



# Agenda

Meeting: **Constitution Working Group**  
Date: **26 September 2023**  
Time: **2.30 pm**  
Place: **Zoom – Remote meeting**

**PLEASE NOTE, THIS MEETING IS NOT OPEN TO THE PUBLIC  
BUT WILL BE STREAMED LIVE TO**  
<https://bit.ly/YouTubeMeetings>

To: Councillors Mrs Jennifer Hollingsbee, Jim Martin, Connor McConville,  
Tim Prater and Paul Thomas

#### 4. **Structure of the new Committee governance arrangements**

Philip McCourt of Bevan Brittan will provide the following documents for discussion. These will be circulated to Members prior to the meeting:

- Draft terms of reference for the committees, along with structure diagrams.
- Spokesperson Member role descriptions.
- A draft revised key decision definition and a referral process.
- A draft of a rescission process is attached to be discussed as an alternative to O&S call-in.

**Queries about the agenda? Need a different format?**

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# Constitution Working Group

Folkestone & Hythe DC

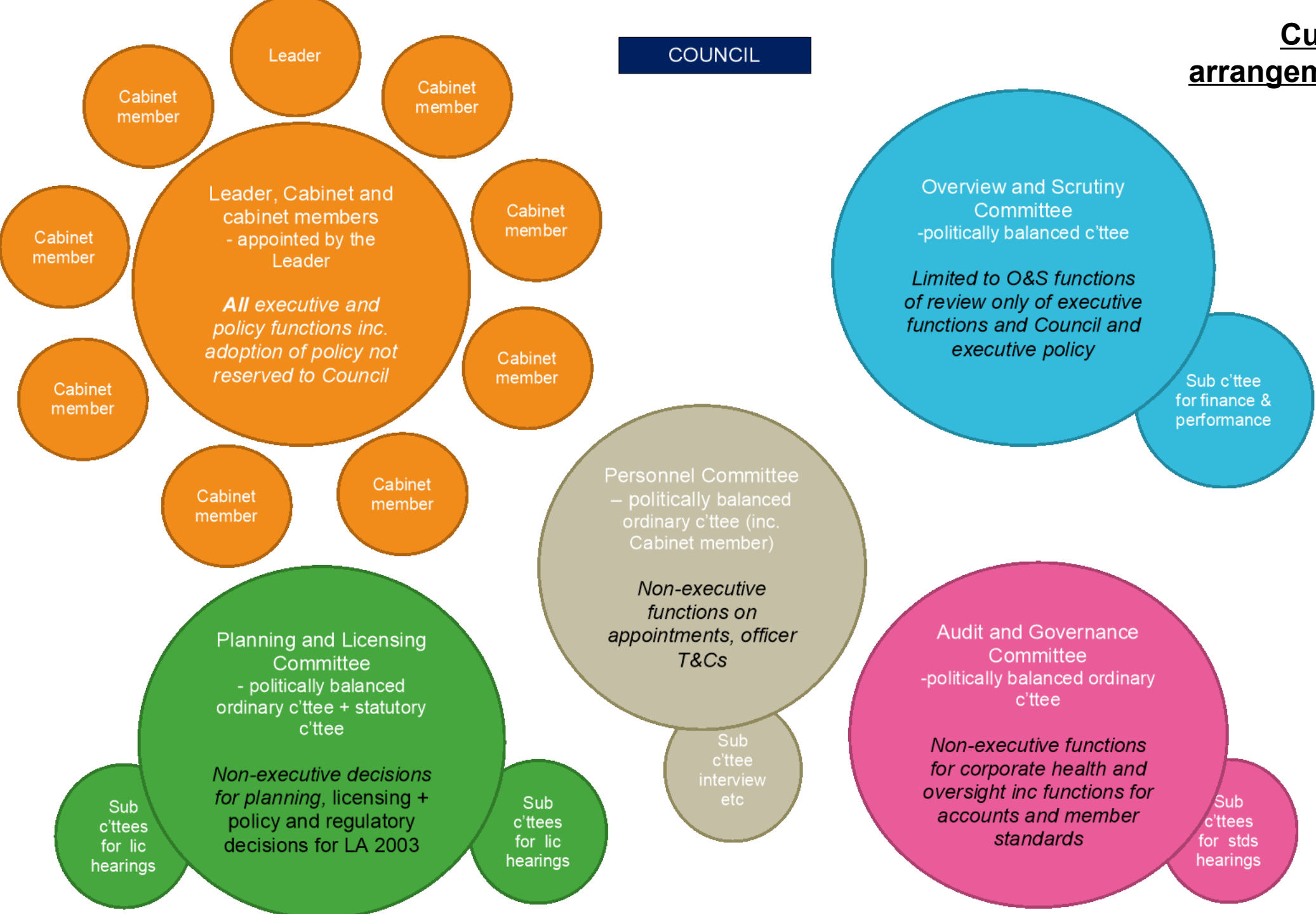


26<sup>th</sup> September 2023

# From the last meeting

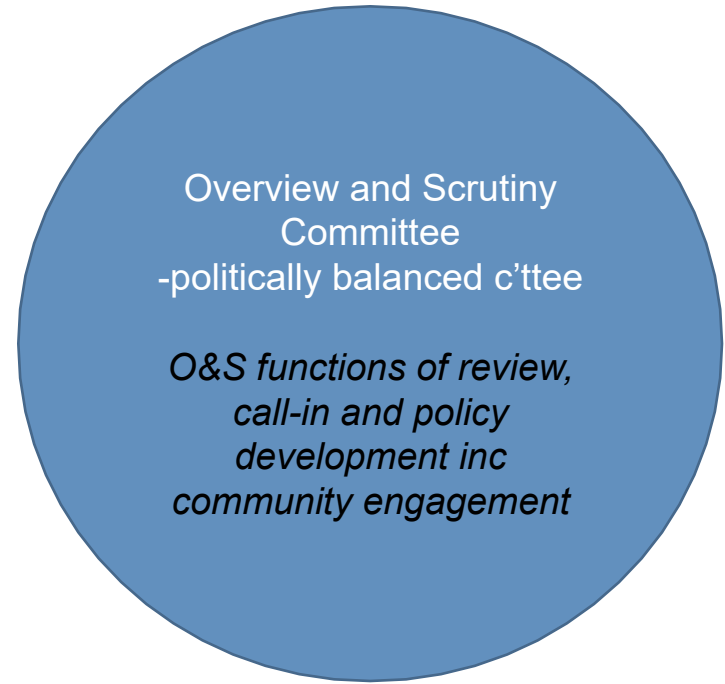
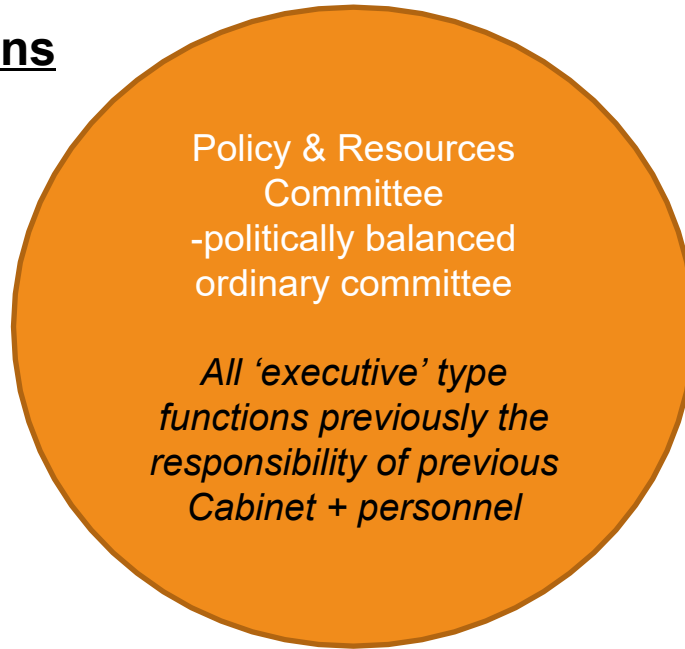
- Two policy committee structure and working title of P&R and Communities. No adoption of O&S functions. The draft terms of reference to be produced with diagram. Will do for all four if possible and note size of 12 for each
- Retain key decisions alongside that (same definitions with 'get-out') and provide a draft of a referral process for members to be drafted.
- Role descriptions for Council spokespersons to be drafted. Starting point of 9 cabinet portfolios including than leader and deputy leader (as chair and vice chair of P&R)
- Provide example(s) of process for a rescission procedure on policy committee decisions (as opposed to old O&S Call-in)

