England;

**Business Plan** means the business Plan of the Company from time to time as more particularly described in clause 6.3 and which is formulated and approved in accordance with clause 6 including, for the avoidance of doubt, the First Business Plan;

**Business Plan Period** means each period of 36 months commencing on 1 April in each year and ending on 31 March 36 months thereafter during the period of this Agreement or any such other period as the Council as member, shall agree;

**Cabinet** means the Cabinet of the Council in accordance with the Council's constitution as may be amended from time to time;

**Companies Act 2006** means the Companies Act 2006 (as amended from time to time);

**Company Intellectual Property** means any Intellectual Property developed or created by an employee or any personnel on secondment to the Company whilst acting on behalf of the Company or any that the Council creates or organises the development of on behalf of the Company, or which is developed or created by third parties on the Company's behalf, including any logos, advertising or marketing material;

**Completion** means the completion of this Agreement in accordance with clause 3;

**Confidential Information** means the information set out in clause 16.1;

**Controlled Company Legislation** means Part V of the Local Government and Housing Act 1989, the Local Authorities Companies Order 1995, the Local Government Act 2003 and Part 12 of the Local Government and Public Involvement in Health Act 2007 and any substitute, replacement or similar legislation in force from time to time;

**Council Director** means a Director who is a current employee of the Council;

**Council** means Sevenoaks District Council;

**Director** means a director of the Company and includes any person occupying the position of director, by whatever name called;

**Director's Undertaking** means the undertaking to be given by each Director in substantially the same form set out in Schedule 1;

**External Director** means a Director who is not a Council Director;

**Financial Regulations** means the financial regulations set out in Schedule 2 as may subsequently be amended with the approval of the Guarantor;

**Financial Year** means each financial year of the Company following the date of this Agreement commencing on 1 April and ending on 31 March and, in the case of the first Financial Year, commencing on the date of this Agreement and ending on 31 March 2017;

**First Business Plan** means the document annexed at Appendix 1 approved by the Council on 21 November 2017 as the first Business Plan of the Company (referred to as the Business Case in the document);

**First Business Plan Period** means the period from the date of this Agreement until 31st March 2019;

**General Meeting** means the Annual General Meeting or any other meeting where a resolution is proposed for the Council to vote on in its capacity as sole member of the Company;

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**Guarantor Board** means the Cabinet or a sub-committee of Cabinet of the Council established to oversee the activities of the Company which require approval of the Council as member of the Company, whose terms of reference and governance arrangements are set out in Schedule 5;

**Intellectual Property** means all intellectual and industrial property rights including patents, Know-How, registered trade marks, registered designs, utility models, applications for the rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**In Writing** means delivered by hand, posted or sent by fax but shall not be valid if sent by e-mail;

**Key Documents** means this Agreement, the Articles, the First Business Plan and each subsequent Business Plan, including the financial documents supporting the Business Plan and "Key Document" shall mean any of them as the case may be;

**Know How** means all knowledge, experience, data, technical or commercial information, inventions which includes description of formulae, business plans, research, research products, information access, networking administration, facilitation and planning;

**Material Matters** means the matters specified in Schedule 3 of this Agreement in respect of the Company;

**Member Approval** means the approval of the Council, which may be given by the Guarantor Board in accordance with its terms of reference, in accordance with clause 12;

**Member IP** means any Intellectual Property owned by or licensed to the Council, excluding Company Intellectual Property;

**Net Losses** means the accumulated aggregate net losses of the Company for a Financial Year as shown in the accounts for such Financial Year;

**Net Profits** means the accumulated aggregate profits of the Company available for distribution (in accordance with the Companies Act 2006) for a Financial Year as shown in the accounts for such Financial Year after the deduction of Net Losses and the corporation tax payable by the Company on such profits;

**Objectives** means the objectives set out in Schedule 4 as may be amended from time to time with Member Approval;

**Policies** means the contract and financial rules, regulations and policies to which the Company is subject from time to time as such rules, regulations and policies may be required by law or as they may be adopted (and, if applicable, amended) from time to time with Member Approval, such reference to include the Financial Regulations;

**Statutes** means the Companies Acts (as defined in section 2 of the Companies Act 2006) and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company;

**Term** means the period during which this Agreement continues in force pursuant to clause 15;

**Written Resolution** means a written resolution of the Council pursuant to clause 12.

1.2 In this Agreement, a reference to:

- 1.2.1 parties will be construed as a reference to the parties to this Agreement and their statutory successors (or any of them as the context may require);
- 1.2.2 a statutory provision includes a reference to:
- (a) any modification, consolidation, amendment or re-enactment of the provision for the time being in force;
  - (b) all statutory instruments, orders, bylaws or regulations made under it or deriving validity therefrom; and
  - (c) any statutory provisions of which it is a modification, consolidation or re-enactment,
- provided that the provisions of this clause 1.2.2 shall not operate so as to increase the liability of any party hereto beyond that which would have existed had this clause 1.2.2 been omitted from this Agreement.
- 1.2.3 a person includes a reference to any body corporate, unincorporated association or partnership, government or government body, trust, firm state, statutory authority or non-departmental public body (whether or not having a separate legal personality);
- 1.2.4 the singular will include the plural and the masculine will include the feminine and the neuter and vice versa where the context so admits;
- 1.2.5 a clause, Schedule or Appendix, unless the context requires otherwise, is a reference to a clause of, Schedule to, or Appendix to, this Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.2.6 a document being "in the agreed terms" will be construed as references to that document in the form agreed and initialised by or on behalf of the parties; and
- 1.2.7 a Key Document shall be construed as including any variation of it made with Member Approval.

