



Standards and Constitutional Oversight Committee

Date:	Tuesday, 12 June 2018
Time:	6.00 p.m.
Venue:	Committee Room 1 - Wallasey Town Hall

Contact Officer: Patrick Sebastian
Tel: 0151 691 8559
e-mail: patricksebastian@wirral.co.uk
Website: <http://www.wirral.gov.uk>

AGENDA

1. **APOLOGIES FOR ABSENCE**
2. **MEMBER DECLARATIONS OF INTEREST**
3. **MINUTES (Pages 1 - 8)**

To approve the accuracy of the minutes of the Standards and Constitutional Oversight Committee meeting held on 27 February 2018.
4. **ADOPTION OF THE MODEL COUNCIL MEMBERS' PLANNING CODE (Pages 9 - 20)**
5. **ESTABLISHING THE STANDARDS AND CONSTITUTIONAL OVERSIGHT WORKING GROUP 2018/19 (Pages 21 - 24)**
6. **REVIEW OF COUNCIL CONSTITUTION (Pages 25 - 28)**
7. **ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 1)**

To consider any other business that the Chair accepts as being urgent.
8. **EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC**

The following items contain exempt information.

RECOMMENDATION: That, under section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information as defined by the relevant paragraphs of Part I of Schedule 12A (as amended) to that Act. The Public Interest test has been applied and favours exclusion.

9. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 2)

To consider any other business that the Chair accepts as being urgent.

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

Tuesday, 27 February 2018

<u>Present:</u>	Councillor	M McLaughlin (Chair)	
	Councillors	P Stuart RL Abbey C Blakeley G Ellis P Gilchrist	B Kenny P Hayes (In place of J Hale) C Meaden (In place of WJ Davies)
<u>In attendance:</u>	Ind. Members	JR McCosh AC Wilson	RS Jones

29 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Bill Davies (Councillor Meaden substituting) and John Hale (Councillor Hayes substituting) and from Angela Lloyd-Prince (Independent Person).

30 DECLARATIONS OF INTEREST

There were no declarations of interest.

31 MINUTES

RESOLVED:

That the minutes of the meeting of the Standards and Constitutional Oversight Committee held on 20 November 2017 be approved as a correct record.

32 STANDARDS AND CONSTITUTIONAL OVERSIGHT WORKING GROUP

RESOLVED:

That (1) subject to the amendment of Minute 19 to indicate the next meeting of the Working Group to be held on Friday 23 March 2018, the minutes of the Standards and Constitutional Oversight Working Group be approved as a correct record;

(2) the recommendation at Minute 11 'Discussion on the Timely Handling of Cabinet Member Questions at Council' be confirmed and the

Council be recommended that Cabinet Member question time be extended to 45 minutes.

33 **FILMING OF PUBLIC MEETINGS**

Further to Minute 15 of the meeting of the Standards and Constitutional Oversight Working Group held on 13 February 2018, the Committee received a recommended draft Protocol for Webcasting, Filming and Recording of Council Meetings. Further to the submitted draft Protocol, the Committee was asked to note the references to 'public meetings' in paragraphs 15, 17 and 18 should be amended and read as 'meetings held in public'.

The Monitoring Officer advised that the Council was moving towards the webcasting of meetings and it was appropriate for the Council to have a policy in relation to the recording of meetings. To date the Council had relied on the Department for Communities and Local Government (DCLG) guidance; this had been enhanced and the draft Protocol was now presented for adoption. The Chair confirmed that the Protocol had been considered by the Working Group and recommended as now submitted to the Committee for adoption.

The Chair, noting that Mr J. Brace had submitted written questions in respect of this item and received answers prior to the meeting, permitted Mr Brace an opportunity to address the Committee.

Mr Brace addressed the Committee, commenting that while the proposal was very different to the current Policy, there had been no consultation with the media or public on the revised Protocol. He noted a major change to be the introduction of a designated area for public filming and queried who would decide where this area was to be, would there be a sufficient area identified, and would chairs be provided. Mr Brace asked the Committee that if a person took a photograph on a mobile phone in the public area, would they be asked to move, and queried whether anyone had complained of problems hearing meetings in progress as he struggled at times due to other noises in the room. Content relating to filming and exclusion from the meeting at paragraph 15 of the draft Protocol was highlighted. It was queried as to what constituted disruptive behaviour, it being suggested that the Council had legal powers only to suppress disorderly behaviour, and whether the Council Constitution would need amendment.