**COUNCIL**



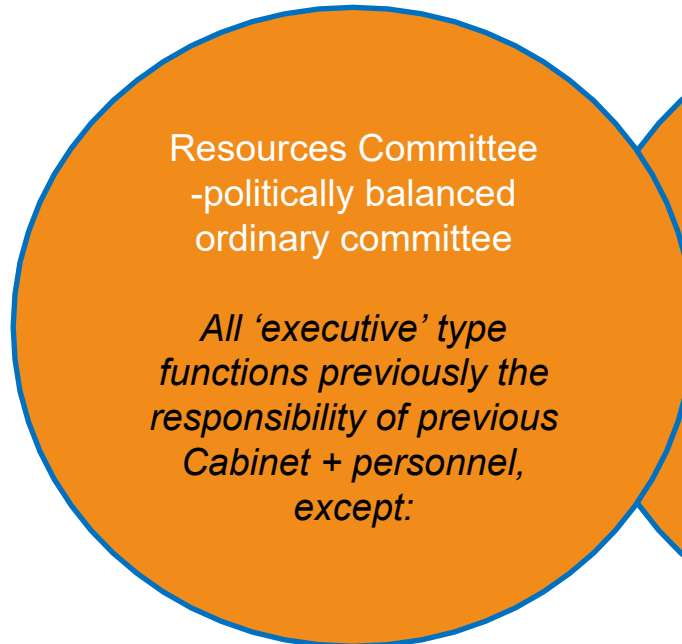
## Two policy committee options

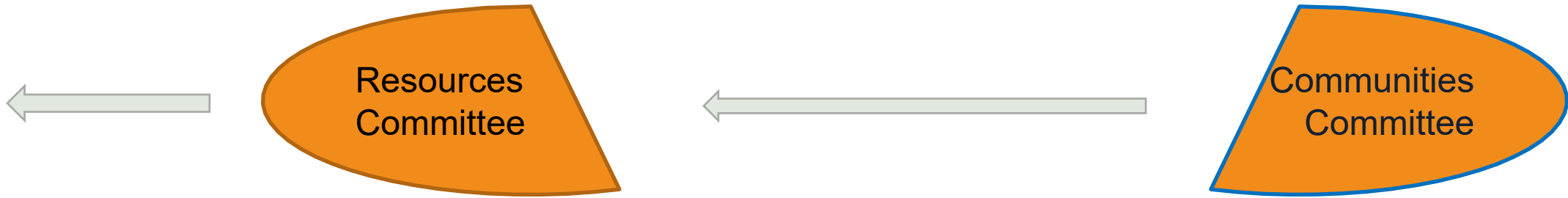
One executive committee,  
with overview & scrutiny  
(to include call-in)



or

Two executive committee,  
No overview & scrutiny  
(but with working arrangements and 'refer up' equivalent to call-in)





## Resources Committee

To provide strategic direction to the operation of the Council, including the exercise all functions of the Council not specifically delegated to another committee or reserved to full Council under this scheme of delegation, standing orders or procedure rules.

To exercise the council's functions in respect of matters referred to it by other committees which have corporate budgetary or policy implications, including:

- To authorise virements under the Budget and Policy Framework Procedure Rules in excess of £N (capital) or £N (revenue).
- To award of contracts in excess of £N;
- the acquisition or disposal of any land of a value in excess of, or likely to exceed, £N.
- To manage matters concerning companies or limited liability partnerships which are regulated or influenced by the Council, [through the appointment of a Shareholder Sub-Committee,] including matters reserved to the shareholder or partner, financing, contracts and acquisition and disposals.
- To undertake responsibility for emergency planning, in compliance with the emergency plan, and business continuity.
- To establish the framework for human resources policies and procedures, and terms and conditions and, through the appointment of relevant Senior Officer Appointments & Staffing Sub-Committees, to recommend or make appointments and related matters in respect of chief officers, as set out at Part 4(n) of the Constitution, together with oversight of employment policies, terms and conditions.
- To appoint Council representatives or nominees as required