- 1.3 The Schedules and Appendices form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedule and Appendices.
- 1.4 The index and headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 1.5 In this Agreement the words "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

## **2 CONSIDERATION**

In consideration of the mutual agreements and undertakings set out in this Agreement the parties have granted the rights and accepted the obligations set out in this Agreement.

## **3 COMPLETION**

Completion shall take place after the execution of this Agreement when the parties shall take, or procure to be taken the following steps (to the extent not already taken):

- 3.1 the appointment of the Auditors of the Company;
- 3.2 the appointment of the bankers of the Company; and

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3.3 the change of accounting reference date of the Company to 31 March.

### **4 DIRECTOR'S UNDERTAKING**

Following the execution of this Agreement, the Council shall procure (insofar as it is able) that (to the extent not already achieved) each Director appointed from time to time and where previously appointed and continuing to act, shall enter into a Director's Undertaking with the Company and the Council and shall deliver an executed copy of the same to the Company.

### **5 CONDUCT OF THE COMPANY'S AFFAIRS**

5.1 The business of the Company shall be the Business.

5.2 The parties agree that the Company, for so long as this Agreement remains in full force and effect, shall:

5.2.1 carry on the Business in accordance with the Key Documents;

5.2.2 adhere to the Policies;

5.2.3 comply with the Key Documents; and

5.2.4 procure the attendance of one of the Directors and/or the Board Chair and/or such other appropriate representative of the Company at meetings of the Guarantor Board to report on the progress of the Company as against the Business Plan.

### **6 BUSINESS CASES**

6.1 The Council and the Company acknowledge and agree that:

6.1.1 the Company shall at all times have a Business Plan;

6.1.2 notwithstanding any other provision of this Agreement, the Business Plan shall require the prior written approval of the Guarantor Board prior to such Business Plan being adopted, amended, varied or upgraded by the Company pursuant to this clause 6.

6.2 The Board shall be responsible for preparing, reviewing and updating the Business Plan in accordance with this clause 6 and such Business Plan (as appropriate) shall be approved by the Board prior to being delivered to the Guarantor Board for consideration and approval pursuant to this clause 6 and the provisions of Schedule 5.

6.3 The Business Plan of the Company (which shall include such other supporting documents as the Board shall determine) shall set out the overall strategic delivery plans of the Company for the forthcoming Business Plan Period and shall include, for the Financial Year in which such Business Plan is adopted, a detailed revenue and capital expenditure budget, identified projects for delivery, details of funding and resource commitments to the delivery of such projects and such other item or items the Guarantor Board may from time to time specify together with a summary of the assumptions on which they are based.

6.4 Notwithstanding any other provision of this clause 6, following the requisite approval of an updated Business Plan by the Guarantor Board, such Business Plan shall become the Business Plan for the remainder of the Business Plan Period.

6.5 Towards the end of the current Business Plan Period the Board shall be responsible for preparing a new Business Plan for the next Business Plan Period for approval as follows:

6.5.1 at least 90 Business Days before the end of the current Business Plan Period, the Board shall submit a new Business Plan to the Guarantor Board for approval;



6.5.2 the Guarantor Board shall (if they consider it appropriate to do so) approve the new Business Plan;

6.5.3 the Company shall adopt the new Business Plan for the next Business Plan Period following approval of the same by the Guarantor Board.

6.6 For such period as an updated or new Business Plan is not approved and adopted by the Company in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.

6.7 The Guarantor Board shall use all reasonable endeavours to agree such draft Business Plan or variations to the Business Plan submitted to them as soon as reasonably practicable, and, in any event, prior to the beginning of the relevant Financial Year or Business Plan Period.

6.8 In the event that the Company wishes to carry out an area of activity (with an annual value in excess of £50,000) that forms part of the Business but is not included in the current Business Plan it shall submit to the Guarantor Board a specific business plan for that activity. The Guarantor Board shall approve the same if it sees fit.

### **7 PROFITS AND LOSSES**

7.1 Subject to clause 7.2, the Net Profits of the Company in any one Financial Year shall be retained by the Company for the forthcoming Financial Year.

7.2 Subject to the provisions of the Statutes and the Articles, if, on a winding up of the Company in accordance with clause 15.1 or other dissolution of the Company, there remains, after the satisfaction of all debts and liabilities of the Company, any property or operating surplus whatsoever, the same shall be paid to the Council.

### **8 MANAGEMENT OF THE COMPANY**

8.1 The Board has responsibility for the supervision and management of the Company and its Business, except as otherwise provided in this Agreement and the Articles and subject to clause 8.2 and provided that the authority of the Board shall be subject to any Material Matter requiring Member Approval.

8.2 The Board shall have the power to establish panels, committees or delivery groups to deal with any matters it shall deem appropriate to be dealt with by such panels, committees or delivery groups.