Further to his comments regarding control of the meeting and consultation, Mr Brace asked the Committee to consider the withdrawal of the second sentence of paragraph 15 in the draft Protocol; this sentence referred to the designated area.

Councillor Gilchrist noted that whoever filmed and wherever they were sat, all members of the public should have full sight of the meeting process. Further,

there were times when committee rooms were full and there was a need to be clear on safety grounds for everybody's protection.

On matters raised, the Monitoring Officer commented on the DCLG guidance that noted recording equipment might not be left in the room where a private meeting is held and that those undertaking recording activities must not act in a disruptive manner, which could result in their being excluded from the meeting. This meant that the Council could require that equipment was not left unattended and be removed when a meeting went into private session, and that the Council could reasonably ask that filming was not disruptive or distracting to the meeting.

In response to a query from Councillor Blakeley seeking a practical consideration of where a designated area might be in the Committee's meeting room in the event of it being full, the Monitoring Officer commented that considerations could include the use of a tripod, as at the current meeting, as potentially disruptive, and that the person filming might be asked to use one leg of the tripod only or to hand hold their camera.

RESOLVED:

That the Protocol for Webcasting, Filming and Recording of Council Meetings, as submitted and amended by references to 'public meetings' in paragraphs 15, 17 and 18 being read as 'meetings held in public', be approved.

34 **SOCIAL MEDIA POLICY**

Further to Minute 17 of the meeting of the Standards and Constitutional Oversight Working Group held on 13 February 2018, the Committee received a draft revised Social Media Policy for consideration.

The Working Group had recommended re-affirmation of the current Policy subject to the following amendments which were indicated within the submitted draft -

- amendment to Section 2 to indicate that the listings of online forums and sharing websites are examples only and not comprehensive;
- amendment to the last sentence of Section 7 such that "Employees must [*delete 'should'*] not...."; and
- amendment to Section 10 to indicate adherence to the Policy is required by all groups identified in that Section.

Councillor Abbey noted the list of related policies listed at Section 12, and sought clarity as to which applied to elected members. The Monitoring Officer noted that the Disciplinary Process and Employee Code of Conduct might be considerations in the event of failure by staff to comply with the Policy; the comparable policy for elected members would be the Members' Code of Conduct.

RESOLVED:

That the recommendations of the Standards and Constitutional Oversight Working Group in respect of the Social Media Policy be accepted and the revised Social Media Policy be adopted.

35 COMMITTEE ON STANDARDS IN PUBLIC LIFE - STAKEHOLDER CONSULTATION

The Monitoring Officer advised that the Committee on Standards in Public Life, in recognition that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government, had launched a consultation exercise to inform their review of local government ethical standards.

The terms of reference for the review are to:

- examine the structures, processes and practices in local government in England for:
 - maintaining codes of conduct for local councillors
 - investigating alleged breaches fairly and with due process
 - enforcing codes and imposing sanctions for misconduct
 - declaring interests and managing conflicts of interest
 - whistleblowing
- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
- make any recommendations for how they can be improved
- note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation

The Committee gave consideration to the formal consultation document, appended to the submitted report, and the following comments and observations made –

Structures, processes and practices - The Committee considered that structures and procedures were considered to be working to ensure high standards of conduct, though there were concerns about sanctions and timescales, both matters considered under later sections.

Codes of conduct – The Monitoring Officer advised that legislation gave considerable freedom with regard to content of a Code of Conduct. The Wirral Council Code was comprehensive, following the former Model; this was not the case elsewhere and some Codes contained little more than the Nolan principles. The Committee agreed that the Council's Code was extensive, and the approach should be a model followed by all Authorities.

Members agreed that the Code was something that should be included in Member induction, but that the way this was presented needed to be checked given the amount of material available to new members. Refresher training for all Members should also be required on a periodic basis.