## Communities Committee

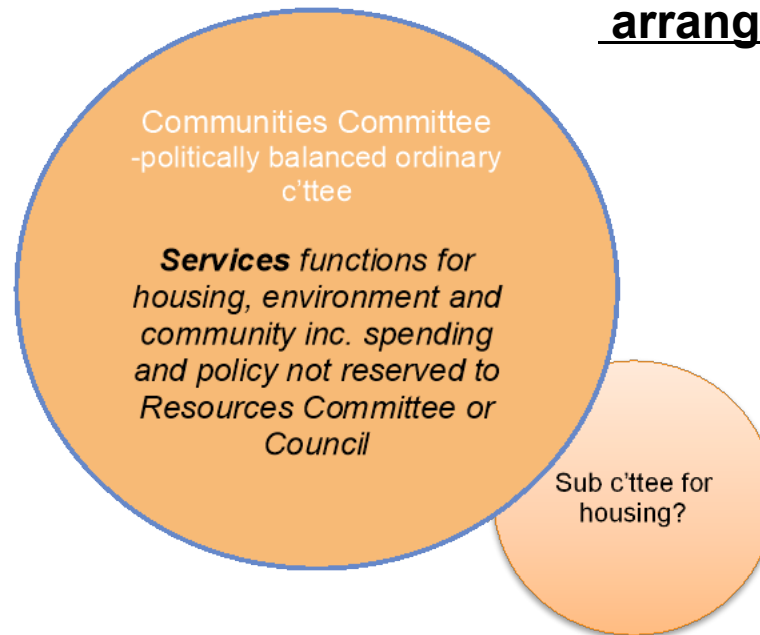
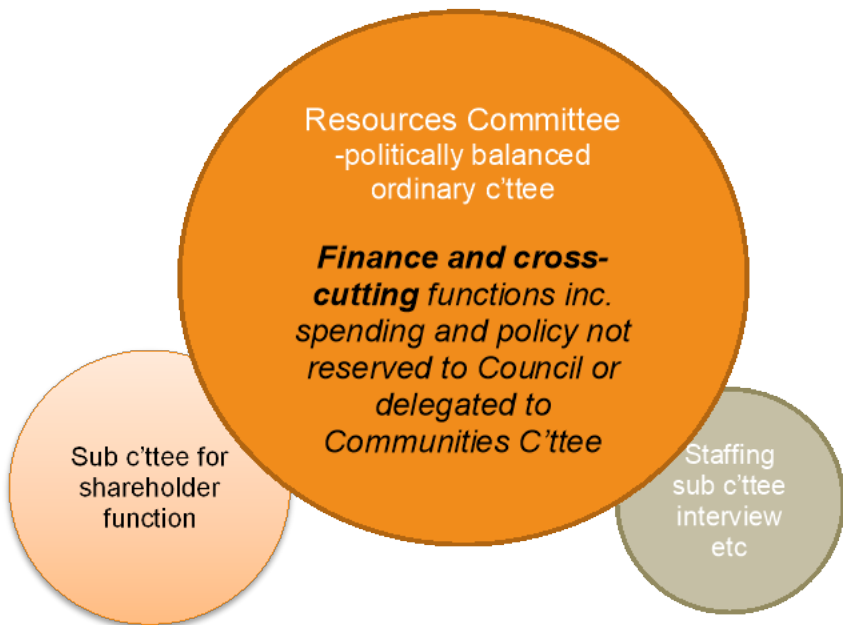
To exercise functions of the Council not specifically reserved to Council or another committee in respect of:

- community leadership, community safety, equalities and community cohesion, neighbourhood and community development, health and wellbeing, including recreational, cultural and sports provision;
- the Council's response to climate change;
- promoting and widening access to services;
- the supply and demand for housing, including the council's landlord functions, housing strategy, private sector housing and homelessness;
- maintenance and improvement of the environment and the health of the community;
- planning policy, regeneration, development and sustainable infrastructure issues, including proposals under the Local Development Framework and associated matters and neighbourhood plans;
- economic development activity including tourism;
- car parking, transport and utility provision;
- provision of public open space, sport, recreation and heritage;
- environmental health and street trading;
- exercising the council's enforcement powers and duties in respect of all statutory provisions which fall within the remit of this committee





**COUNCIL**





# Comparative Notes - Highlights

- Comparative Notes
- Questions
- Detailed Drafts awaiting discussion with officers and further instruction

# Council/Committee Spokespersons – Possible role description

## 1 Function

A policy Committee may appoint individual Members to take on a specific role to highlight and enhance an area of that Committee or the Council's terms of reference. Spokespersons hold no formal legal position but undertake the role to assist the Leader/Chair and Committee in fulfilling their wider leadership functions.