### **9 OBLIGATIONS OF THE COMPANY**

9.1 The Council shall exercise all voting rights and other powers of control available to it in the Company (so far as the Council is legally able) to procure that and the Company will procure that:

9.1.1 the Company shall transact all its business on arm's length terms;

9.1.2 the business of the Company consists exclusively of the Business and that the Company shall not involve itself in any other business or activities in pursuance of the Objectives;

9.1.3 the Company fully complies with its obligations under the Key Documents and carries out its duties with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene;

9.1.4 the Company shall not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and services by such means and from and to such persons as it thinks fit;

9.1.5 the Company shall adopt standing orders to regulate the letting of contracts and the selection and evaluation of contractors consistent with the obligations imposed on the

## Agenda Item 16

- Council in relation to procurement and that the Company's procurement of works, suppliers and services complies with all laws which relate to the EU public procurement framework;
- 9.1.6 the Company shall adopt the Financial Regulations;
- 9.1.7 the Company carries out and conducts its business and affairs in a proper and efficient manner in accordance with its objects and the provisions of this clause 9;
- 9.1.8 the Company shall maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;
- 9.1.9 the Company may purchase and maintain for any Director (including an alternate), officer or Auditor of the Company insurance against any such liability subject to the provisions of the Companies Act 2006, against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a Director (including an alternate), officer or Auditor;
- 9.1.10 the Company shall not acquire, dispose, hire, lease, license or take licences of any assets, goods, rights or services otherwise than at the best value reasonably obtainable in the circumstances;
- 9.1.11 the Company shall keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
- 9.1.12 save to the extent otherwise agreed by the Guarantor Board, the Company shall prepare and provide to the Guarantor Board, by no later than 20 Business Days following the end of the 3 month period to which they relate, a financial statement and unaudited management accounts for the Company containing such information as the Guarantor Board shall agree from time to time for such relevant 3 month period.
- 9.1.13 the Company shall prepare its accounts and its management accounts in accordance with the Statutes and in accordance with historical cost convention and with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
- (a) the Company shall:
- (i) prepare the Company accounts in respect of each accounting reference period as are required by statute;
  - (ii) procure that such accounts are audited as soon as practicable after the end of the period to which they relate and in any event not later than 3 months after the end of the relevant accounting reference period; and
  - (iii) provide the Guarantor Board with annual audited accounts within 12 weeks from the end of the period to which they relate;
- 9.1.14 as soon as practicable and in any event within 15 Business Days of the end of each quarter, the Company shall send to the Guarantor Board a report showing progress against the Business Plan;
- 9.1.15 the Company fully complies with any obligations which it may from time to time have under or pursuant to any Key Document and/or pursuant to Applicable Law;
- 9.1.16 the Company opens a bank account and that such account shall not be used for any purpose other than for a purpose directly related to the Business and all money transactions relating to the Business shall be recorded and conducted by means of credits to or withdrawals from such account;

- 9.1.17 if the Company requires any approval, consent or licence for carrying on the Business, the Company will use all reasonable endeavours to maintain the same in full force and effect and the Council shall provide such assistance as the Company may reasonably request of them to facilitate the Company obtaining the requisite approval, consent or licence provided that this shall not require the Council to exercise or fetter the exercise of any of its statutory powers;
- 9.1.18 the Company conducts the Business in accordance with the Key Documents, provided that the Guarantor Board may approve the introduction of any project or scheme into the Business of the Company at any time notwithstanding the fact that such project has not been included in the Business Plan for the relevant Financial Year;
- 9.1.19 the Company, as soon as practicable upon becoming aware of the same, provides the Guarantor Board with the full details of any actual or prospective change in circumstances which has had or could have a material affect on the financial position or affairs of the Company;
- 9.1.20 the Company uses its reasonable endeavours to take such steps and do such things as may be reasonably requested by the Guarantor Board to assist it in ensuring the Company and Council comply with their duties and obligations under the Controlled Company Legislation;
- 9.1.21 the Company maintains (where such information is not contained within the Business Plan) cash flow projections, project briefs, time lines and reporting mechanisms, such information to be supplied to the Guarantor Board from time to time upon request.

### **10 DIRECTORS AND MEETINGS**

- 10.1 The appointment, removal and conduct of the Directors shall be regulated in accordance with this Agreement and the Articles.
- 10.2 The Company shall have a minimum of one Director and a maximum as agreed by the Council from time to time of which a minimum of one and a maximum of three shall be Council Directors.
- 10.3 The Council shall be entitled from time to time to appoint all the Directors by notice in writing to the Company and also to remove any such Director appointed by it.
- 10.4 An External Director may be appointed by the Council for a term of three years and at the end of the three year term the External Director shall be deemed to have retired as a Director unless the Council reappoints them for a further three year term.
- 10.5 An External Director shall not serve more than nine years as a Director. The Council may remove or replace an External Director at any time by notice in writing to the Company.
- 10.6 The Council shall appoint a person to act as company secretary and may remove such person, from time to time, by notice in writing to the Company.
- 10.7 The quorum for meetings of the Board shall be three Directors.
- 10.8 The Council agrees that any person appointed to the Board in accordance with the Articles as a Director must have sufficient knowledge, understanding and experience to contribute appropriately in connection with the matters with which the Board will deal. The Directors may appoint a Director to Chair their meetings, in accordance with the Articles. The Chair shall have a casting vote.
- 10.9 Board Meetings shall be held at regular intervals as the Board shall determine from time to time provided that a Board meeting is held at least once in every 3 month period.
- 10.10 Non-voting observers or attendees as the Guarantor Board shall agree (with Board Approval from time to time) shall be entitled to attend meetings of the Board in a non-voting observer role ("Observers"). For the avoidance of doubt, Observers shall not be Directors of the Company.