Investigations and decisions on allegations - The Committee considered that the investigation procedure required timescales which ensure prompt consideration and that could be rigorously applied, noting that in instances where the subject member prevaricated or did not respond the timescales for dealing with a complaint became unreasonably long. It was however noted that a timescale should not be imposed that might allow allegations to be ruled out of order because they were not dealt with; if personal circumstances did not allow for a speedy consideration this should be accommodated.

It was noted that the only timescale applying was when notifying the subject member of the receipt of a complaint. Thereafter, timescales were discretionary. It was suggested that deadlines for each stage should be specified and take no more than six months, and that should a subject member be not compliant with timescales, the Standards Panel should have the ability to hear the case without them.

With regard to the role of the Independent Person, the Committee considered that their role had been invaluable. Having sought advice from the Independent Persons in attendance and concurring that the role and opinions of the Independent Person must be sought and taken into account, the Committee would not seek voting rights for the Independent Persons.

With regard to the role of the Monitoring Officer and following queries of Members regarding potential conflicts of roles and risks, the Chair invited observations from the Monitoring Officer. The Committee was advised that conflicts of role could arise, noting that the Monitoring Officer could not be investigator and advisor, but it was considered that the Council had sufficient safeguards in this regard. It was acknowledged that undue pressure on Monitoring Officer's had occurred at certain authorities, but the Council had retained certain safeguards and Monitoring Officers retained a statutory right to demand appropriate resources to undertake their role. There were issues of job protection, it being noted that employment protection for the Head of Paid Services, Chief Finance Officer and Monitoring Officer had been watered down by recent legislation. A Monitoring Officer Protocol that described the role of the Monitoring Officer and how they go about their role gave some assurance, and the Committee concurred that adoption of a Monitoring Officer Protocol should be recommended.

Sanctions - The Committee considered that existing sanctions had proved adequate for normal cases, but additional options were needed for more serious breaches of the Code of Conduct or where a subject member did not engage with the current sanctions applied. Members considered that options

to either remove a subject Member from committees or outside bodies, or to suspend a Member, would give the process real teeth.

The Committee considered whether such additional powers should lie with this Committee or with the full Council. It was noted that the Council's current Panel had operated in a non-partisan manner and that the Panel had the benefit of advice from the Independent Person, which would not be the case should the decision lie with the Council. The Committee considered that the decision should remain with the Panel.

Declaring interests and conflicts of interest - The Committee considered that the Council's existing arrangements for declaration of councillors' interests and management of conflicts of interest were satisfactory.

The Monitoring Officer noted that the Council's arrangements covered both the statutory disclosure of pecuniary interests and a range of other interests, such as personal and prejudicial interests brought over from the previous standards regime, to cover potential situations of bias or conflict of interest. It was noted that not all authorities had done so, and the Committee considered that this Council's approach should be recommended.

Whistleblowing - The Committee noted that much work had been done on whistleblowing and considered that the Council's arrangements were satisfactory.

Improving standards – Members agreed the importance of training to increase and improve knowledge on conduct and ethical issues, and would recommend that for all local authorities the code of conduct form part of Councillor induction processes, followed thereafter by two-yearly training or refresher sessions. With regard to the contribution of central government, the Committee would wish to see local authorities being given the powers to deal with conduct issues appropriately, such as those suggested elsewhere in this consideration.

Intimidation of local councillors – Members commented on the need for guidance around this issue, as there appeared no route other than going to the Police with concerns; it was suggested the Police might not necessarily view such referrals as priority as councillors had voluntarily put themselves into the public domain. It was noted that elected members needed to be accessible, for example through surgeries, but using personal phones and email and having addresses in the public domain could make Councillors and their families vulnerable and had on occasion left them open to abuse. All local authorities needed to consider how this might be mitigated and what facilities might be provided by a council to address intimidation and identified concerns. The Committee agreed it be recommended that all local authorities should be have the necessary powers and resource to address these

concerns, including provision of the equivalent legal, professional and emotional support that was available to Council employees.

RESOLVED:

That the Monitoring Officer be authorised to respond to the consultation being undertaken by the Committee on Standards in Public Life reflecting the considerations given by this Committee and minuted above.

36 **CONSTITUTIONAL UPDATES**

The Committee were advised of required amendments to Part 3 of the Council's Constitution relating to delegation of functions.