## 2 Appointment

- (a) The Council or Committee holding the corresponding functions within its terms of reference may by simple resolution appoint a Spokesperson from one of their number.
- (b) The Spokesperson holding a portfolio for a highlighted area may be the Leader/Chair, Vice-Chair or any other member of the Committee but shall be limited to 9 Members in total (including the Chair and Vice-Chair of Resources Committee).
- (c) Where the subject of a Spokesperson covers functions across the terms of reference of more than one Committee, the Committees may jointly appoint the Spokesperson from either of their Committees' number.

## 3 Role

The role of a Spokesperson is to act in support of the Chair (Leader), and on behalf of the Committee and Council, by providing a policy focus for the Council, partners, stakeholders and communities in order to:

- (a) To develop their expertise and knowledge in respect of that highlighted area
- (b) To provide political focus and leadership for that highlighted area within the Committee and Council.
- (c) To lead the development of approaches to policy and operational issues on behalf of the Committee and Council.
- (d) To be the Committee's lead spokesperson and first political point of contact within the Committee and Council.
- (e) Raise the profile of that highlighted area of the Council and Committee's functions, and in conjunction with the relevant Member(s), officers and partner(s), support community engagement activities and other related publicity campaigns;
- (f) Liaise with members, public sector partners and other stakeholders to promote key initiatives (as appropriate and required);
- (g) Act as an advocate for that highlighted area of the Council and Committee's functions and be required to familiarise themselves with related matters;
- (h) Seek out and share best practice from other areas of the UK;
- (i) Periodically present reports to the members of their Committee or other committees (as necessary and requested) setting out the actions taken and how those actions have contributed to the success and promotion of that highlighted area of the Council and Committee's functions;
- (j) Present, as appropriate, research papers and suggest new initiatives and ideas relating to highlighted area of the Council and Committee's functions for consideration by the Committee(s) or Council.

## 4 Do not normally attract SRA

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COMPARISON SUMMARY OF CHANGE IN CONSTITUTIONAL ARRANGEMENTS

<b><i>Draft provision – Committee system</i></b>	<b><i>Current provision – Exec system</i></b>	
Role description	Article 5 & 7	
Leader and Dep Leader is not a formal office of the Council. Appointed to formal office of Chair & Vice Chair of Resources Committee each year as part of AM Informal role for political focus but no decision making powers	Article 7: Leader is the senior executive member of the council. Leader is elected for a term determined by council, currently for full term of cllr (>4yrs) Ldr appoints deputy and cabinet Ldr determines delegations and decisions for exec functions	Legal requirements
Spokespersons as informal support roles to a committee. No decision making powers	Cabinet members as portfolio holders Have decision making powers as delegated by Leader	Spokespersons not necessary and a choice
Group leaders	No current description	
Chair	Article 5: Function of chair of the council remains as is	
Chairs & Group spokespersons	No equivalent description for other roles	
Council similar as now cttee system reservations	Article 4	
Policy Terms of reference	Articles 6,7,8	
Resources Committee and Communities Committee, includes employment matters. They are responsible for active functions and referred to as 'policy committees', but can cover other matters as desired Politically balanced.	Cabinet. Executive or non-executive functions are fixed legal concepts Personnel Committee separate (as non-executive) Not politically balanced. As above	
O&S functions not adopted. Style is incorporated into policy committees	O&S committee	Must resolve to adopt or not
Planning committee	As now, separated from planning and licensing	A choice
Licensing and Licensing Act Committee	As now, separated from planning and licensing	LA 2003 required