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- 10.11 Each Director will be entitled whilst he or she holds that office to make full disclosure to the Council of any information relating to the Company which may come into his or her possession as a Director and which the Council may reasonably require including (for the avoidance of doubt) Confidential Information but each Director shall only use such information in connection with its interest in the Company and the Business and shall not (unless it is under a legal or regulatory obligation to do so and then only to the extent so required) use that information in any way which is or may be detrimental to the Company.
- 10.12 The Company shall have an Annual General Meeting at which it shall report those matters that the Guarantor Board require to be reported on annually and it shall invite all Councillors of the Council to attend the Annual Meeting which will be held at the end of a full Council meeting with elected members being asked to endorse such report.

### **11 FINANCING THE BUSINESS**

- 11.1 The Council shall not be obliged to:
- 11.1.1 provide any funding to the Company other than on commercial terms, in accordance with state aid rules; or
  - 11.1.2 guarantee or provide security for any indebtedness of the Company.
- 11.2 Any expenditure by the Company in any form (electronic or otherwise) must be made in accordance with the Financial Regulations and must only relate to matters covered by the Business Plan. For such time as the Company shall not have adopted the Financial Regulations any expenditure made by the Company shall require the prior approval of each Director.
- 11.3 No new accounts will be opened by the Company, or amendments made to the mandate under which the Company operates its account with the Bank or any other account or facility opened with the Bank or any other bank or financial institution without the prior written consent of the Board.

### **12 MEMBER APPROVAL**

- 12.1 Every Material Matter shall require the prior approval of the Guarantor Board before such matter is then actioned by the Board on behalf of the Company, provided always that the Board may approve a Material Matter subject to obtaining Member Approval. For the avoidance of doubt, once a Material Matter has received Member Approval, the Board must approve and action such Material Matter save that the Board shall not be required to approve or action any such Material Matter where the Board considers that to do so would no longer be in the best interests of the Company.
- 12.2 In voting for or against a resolution, the Council and the Guarantor Board shall at all times act in good faith.
- 12.3 Member Approval shall be evidenced by:
- 12.3.1 in respect of anything not being a Material Matter, a resolution passed by the Council acting by the Guarantor Board or one of its members authorised to act on behalf of the same; or
  - 12.3.2 in respect of Material Matters: letters or electronic communication addressed to the Company from the Guarantor Board, signed by the chair confirming approval of the matter in question, or a resolution passed by the Guarantor Board.
- 12.4 Any resolution of the Council (except for Material Matters) shall be validly made without the need for any meeting if contained in a written resolution signed by the chair of the Guarantor Board, apart from matters outside approved budgets.
- 12.5 For the purposes of a General Meeting the Council shall act and be represented by its duly authorised representative, who shall be a member of the Guarantor Board, and the Council or the Guarantor Board shall give the Company written notice of its duly authorised representative.

**13 PARTIES' RIGHTS AND OBLIGATIONS**

- 13.1 The Council shall not have any personal obligation for the debts and liabilities of the Company.
- 13.2 The Council will account fully and promptly to the Company for any payment received by the Council from any third party in respect of services provided to that third party by or on behalf of the Company.
- 13.3 Subject to clause 13.4 the Council and the Guarantor Board shall be permitted access to such information and documents of the Company as the Council may reasonably require in order to:
- 13.3.1 satisfy itself that that Company has established and is maintaining and administering an internal control system necessary to ensure:
    - (a) the Company's effective and efficient operation by enabling it to manage significant business, operational, financial, compliance and other risks to achieve the Objectives;
    - (b) the quality of the Company's internal and external reporting; and
    - (c) the Company's compliance with any Applicable Law;
  - 13.3.2 keep itself properly informed about the business and affairs of the Company;
  - 13.3.3 allow it to comply with any obligations to which it is from time to time subject under any Applicable Law; and
  - 13.3.4 allow it to comply with its obligations in relation to public sector requirements for transparency and accountability.
- 13.4 The Company shall make available the accounting records and any other books and records, information, plans or other documents ("Records") for inspection by the Council and its duly authorised representatives (and by any other person to whom the Company or the Council is required pursuant to any statutory or regulatory obligation to disclose such Records including the internal or external auditors of the Council, their employees, the Audit Commission or any government organisation) and the taking of copies (at the reasonable expense of the Council) during normal business hours on reasonable advance notice being given.
- 13.5 The Company shall not be obliged to disclose or otherwise make available to the Council or other person (save for a governmental or regulatory body to which the Company or any Council has a statutory or regulatory obligation to disclose) any Records or other information if and to the extent that to do so would or may put the Company in breach of any confidentiality or other obligation by the Company to a third party or would cause the Company to be in breach of any Applicable Law. The Company will procure that in respect of any contract entered into by the Company with any third party on or after the date of this Agreement that the Company will use all reasonable endeavours to secure the permission of that third party to the disclosure of such contract to the Council but provided always that the obligations upon the Company to use reasonable endeavours to secure such permission will not be a pre-condition to the Company entering into any contract.
- 13.6 It is acknowledged that the Council may provide services (including the secondment of staff) to the Company during the Term provided that the provision of such services is in accordance with the Policies and the terms upon which such services will be provided (including remuneration) have received Board Approval.
- 13.7 The parties shall, to the extent permitted by Applicable Law, comply with and be bound by the provisions of this Agreement.