The following Committee were advised of the relevant legislative provisions and considerations given by the Council that now required amendment to the constitution:

- i. a delegation at Part 3 'Responsibility for Functions' Schedule 4A Part 2 of the Council Constitution enabling Officers, including the Assistant Director of Environmental Services, to authorise Officers to issue Fixed Penalty Notices to drivers of idling vehicles pursuant to Part 6(3) of the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, as recommended by the Environment Overview and Scrutiny Committee at a meeting held on 30th November 2017; and
- ii. a delegation at Part 3 'Responsibility for Functions' Schedule 5 'Delegation of Functions to Individual Cabinet Members' of the Council Constitution to enable the Cabinet Member for Environment, supported by Officers, to be the person nominated by the authority to hear the applicant and determine the matter pursuant to Schedule 1 s7 to the Scrap Metal Dealers Act 2013, agreed by the Cabinet at a meeting held on 10 October 2013, but not included in the Constitution at that time.

RESOLVED:

That the required amendment to the Council Constitution be noted and the Council be recommended to confirm their adoption.

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Standards and Constitutional Oversight Committee Tuesday, 12 June 2018

REPORT TITLE:	Adoption of the Model Council Members' Planning Code
REPORT OF:	Director: Governance and Assurance (Monitoring Officer)

REPORT SUMMARY

This report is submitted to the Committee to recommend that Council adopts the Model Council Members Planning Code which has been produced by Lawyers in Local Government (LLG). A copy of the Code is attached at Appendix 1 ("the Model Code").

RECOMMENDATION/S

That, subject to the views of the Planning Committee, Committee recommends to Council that the Model Planning Code appended to this report is adopted and included within the Council Constitution.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

The Model Code provides best practice for members at all times when involving themselves in the planning process.

2.0 OTHER OPTIONS CONSIDERED

2.1 That the Model Code is not adopted.

2.2 It is recommended that the Model Code is adopted to ensure best practice in the planning process.

3.0 BACKGROUND INFORMATION

3.1 The Members' Planning Code of Good Practice was originally prepared in response to a series of successful challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interests. It replaced a number of individual and sometimes haphazard approaches in individual councils at the time.

3.2 The Model Code takes into account the Nolan Principles and commentary from the Committee on Standards in Public Life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government 2013.

3.3 This Model Code applies to Members at all times when involving themselves in the planning process. The Model Code is simple in format and easy to understand and apply.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no financial implications associated with the adoption of the Model Code.

5.0 LEGAL IMPLICATIONS

5.1 The Council must act in accordance with the legislative requirements when dealing with planning matters and the Model Code provides best practice to ensure compliance. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up to date. Section 25 of the Localism Act, 2011 introduces provisions for dealing with allegations of bias or pre-determination or matters that otherwise raise an issue about the validity of a decision, whether the decision-maker had or appeared to have a closed mind (to any extent) when making the decision.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

6.1 There are no resource implications associated with the adoption of the Model Code.

7.0 RELEVANT RISKS

7.1 Adopting the Model Planning Code of Conduct will minimise the risk within the planning process of suggestions being made that a decision has been biased, partial or not well founded in any way.

8.0 ENGAGEMENT/CONSULTATION

8.1 The drafting of the Model Code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman and the Planning Officers Society, supported by leading planning law firms and Queens Counsel.

8.2 The recommendation sets that this code / protocol will be subject to the view of the Planning Committee before being referred to Council for approval. If necessary, the matter can be returned to the committee if further discussion is required.

9.0 EQUALITY IMPLICATIONS

9.1 The code and its implementation must adhere to equality and human rights legislation under the relevant Acts. The Code will ensure that these matters are addressed in making decisions and advising upon the approach to decision making in planning applications.

REPORT AUTHOR: Philip McCourt
Director of Governance and Assurance
telephone: (0151) 691 8569
email: philipmccourt@wirral.gov.uk

APPENDICES

Model Council Members Planning Code

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

The Model Code



MODEL COUNCIL MEMBERS' PLANNING CODE or PROTOCOL

Background

The Members' Planning Code of Good Practice was originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interests. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

The drafting of the model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

This 2013 update takes into account the update to the Seven Principles of Public Life (the 'Nolan principles') and commentary from the Committee on standards in public life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on 'Openness and transparency on personal interests' published by the Department for Communities and Local Government 2013.