<b>Draft provision – Committee system</b>	<b>Current provision – Exec system</b>	
Politically balanced Licensing Committee appointed - Same members for the separate statutory committee for functions under the Licensing Act 2003		
Audit and Governance	As now	No change
Key decision: a choice – policy committee decisions The trigger for inclusion on Forward Plan and for being able to have decision referred from officer to committee and for rescission (call-in) to Resources Committee or Council	Article 12.3 – legal requirement for exec decisions The trigger for inclusion on Forward Plan and for being able to have decision called-in to scrutiny	A choice but must adopt or not
Legal definition Not included council budget and policy decisions as to be decided at Council in any event Financial significance defined locally as now (or will be) Means of determining significant	Legal definition Added to with inclusion of non-executive council budget and policy decisions Financial significance defined locally No means of determining significant	
Forward Plan - also a choice. Added the term ‘normally’	Advance notice of key executive decisions a requirement	
Referral: withdrawal of delegation on officer key decisions <i>before</i> decision to be made and sent to committee	No current process	a choice
Draft process for discussion – threshold & criteria?	At absolute discretion of the Leader	
Rescission: withdrawal of delegation on key decisions <i>after</i> decision made	Call-in after decision made: a requirement	a choice
May be re-made, or may be referred back, by resources committee or council	Suspension of implementation and key decision may be confirmed or referred back	
Criteria is to be the same as currently used for call in?	O&S Rules 3.2	

## F&HDC Draft process for

### REMOVAL OF DELEGATION FOR RECONSIDERATION (RESCISSION)

#### 1. Overview

Members of the Council may request that a decision taken by one of the policy committees or sub-committees, or of a Key Decision taken by an officer acting under delegated authority from a Committee, is re-considered by another Committee or Council.

The effect of this process is to remove delegated authority from the Committee or officer in respect of that item of business, so that the decision is nullified, allowing the Resources Committee or Council to confirm, refer back or make the decision afresh under this procedure.

Due to the costs and delay caused by reconsidering a decision, it is intended that it should only be used in exceptional circumstances. It is therefore subject to safeguards concerning:

- (i) the number of members required to make a valid request;
- (ii) the timescale in which a request must be made; and
- (iii) criteria for acceptable reasons to make a valid request

before the delegated authority is removed and the item of business referred to the next meeting of the Resources Committee or Council

#### 2. Process

Members may initiate a reconsideration of a decision taken by the Resources Committee, or of a Key Decision taken by an officer acting under delegated authority from one of those committees, by a meeting of another Committee or Council. This process will not apply to decisions made in the circumstances set out at paragraph 6 below.

A request for a reconsideration of an item of business must be made in writing (which may be by email) to the Monitoring Officer or Chief Executive and be made

- (i) before the expiry of [five] full working days from the date on which the decision notice was published;
- (ii) supported or signed by [three or more] Members of the Council; and
- (iii) setting out why the request meets the criteria for reconsideration
- (iv) whether they wish the decision to be referred to the Resources Committee or full Council.

#### 3. Criteria

Such a request must be received by the Monitoring Officer or Chief Executive and must set out two or more of the following grounds in support, explaining why the decision is or might reasonably be felt to be:

- (a) a key decision but not treated as such;
- (b) inadequate consultation with stakeholders prior to the decision;
- (c) inadequate evidence on which to base a decision;
- (d) contrary to the budget or policy framework;
- (e) the action is not proportionate to the desired outcome;
- (f) a potential human rights or equalities challenge; or
- (g) insufficient consideration of legal and financial advice.

A request may not apply to individual staffing matters or a matter that has been implemented and directly affects a third party's financial interests.

#### **4. Effect**

Where the Monitoring Officer or Chief Executive consider these criteria have been met, delegated authority for that matter shall be withdrawn from the Committee or officer concerned and the decision shall be accordingly nullified and made subject to referral to the next meeting of the Resources Committee or Council as the Monitoring Officer or Chief Executive may determine or, if necessary, to an extraordinary meeting for the matter to be considered afresh.

#### **5. Decision**

Upon re-considering the referred item of business, the Resources Committee or Council may:

- (a) Uphold the previous decision, following which the original decision shall take effect by 9.30am the next working day following the day of the Resources Committee or Council meeting which considered the request.
- (b) Refer the matter back to the relevant Committee, Sub-Committee or officer with a recommendation from the Resources Committee or Council. The relevant Committee, Sub-Committee or officer shall reconsider the matter, taking into account any concerns and recommendations of another Committee or Council, before reaching a final decision. The decision may not be the subject of a further request for reconsideration and will take from the date on which the new decision notice is published
- (c) Determine the matter itself, whereby the Resources Committee or Council may determine the matter as it sees fit. the Resources Committee or Council will set out its reasons for coming to a different conclusion from the originating Committee, Sub-Committee or officer whose decision has been superseded. The decision may not be further reconsidered and will take effect from the date on which the new decision notice is published.