**14 TAX MATTERS**

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14.1 The effective management of the Company shall be exercised in the United Kingdom and the parties shall use their respective best endeavours to ensure that the Company is treated by all relevant authorities as being resident for taxation purposes only in the United Kingdom.

14.2 The parties hereby agree that they will use reasonable endeavours to ensure that the Company is operated in a tax efficient manner.

### **15 TERMINATION**

#### 15.1 Termination

This Agreement shall continue in full force without limit in point of time until the earlier of:

15.1.1 the Council agreeing in writing to terminate this Agreement whereupon the provisions of clause 15.2.1 shall apply;

15.1.2 an effective resolution or binding order is passed for the winding up of the Company, whereupon the provisions of clause 15.2.2 shall apply.

#### 15.2 Consequences of termination and retirement

15.2.1 In the event that this Agreement shall terminate pursuant to clause 15.1.1:

- (a) the provisions of this Agreement shall cease to have effect against the Council; and
- (b) this Agreement will terminate on the date agreed by the Council.

15.2.2 In the event that this Agreement shall terminate pursuant to clause 15.1.2:

- (a) the provisions of this Agreement shall cease to have effect against the Council upon the Council ceasing to be a member of the Company;
- (b) the Company shall be put into voluntary liquidation and the Council shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:
  - (i) all existing contracts and commitments of the Company shall be completed so far as possible;
  - (ii) no new contractual obligations shall be entered into by the Company; and
  - (iii) the Company shall be wound up as soon as possible.

15.2.3 The termination of this Agreement pursuant to this clause 15 shall be without prejudice to any accrued rights and liabilities of the Council. The provision of clauses 20 and 33 shall survive termination or expiration of this Agreement.

### **16 CONFIDENTIALITY AND ANNOUNCEMENTS**

16.1 Subject to the exceptions provided in clause 16.2, neither of the parties shall, at any time, whether before or after the expiry or sooner termination of this Agreement without the consent of the other party, divulge or permit its officers, employees, agents, advisers or contractors to divulge to any person (other than to any respective officers or employees of a party or a person to whom, in each case, disclosure of information is permitted by this Agreement and who require the same to enable them properly to carry out their duties):

16.1.1 any of the contents of this Agreement or any other document referred to in this Agreement.

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- 16.1.2 any information which it may have or acquire (whether before or after the date of this Agreement) relating to the Business of the Company or otherwise in relation to the assets or affairs of the Company;
  - 16.1.3 any information which, in consequence of the negotiations relating to this Agreement or any other document referred to in this Agreement or of a party being involved in the Company or its business in a manner whatsoever (including as a Member and as an appointer of a Director) or performing or exercising its rights and obligations under this Agreement or any other document referred to in this Agreement, any party may have acquired (whether before or after the date of this Agreement) with respect to the customers, business, assets or affairs of any other party.
- 16.2 The restrictions imposed by clause 16.1 shall not apply to the disclosure of any information by a party (“the Disclosing Party”):
- 16.2.1 which is now in or comes into the public domain otherwise than as a result of a breach of such undertaking of confidentiality; or
  - 16.2.2 which is required by law (including, without limitation, by virtue of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004) to be disclosed to any person who is authorised by law to receive the same; or
  - 16.2.3 such information is disclosed to any department or office of the Government or their advisors; or
  - 16.2.4 which is required to be disclosed by the regulations or any recognised exchange upon which the share capital of the Disclosing Party is or is proposed to be from time to time listed or dealt in; or
  - 16.2.5 to its legal advisors provided that such legal advisors are made aware of the confidentiality obligations contained in this Agreement and undertake to the Disclosing Party to maintain such information as confidential and further provided that such disclosure is only made to such legal advisors where legal advice is required to be taken by the Disclosing Party; or
  - 16.2.6 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Disclosing Party is a party in a case where such disclosure is required by such proceedings.
- 16.3 No announcement, advertisement, circular or other publication concerning or relating to:
- 16.3.1 the subject matter of this Agreement shall be made by any party (save as required by law) without the prior approval in writing of the other members as to the contents, form and timing thereof; or
  - 16.3.2 the business of the Company except in accordance with any communications strategy of the Company adopted by the Board from time to time.

### **17 VAT**

- 17.1 Where the fulfilment by any party of an obligation under this Agreement constitutes a supply of goods or services for VAT purposes, the appropriate VAT payments shall be made and invoices issued. Agreement to pay any money shall be regarded as exclusive of VAT and as requiring the additional payment of any VAT properly chargeable in exchange for a valid VAT invoice.

### **18 INTELLECTUAL PROPERTY**

- 18.1 Any Company Intellectual Property shall belong to and vest in the Company. If the Council creates or procures the creation of any Company Intellectual Property it shall assign such Company Intellectual Property to the Company, and in relation to any copyright, design right or database right, the Council

## Agenda Item 16

shall assign by way of present assignment of future rights, any future copyright, design rights and database rights in the Company Intellectual Property to the Company.