For further reading please refer to 'Probity in Planning' issued by the Local Government Association.

Introduction

The aim of this Code: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

When the Code applies: this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision

making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on interest, Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- **Do** then apply the rules in this Members' Planning Code, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:
 - the Council at risk of proceedings on the legality of the related decision or maladministration; and
 - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

2. Development Proposals and Personal Interests

- **Do** disclose the existence and nature of your interest as required by your Authority's Member Code of Conduct.
- **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that

*"Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**".*

It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on

you in representing the proposal in which you have a personal interest.

- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest and note that:
 - you should send the notification no later than submission of that application where you can;
 - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
 - you must not get involved in the processing of the application; and
 - it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

3. **Fettering Discretion in the Planning Process**

(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind that, when you come to make the decision, you
 - are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
 - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
 - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
 - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
 - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:
 - the proposal does not substantially effect the well being or financial standing of the consultee body;
 - you make it clear to the consultee body that:

- your views are expressed on the limited information before you only;
- you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (*Use the disclosure form provided for disclosing interests.*)
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this is granted by the authority's standing orders or by the consent from the Chair and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
 - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the seating area for members of the Committee for the duration of that item; and
 - ensure that your actions are recorded.

4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the [Development Control Manager] to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the Authority's rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the [Development Control Manager] any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file [a profoma has been supplied to you for this purpose].

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation without requesting an officer to be present.

- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

5. Lobbying of Councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your [ward][division] and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity.
- **Do** promptly refer to the [Development Control Manager] any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary

purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.

- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

7. Site Visits/Inspections

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - you feel it is essential for you to visit the site other than through attending the official site visit,
 - you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and
 - you can ensure you will comply with these good practice rules on site visits.

8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the [Development Control Manager], which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section [38 of the Planning and Compulsory Purchase Act 2004][Art 4(2A) The Planning (Northern Ireland) Order 1991] and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and

understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

11. Training

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.



Standards and Constitutional Oversight Committee Tuesday, 12 June 2018

REPORT TITLE:	Establishing a Constitutional Review Working Group 2018/19
REPORT OF:	Assistant Director: Law & Governance (Monitoring Officer)

REPORT SUMMARY

This report seeks approval to establish a Constitutional Review Working Group for the municipal year 2018/19.

This report also seeks the Committee's view on the membership, allocation of seats on a party basis, and to confirm arrangements for deputy members (options are set out in paragraph 4.3.1 and 4.3.2 of this report).

RECOMMENDATION/S

That the Committee:

- (a) Agrees to establish a cross party Constitutional Review Working Group for the current Municipal Year; and
- (b) Appoints members to the Working Group, or agrees that nominations be confirmed to the Monitoring Officer as agreed by all the party spokespersons at the earliest available opportunity.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The recommendations are necessary to ensure compliance with legal obligations and improve governance arrangements.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 None, a Working Group has been established previously to support the work of the Committee. In light of other business on the agenda for this meeting, it has not been considered appropriate to propose any alternate option.

3.0 BACKGROUND INFORMATION

- 3.1 The Committee has for the last few years established a Working Group to assist it in its work.
- 3.2 The priorities for the Working Group are set by the Committee, and are the subject of a separate report on this meeting agenda.

4.0 SCOPE AND REMIT

- 4.1 The Working Group is to support the Council's Standards and Constitutional Oversight Committee in its role of oversight of the Council's Constitutional arrangements and promotion of standards and the ethical framework within the Council.
- 4.2 The Working Group shall make recommendations to the Council's Standards and Constitutional Oversight Committee in relation to the matters mentioned in para 4.3.1 above.

4.3 MEMBERSHIP

4.3.1 OPTIONS

(A) The Working Group shall consist of the:

- three Members from the Labour Group (including the Chair)
- two Members from the Conservative Group
- one Member of the Liberal Democrat Group

i.e. **3:2:1**

A total of six members, all of whom must also be members of the Council's Standards and Constitutional Oversight Committee (or in the case of the Liberal Democrat Member may be his/her deputy).