#### **6. Exclusion from removal of delegation**

- (a) A decision making Committee, Sub-Committee or officer may determine that a decision being taken by them is not to be subject to removal of delegation and reconsideration in the circumstances where:
  - (i) in the opinion of the decision-maker, any delay likely to be caused by the process for removal of delegation and reconsideration would seriously prejudice the Council's or the public's interest;
  - (ii) the Chief Executive (or in his or her absence their nominee) agrees both that the decision proposed is reasonable in all the circumstances and that it should be treated in this manner; and
  - (iii) the decision maker causes a record to be made and notice published that the decision is not to be subject to removal of delegation and reconsideration and of the reasons for that determination
- (b) The Chief Executive (or in his or her absence their nominee) may otherwise decline to act on a request made under paragraph 2 above in those circumstances where he or she considers that it would be likely that the implementation of the process for removal of delegation in respect of a decision taken and its then reconsideration by the Resources Committee would cause serious prejudice to the Council's or the public's interest.
- (c) Application of this exclusion to the removal of delegation and reconsideration procedure must be reported to the next available meeting of the Council, together with the reasons for doing so

## F&HDC Draft process for

### REFERRAL OF OFFICER KEY DECISIONS TO COMMITTEE

#### 1. Overview

Members of the Council may request that a Key Decision published on the Forward Plan and due to be taken by an officer acting under delegated authority is, instead, to be considered by a policy Committee of the Council.

#### 2. Process

The Forward Plan will publish a Key Decision and will normally do so at least 28 days in advance of the decision being made and will include where the decision is to be made by an officer.

The Forward Plan is published monthly on the Council's website [and a copy is provided to all members].

A request may be made for the delegated authority to the officer to make a decision in respect of that item of business to be removed and, instead, the item be referred to a meeting of the Resources Committee or Communities Committee, or relevant Sub-Committee, for consideration.

A request must be made in writing (which may be by email) to the Monitoring Officer or Chief Executive:

- (i) supported or signed by [five of the members of Resources and Communities Committees, including from at least two political groups and inclusive of the relevant spokesperson or committee chair or vice-chair];
- (ii) submitted before the expiry of [three] full working days prior to the date on which the Forward Plan states that the item of business was due to be determined;
- (iii) stating which Committee or Sub-Committee the item should be referred to; and
- (iv) setting out the reasons why the request is made.

#### 3. Criteria

The request must set out why the proposed decision should not be made by an officer and why it is of sufficient public interest that it should be subject to determination by a policy committee of the Council.

The Monitoring Officer or Chief Executive (or their nominee), in consultation with the Chair or Vice Chair of the Committee concerned, will confirm or reject the referral request. This will be based on the significance of the Key Decision and an assessment of the reasons provided in the request.

#### 4. Effect

Where a request is accepted, the item will be placed on the agenda of the next meeting of the Committee or Sub-Committee concerned. The report published in respect of the item of business will state that it has been the subject of a referral and set out the supporting reasons.

Where the Monitoring Officer or Chief Executive (or their nominee) consider necessary, in consultation with the Chair or Vice-Chair of the Committee or Sub-Committee concerned, an extraordinary meeting of the Committee or Sub-Committee will be called to consider the referred item of business



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**F&HDC**  
**Draft definition of a Key Decision**

## **1. Introduction**

The Council has adopted the concept of a Key Decision for the purposes of meetings and access to information in order to differentiate those decisions that require a greater degree of openness and rigour. Where a meeting of the full Council, a Committee or SubCommittee of Council or an officer takes a Key Decision, or intends to take a Key Decision, they shall normally adhere to the following.

## **2. Definition**

A key decision is defined<sup>1</sup> as a decision to be made by the resources committee or communities committee (a policy committee), a sub-committee of one of those committees or an officer acting under delegated authority and which:

- (a) is likely to result in the 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; and/or
- (b) is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards or electoral divisions in the area of the Council.

For these purposes, savings and expenditure are "significant" if they are equal to or greater than:

- (i) £300,000 ordinary revenue expenditure;
- (ii) £500,000 where the Council is entering into a contractual obligation; or
- (iii) £500,000 in respect of the value of the acquisition or disposal of land or property

The meaning of 'significant' in terms of its effects on communities is subject to any guidance to be issued by the Secretary of State.