- 18.2 The Company grants to the Council a non-exclusive, royalty-free licence to use such of the Company Intellectual Property as it may require, in order to carry out its obligations under this Agreement and for the purpose of carrying on the Business.
- 18.3 The Council grants to the Company a non-exclusive, royalty-free licence of any of its Member IP, which is required by the Company to conduct the Business or as is otherwise required pursuant to this Agreement.

### 19 NOTICES

- 19.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, first class post or facsimile addressed to the recipient at its address or facsimile number as the case may be stated in clause 19.3 marked for the attention of the appropriate person specified in clause 19.3 (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this clause 19, to be received by the sender not less than 5 Business Days before the notice is despatched).
- 19.2 The notice, demand or communication will be deemed to have been duly served:
- 19.2.1 if delivered by hand, at the time of delivery;
- 19.2.2 if delivered by first class post, 48 hours after being posted (excluding days other than Business Days);
- 19.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.

- 19.3 The addresses, facsimile numbers and appropriate contacts for the parties are as follows:

Party	Address/facsimile number and contact
SEVENOAKS DISTRICT COUNCIL	Council Offices, Argyle Road, Sevenoaks, TN13 1HG Contact: Head of Legal and Democratic Services Fax number: 01732 227340

COMPANY	Council Offices, Argyle Road, Sevenoaks, TN13 1HG Contact: Chief Finance Officer Fax number: 01732 227493
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- 19.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

### 20 FAIRNESS CLAUSE



- 20.1 In the event that any circumstance arises during the Term which is not within the contemplation of the parties at the date of this Agreement and not provided for in the Key Documents (or any of them) either expressly or impliedly then the parties agree that such matter shall be dealt with and resolved in such manner as shall operate between them for fairness and, so far as is possible, without detriment to the interests of any of them.

### **21 CONFLICT**

- 21.1 Where the provisions of the Articles, the Policies (or any of them) conflict with or are inconsistent with the provisions of this Agreement then this Agreement shall prevail to the intent that the parties shall if necessary procure the amendment of the Articles, or the Policies (or any of them) to the extent required to enable the Company and its affairs to be administered as provided in this Agreement.

### **22 EXERCISE OF POWERS**

- 22.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to use all reasonable endeavours to procure that it be done (including using its voting and other powers at any meeting of the members of the Company to such effect) and words placing a party under a restriction include an obligation not to permit or allow so far as the same is possible infringement of that restriction.

### **23 NO PARTNERSHIP OR AGENCY**

- 23.1 Nothing in this Agreement shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

### **24 VARIATION**

- 24.1 Any variation to this Agreement shall only take effect if it is in writing and signed by both parties.

### **25 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 25.1 The parties do not intend that any of the provision of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

### **26 ENTIRE AGREEMENT**

- 26.1 This Agreement and the Articles constitute the entire agreement between the parties in relation to their respective subject matters (save, for the avoidance of doubt, any statutory provisions which are not overridden by the terms of this Agreement and/or the Articles or any of them or any part of them) and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to in this Agreement and/or the Articles. This clause 26 does not exclude or restrict the liability of a party for any representations made fraudulently by that party.

### **27 WAIVER**

- 27.1 The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Agreement shall not affect such party's rights, powers or remedies in respect of any other default or any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.
- 27.2 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

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- 27.3 For the avoidance of doubt and without prejudice to the generality of the foregoing, any failure by any party to comment upon or raise any objection to the fact that any matter referred to in clause 12 has been effected without the consent of the Council shall not be deemed to constitute consent to such action and nor shall be taking of any such action on any two or more occasions without such comment or objection be deemed to constitute accepted general practice.

### **28 UNLAWFUL FETTER ON STATUTORY POWERS**

- 28.1 Notwithstanding any other provision contained in this Agreement the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.
- 28.2 The parties recognise that it is a rule of public law that it is unlawful for the Council to fetter its discretion in carrying out its statutory duties and that they agree that notwithstanding anything apparently to the contrary in this Agreement the terms of this Agreement shall not have that effect on the Council's statutory duties.

### **29 INVALIDITY/SEVERABILITY**

- 29.1 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

### **30 ASSIGNMENT**

- 30.1 The Council shall not assign or transfer or purport to assign or transfer all or any of its rights or obligations hereunder or as the member of the Company.

### **31 COUNTERPARTS**

- 31.1 This Agreement may be executed in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

### **32 DISPUTE RESOLUTION**

- 32.1 The Council undertakes and agrees to pursue a positive approach towards dispute resolution which seeks (in the context of these joint working arrangements) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the parties.
- 32.2 Any dispute arising out of this Agreement and which has unsuccessfully been settled by the parties between themselves within 60 Business Days, will be attempted to be settled by mediation. To initiate mediation, a party must give notice in writing ("a mediation notice") to the other parties to the dispute.
- 32.3 The parties will seek to agree the appointment of a mediator but failing agreement within 28 days of service of the mediation notice, the parties (or any of them) will ask the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator.
- 32.4 The parties will use their best endeavours to arrange and attend a mediation meeting within 60 Business Days of the appointment of a mediator.
- 32.5 If any party refuses at any time to participate in the mediation procedure and in any event if the dispute is not resolved in 90 days of the appointment of a mediator, then clause 20 shall apply.