OR

(B) The Working Group shall consist of the:

- two Members from the Labour Group (including the Chair)
- one Member from the Conservative Group
- one Member of the Liberal Democrat Group

i.e. **2:1:1**

A total of four members, all of whom must also be members of the Council's Standards and Constitutional Oversight Committee (or in the case of the Liberal Democrat Member may be his/her deputy).

4.3.2 In all cases, should a member of the Working Group be unable to attend a meeting of the Working Group, a deputy (who must be a member of the Standards and Constitutional Oversight Committee) may attend in his/her place.

4.4 VOTING

4.4.1 Voting shall be by majority vote.

4.4.2 The Chair shall have a casting vote.

4.5 MEETINGS

4.5.1 The Working Group shall meet as frequently as considered necessary.

4.5.2 Meetings shall be quorate providing the Chair (or his/her deputy) and at least two other Members of the Working Group are in attendance.

4.5.3 Meetings of the Working Group shall be held in private and the provisions relating to Access to Information shall not apply.

4.6 DECISION MAKING

4.6.1 The Working Group shall only be permitted to make recommendations to the Council's Standards and Constitutional Oversight Committee in relation to matters falling within its delegated scope and remit.

4.7 ADMINISTRATIVE SUPPORT

4.7.1 The Working Group shall be administered and supported by the Director of Governance and Assurance and Monitoring Officer, and officers from the Council's Governance Section.

5.0 FINANCIAL INFORMATION

5.1 There are no such implications arising.

6.0 LEGAL IMPLICATIONS

6.1 The legal implications have been set out in this report.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; ICT; STAFFING; AND ASSETS

7.1 There are no such implications arising.

8.0 RELEVANT RISKS

8.1 The Council must ensure that the Constitution and other working arrangements/practices are effective and compliant with relevant legislation.

8.2 By undertaking a regular review of the Constitution and other key aspect of the Council's practices, the risks to the Council are mitigated.

9.0 ENGAGEMENT/CONSULTATION

9.1 The Standards and Constitutional Oversight Working Group has a cross-party consultative role by virtue of its cross-party membership. No engagement or consultation has been undertaken on this report as it deals with procedural matters only.

10.0 EQUALITIES IMPLICATIONS

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) No EIA is required.

REPORT AUTHOR:

Patrick Sebastian

Principal Committee Officer

Telephone: 0151 691 8424

Email: patricksebastian@wirral.gov.uk

APPENDICES

N/A



**Standards and Constitutional Oversight Committee
Tuesday, 12 June 2018**

REPORT TITLE:	Review of Council Constitution
REPORT OF:	Assistant Director: Law & Governance (Monitoring Officer)

REPORT SUMMARY

The report presents an approach to taking forward a major review of the Council's Constitution.

RECOMMENDATION/S

The Standards and Constitutional Oversight Committee is asked to approve the progression of a significant review of the Council's Constitution, and for the Constitutional Review Working Group to give consideration to a scoping document to consider a timetable and set priorities for the review.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

Keeping the Constitution under review is a role of the Standards and Constitutional Oversight Committee. The Committee advises the Council on Constitutional issues generally, the Council having a statutory responsibility for maintaining a Constitution.

2.0 OTHER OPTIONS CONSIDERED

None, amendment to the Constitution being a Council function.

3.0 BACKGROUND INFORMATION

Section 37 of the Local Government Act 2000 requires a local authority operating executive arrangements to maintain a document (referred to as a constitution) which contains—

- (a) such information as the Secretary of State may direct,
- (b) a copy of the authority's standing orders for the time being,
- (c) a copy of the authority's code of conduct, and
- (d) such other information (if any) as the authority considers appropriate.

Alongside the general guidance to the 2000 Act, in support of section 37 the Government issued a Modular Constitution setting out a suggested structure for the constitution including statutory governance requirements and matters traditionally covered by Standing Orders, financial regulations and schemes of delegation, while also including the new arrangements resulting from the implementation of executive style of governance introduced by the Act. While suggesting a structure, guidance did recognise that local choice existed and that individual Council's would find their own ways to organise how their own Council would work.