## **3. Requirements of a Key Decision**

A key decision may only be taken:

- (a) following notice being given (on the Forward Plan) as may be required by the Council's Access to Information Procedure Rules set out at Part N(N) of this Constitution;
- (b) on consideration of a full report by the relevant officer(s), published as may be required by the Council's Access to Information Procedure Rules set out at Part N(N) of this Constitution, and which shall contain as a minimum:
  - (i) a recommended decision;
  - (ii) an explanation of the reasons for the recommendation being put forward;
  - (iii) details of any alternative options, if any, considered and rejected for recommendation;
  - (iv) details of any consultation undertaken or proposed including, in respect of consultation undertaken, the nature and extent of the consultation undertaken with stakeholders and the overview and scrutiny committees and the outcome of that consultation;
  - (v) a consideration of the financial and legal issues pertaining to the matter, and such other matters as governance chief officers (the Head of Paid Service, Chief Finance Officer or Monitoring Officer) may require, which may include risk, staffing, equalities, crime and disorder and climate change implications; plus
  - (vi) a list compiled of any Background Papers to the report, which are those documents other than published works that, in the opinion of the proper officer, relate to the subject matter of the report or, as the case may be, the part of the report and:

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<sup>1</sup> S.I. 2012/2089

- (1) disclose any facts or matters on which the report or an important part of the report is based; and
- (2) were relied on to a material extent in preparing the report; and

#### **4. Requests for Call in (referral) or removal of delegation (rescission)**

- (a) A Key Decision published on the Forward Plan that is due to be taken by an officer may be referred to a committee or Council under the procedure set out in Part N(N) of this Constitution
- (b) A Key Decision is normally subject to delayed implementation to permit a request for the decision to be rescinded and reviewed in circumstances set out in Part N(N) of this Constitution.

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### **F&HDC Draft definition of The Forward Plan**

#### **1. Introduction**

The Council has adopted the concept of a Key Decision and a Forward Plan. Where a meeting of the full Council, a Committee or SubCommittee of Council or an officer takes a Key Decision, or intends to take a Key Decision, they shall normally adhere to the following.

#### **2. Definition**

The Forward plan is a document that the Council will publish every month and which sets out, in respect of each Key Decision that will be taken on behalf of the Council:

- (i) that a Key Decision is to be made on behalf of the Council.
- (ii) the matter in respect of which a decision is to be made.
- (iii) where the decision maker is an individual, his/her name and title, if any, and where the decision maker is a body, its name and details of membership.
- (iv) the date on which, or the period within which, the decision is to be made.
- (v) where the decision relates to confidential or exempt information, as defined above, a statement that the decision will be made in private
- (vi) a list of the documents submitted to the decision maker for consideration in relation to the matter.
- (vii) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available.
- (viii) that other documents relevant to those matters may be submitted to the decision taker.
- (ix) the procedure for requesting details of those documents (if any) as they become available.

#### **3. Publication**

The 'Forward Plan' and it will be published on the Council's website and will be updated from time to time as required. The Forward Plan will also be available for inspection by the public at the Council's offices.

#### **4. Notice of a Key Decision**

A key decision will not normally be taken unless:-

- (i) notice has been published in connection with the matter in question on the Forward Plan; and
- (ii) at least 28 clear days have elapsed since the publication of the Forward Plan;

#### **5. General exception**

If 28 days' notice of a matter which is likely to be a Key Decision has not been provided (via the Forward Plan) because the decision must be taken by such a date that it would be impracticable to defer it, then, subject to subject to paragraph 6 below (special urgency), the decision may still be taken if:

- (i) the Monitoring Officer has been informed of the reasons for urgency, and is satisfied that the reasons satisfy the criteria for urgent decisions, and that the decision must be taken with less than 28 days' notice;
- (ii) the Monitoring Officer has placed notification of the date and nature of the forthcoming decision and the reasons for urgency on the Council's website; and
- (iii) at least five clear days have elapsed since the Monitoring Officer complied with conditions (i) and (ii).

If the Monitoring Officer, or if absent the Deputy Monitoring Officer, is not available to act, then the Chief Executive or S.151 officer shall act in his/her place.

## **6. Special urgency**

If by virtue of the date by which a decision must be taken paragraph (d) above (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chair of the body making the decision, obtains the agreement of the Chair of the Council, or in their absence the Vice-Chair of the Council will suffice

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