### **33 GOVERNING LAW AND JURISDICTION**

33.1 This Agreement shall be governed by and construed in all respects in accordance with English Law and the Courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, each party irrevocably submits to the jurisdiction of the Courts of England.

**THIS AGREEMENT** is executed as a deed and delivered and takes effect on the date stated at the beginning of it.

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## SCHEDULE 1 – DIRECTOR'S UNDERTAKING

To: Quercus Housing Limited  
Sevenoaks District Council

From: [ ]

Dated [ ]

I hereby confirm that I have been supplied with a copy of the Guarantor's Agreement made between (1) Sevenoaks District Council, and (2) Quercus Housing Limited dated 2018 (the "Guarantor's Agreement") and undertake to the Company and the Council that:-

I will, so far as may be permitted by law and so long as I remain a Director of the Company, be bound by and comply with the terms and conditions of the Guarantor's Agreement (as the same may hereafter be amended from time to time), insofar as the same relate to me and to act in all respects as contemplated thereby, and I will (so far as aforesaid) do everything within my power as a Director to ensure that the Company complies with all its obligations thereunder.

Provided that there shall not attach to me any personal liability in relation to the pursuance of my obligations, save where such liability shall arise directly or indirectly out of my fraudulent activity, dishonesty or bad faith.

EXECUTED AND DELIVERED AS )  
A DEED BY [ ] )  
On the date stated above )  
in the presence of: )

**SCHEDULE 2 – FINANCIAL REGULATIONS**

<b>Estimated Value of Purchase</b>	<b>Minimum competition and documentation requirements</b>	
<b>Zero to £10,000</b>	<b>At least one quote in advance</b>	
<b>£10,000 up to £74,999</b>	At least three written quotes in advance	
<b>Over £75,000 up to EU Procurement Limit</b>	At least three written tenders, formal opening procedures, Cabinet approval and a written contract.	
<b>At EU Procurement Limit and above</b>	Advertisement and tenders in accordance with EU requirements, Cabinet approval and a written contract.	

**Purchase of Property**

Board decision with the Guarantor Board approval if contained within the Business Plan and approved budgets otherwise Cabinet approval between £50,000 and £500,000 and full Council approval over £500,000

**For the avoidance of doubt the Financial Procedure Rules and Contract Procedure Rules must follow the Financial Procedure Rules and Contract Procedure Rules of Sevenoaks District Council as set out within the Constitution of Sevenoaks District Council.**

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## SCHEDULE 3 – MATERIAL MATTERS

- 1 Subject to paragraph 3 below, the Company can do anything that is contained in the Business Plan without any further approval from the Guarantor Board.
- 2 The approval of the Guarantor Board (to be given in accordance with the terms of reference of the Guarantor Board) is required:
  - (a) For the adoption of the Business Plan and any variations to the Business Plan;
  - (b) Before the Company can carry out any activity that is not included in the Business Plan;
  - (c) Before the Company makes any amendment or variation to the Financial Regulations;
  - (d) Before the Company makes any amendment or variation to the Policies;
  - (e) In order to appoint or remove the Auditors;
  - (f) In order to appoint or remove a Director in accordance with the Articles;
  - (g) To waive any of the confidentiality restrictions under this Agreement;
  - (h) Before entering into (or agreeing to enter into) any borrowing arrangement and giving any security in respect of such borrowing;
  - (i) Before creating or allowing to be created any encumbrance over any tangible or intangible asset (including any mortgage, charge, pledge, option, title retention, preferential right, equity or trust arrangement, lien (other than a lien arising by operation of law), right of set-off or any security interest whatsoever and howsoever created or arising;
  - (j) Entering into any grant funding agreement or applying for any other funding;
  - (k) Before making any application for planning permission or lodging an appeal against a planning authority;
  - (l) Any other matter that the Guarantor Board or Council shall advise the Company of in writing.
- 3 The specific approval of the Guarantor Board is required for the following matters, regardless of whether they are included in the Business Plan:
  - (a) Before the Company forms any subsidiary, acquires any interest in any other company, partnership, limited partnership, limited liability partnership, trust or other body (incorporated or otherwise) or enters into any joint ventures or partnerships
  - (b) Determining whether any Director (or any person recruited to work for the Company) shall be entitled to remuneration in connection with the performance of his or her duties for the Board and determining the level and terms upon which the remuneration will be payable.
  - (c) Before taking any step which will result or may result in the winding up of the Company including (but not limited to) making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or giving notice of the intention to appoint an administrator or filing a notice of appointment of an administrator unless in any case the Company is at the relevant time insolvent and the Guarantor Board reasonably considers that it ought to be wound up.
  - (d) Before changing the registered office of the Company;
  - (e) Before changing the accounting reference date of the Company;
  - (f) Before changing the place of business of the Company; and
  - (g) Any other matter that the Guarantor Board or Council shall advise the Company of in writing.

**For the avoidance of doubt the Guarantor Board can sign off Material Matters on behalf of the Council.**

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### **SCHEDULE 4 – OBJECTIVES**

To provide affordable housing in the District of Sevenoaks.