While the Council has from time to time undertaken reviews of various aspects of its Constitution, the significant rate of both primary and secondary legislation that has impacted on the Constitution, when taken alongside organisational restructuring and the changing environment and challenges facing the Council, means that a more significant and structured review of the Council's Constitution is now required. This review is required to ensure that all necessary statutory requirements are reflected, that where choice is available the Council has taken an informed view of the options available, and that the Constitution is fit for the purpose envisaged in guidance of providing the means for citizens and stakeholders to understand how the Council makes decisions and who is responsible for those decisions.

An initial oversight review of the Constitution revealed areas where the Constitution has varied from the Modular Constitution and where the Wirral Constitution does not include other documents which have come to be regarded as good practice for inclusion. In themselves these variations and omissions may not necessarily be a negative but, for example, this initial

review highlighted that the Budget and Policy Framework Procedure Rules had varied significantly and that there was no specific set of Executive Procedure Rules explaining the Council's executive arrangements. On the latter point, relevant content is contained elsewhere in the Constitution, but the current approach means that executive arrangements are not expressed explicitly thereby failing the purpose of transparency.

Some work to remedy the more immediate Constitutional issues has already been undertaken, with the Council at the meeting held on 5 March 2018 approving a revised form of Budget and Policy Framework Procedure Rules, and a Code of Conduct for Elected Members Dealing with Planning Matters intended for inclusion in the Constitution being presented to this meeting of the Committee for consideration.

It is proposed that work on the Constitution be progressed through the preparation of a scoping document, for consideration by the Constitutional Review Working Group, looking to prioritise work on the Constitution, the approach to prioritisation being as follows -

- Those areas of significant variation from the Model Constitution, where particular legal and / or corporate issues might be concerned, or where particular 'good practice' issues are considered priority. Issues for consideration here would include the Executive Procedure Rules referenced above; the schemes of delegation for both Council and executive functions at Part 3 'Responsibility for Functions', clarifying matters for Member and Officer decision making; and a specific Planning Code of Conduct for Members Dealing with Planning Matters which is presented for consideration elsewhere on this agenda;
- A significant review of the remaining Parts of the Constitution comprising a comparator with the Modular Constitution, consideration of statutory developments since the issue of the Modular Constitution, and the Council's arrangements and requirements going forward; and
- An overall view of the Constitution, ensuring that the work undertaken has presented all interdependences within the document in a consistent and properly referenced manner, and that the final document complies with the purpose of providing an understanding as to how the Council makes decisions and who is responsible for those decisions.

It is proposed that this scoping document would, alongside a prioritised listing to be determined by the Working Group of a number of ad hoc issues raised previously and falling more generally within the purview of the Working Group, form the basis of the work programme of the Working Group for the next 2-3 years which is the anticipated duration of the Constitutional Review project.

In undertaking the review, the Working Group should seek the views of such Members and Officers as it considers appropriate to the matter under consideration. The Working Group will forward recommendations to the Committee which shall, in turn, make formal recommendations to the Council in respect of the adoption of any revisions to the Constitution.

4.0 FINANCIAL IMPLICATIONS

There are no financial implications associated with this report as it deals with procedural matters only.

5.0 LEGAL IMPLICATIONS

There are no particular legal implications associated with this report beyond those noted above.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

There are no resource implications associated with this report as it deals with procedural matters only.

7.0 RELEVANT RISKS

While the Constitution can provide an important means of enabling citizens and stakeholders to understand how the Council makes decisions and who is responsible for those decisions, the Constitution also sets out the legal and procedural framework within which the Council makes those decisions. A properly maintained Constitution and recorded schemes of delegation can mitigate potential challenges to the Council's decision making.

8.0 ENGAGEMENT/CONSULTATION

No engagement or consultation has been undertaken on this report as it deals with procedural matters only.

9.0 EQUALITY IMPLICATIONS

There are no direct equality implications associated with this report as it deals with procedural matters only.

REPORT AUTHOR: Mark Hardman
Principal Committee Officer
telephone: 0151 691 8546
email: markhardman@wirral.gov.uk

APPENDICES

None.

REFERENCE MATERIAL

None.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date