**SCHEDULE 5 – TERMS OF REFERENCE AND GOVERNANCE ARRANGEMENTS OF THE  
GUARANTOR BOARD**

The Guarantor Board shall have delegated authority to carry out on behalf of the Cabinet the following functions, namely:

- 1 To monitor and report regularly on high level performance and report on areas of concern to the Cabinet;
- 2 To receive and consider the annual Business Plans from the Company including any information on profit and loss accounts;
- 3 to receive and consider any variations from the approved annual Business Plans;
- 4 To receive and consider reports on new business initiatives. It is proposed that the Council as member should require the Company to submit to the Guarantor Board a Business Plan for each new area of activity and to obtain the Guarantor Board's approval for every new contract outside the approved Business Plans, which the company proposes to enter with an annual value in excess of £50,000 up to £500,000 and thereafter full Council approval would be necessary;
- 5 To receive and consider periodic reports on the performance of key areas of business and main areas of business of the Company. Such reports will initially be required quarterly in respect of the business area or contract which has been approved or exceeds the values set in paragraph d) above, but these values are to be subject to review by the Guarantor Board;
- 6 To review any significant identified risks of the Company on behalf of the Cabinet for the purposes of managing those risks;
- 7 To receive and consider annual budget and capital spending plans for the Company;
- 8 To recommend to Cabinet whether or not to approve any applications from the Company for:
  - 8.1 consents to acquire or dispose of land outside the approved Business Plan;
  - 8.2 consents to enter into third party loan agreements;
  - 8.3 the transfer of Council assets including land;
  - 8.4 the granting of loans from the Council; and
  - 8.5 approval of the Business Plans and variations;
- 9 To receive and consider quarterly budget monitoring reports from the Company;
- 10 To assist the Company in the exploration of other Guarantor opportunities with a view to achieving greater efficiency;
- 11 To be responsible for ensuring that the Council's investment and or assets that may be transferred to or used by the established Company is properly protected and used for the purposes approved of by the Cabinet;
- 12 To ensure formal directions of the Council or Cabinet are brought forward to the Company and agree the basis of implementation by the Company; including making changes to the governance arrangements for the Company;
- 13 To appoint and remove the Directors (subject to the approval of the Leader of the Council);
- 14 To act as the Council's (in its capacity as member) nominated body to give all consents and approvals, including those that may be given under the Guarantor Agreement, subject to the approval of the Cabinet in respect of those matters set out in (h) above;

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- 15 To nominate a member of the Guarantor Board (subject to the approval of the Leader) to act as the representative of the Council at member meetings of the Company;
- 16 The purpose of the Guarantor Board is to oversee the activities of the Company which require approval of the Council as Guarantor, in line with these terms of reference and governance arrangements.

### Governance Arrangements

- 1 The Guarantor Board will be made up of an unlimited number of Members of the Cabinet;
- 2 The quorum of the Guarantor Board meetings will be three voting members;
- 3 All members of the Guarantor Board will be entitled to vote at meetings;
- 4 Voting will take place by a show of hands. If there are equal numbers of votes for and against, the chairman (or if the chairman is unavailable, the vice chairman) will have a second or casting vote. There will be no restriction on how the chairman chooses to exercise a casting vote.
- 5 The chairman of the Guarantor Board will be the Chairman of Cabinet and the Vice Chairman will be appointed and may be removed by the Guarantor Board from time to time.
- 6 The Guarantor Board will meet at least each quarter.

Signed on behalf of Sevenoaks District Council

.....

Signed on behalf of Quercus Housing Limited

.....Director

.....Secretary

**APPENDIX 1 – FIRST BUSINESS PLAN**

## CHAIRMAN'S ANNUAL REPORT

I didn't realise when I accepted Peter's offer to be the Vice Chairman and then Chairman of Sevenoaks District Council that it would prove to be such a momentous couple of years! A time of highs and lows. We received nearly 300 invitations this year alone and attended 150 of them. The majority have been within the District. I have tried to ensure that we visited every Borough and District in Kent and our immediate neighbours in Surrey and Greater London as well as the various Town Mayors throughout Kent.

I mentioned earlier that it has been a time of highs and lows. Some of the high points were the various Jubilee celebrations including Beacon Lightings and Street Parties. But nobody expected so suddenly to be experiencing the lows of the death of Her Majesty Queen Elizabeth II and her subsequent Funeral. I felt privileged to proclaim the Accession of the new King Charles III and am looking forward to the various Coronation events that are taking place.

On most occasions I have been accompanied by my husband, Allan. We have been to a variety of events ranging from school performances to Forget Me Not Cafes, concerts, visits to vineyards, Chatham Historic Dockyard, the Hawkinge Battle of Britain Museum, Biggin Hill Airport and several Garden Parties and Dinners. There have also been a number of AGMs, the opening of shops, tree planting, the burying of a Time Capsule at Swanley Whiteoak, I could go on and on but hope this gives a flavour of the past year. Possibly one of the most memorable visits was to Margate for the Blessing of the Seas on a rather cold January day. We felt very sorry for the young boy who dived into the sea to "rescue" the cross.

We will shortly be attending our second Run, Walk, Push for Dementia in Knole Park, a joyous occasion for the fun runners as well as the more dedicated athletes which raises valuable funds for the Dementia charities.

I could cover many more pages about the wonderful experiences we have had and I just hope our next Chairman will have an equally enjoyable year.

I cannot end without thanking the Democratic Services Team and Amanda Miller for their help and support over the two years, quietly and efficiently dealing with the booking of tickets and confirming details of visits. And, last but not least can I thank all Sevenoaks District Councillors for your support and encouragement.

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