

Council

08 July 2025

Part 1 - Public

Matters for Decision



Cabinet Member	n/a
Responsible Officer	Adrian Stanfield, Monitoring Officer
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Changes to the Constitution

Summary and Purpose of Report

- 1.1 This report recommends that changes are made to the following parts of the constitution
- (a) The Overview and Scrutiny Procedure Rules – the proposed amendments provide clarity around the order in which the Vice-Chairs will preside in the event that the Chair of the Committee is absent.
 - (b) The Rules for decision making during a period of serious and unexpected disruption – the proposed amendments remove an anomaly within the Rules relating to the process to be followed in the event that the Chair of the Overview and Scrutiny Committee is unable to act.
 - (c) The rules for public speaking in respect of planning applications – the proposed amendments provide for a maximum number of public speakers on each application.
 - (d) Rule 15.24 of the Committee Procedure Rules – it is proposed that this provision (which allows for 3 members of a committee to refer a planning application to full Council for determination) be removed.
- 1.2 The report also asks Members to note changes I have made to the constitution to reflect the structural changes agreed by the General Purposes Committee upon the retirement of the Director of Finance and Transformation.

2 Corporate Strategy Priority Area

- 2.1 Efficient services for all our residents, maintaining an effective council.

- 2.2 The proposals in this paper will contribute to the above priority area by ensuring that decisions are taken by Members in the most efficient and equitable way.

3 Recommendations

Members are requested to:-

- 3.1 Note the changes to the constitution to address the deletion of the post of Director of Finance and Transformation following the retirement of the current postholder and creation of the new post of Head of Finance and Section 151 Officer. These changes will be effective from 28 July 2025.
- 3.2 Agree to the changes to the Overview and Scrutiny Procedure Rules at Part 4 of the Constitution.
- 3.3 Agree to the changes to the rules for decision making during a period of serious and unexpected disruption at Part 7 of the Constitution.
- 3.4 Agree to the changes to the rules for public speaking in respect of planning applications at Part 4 of the Constitution.
- 3.5 Agree to the deletion of Rule 15.24 of the Committee Procedure Rules at Part 4 of the Constitution.

An amended version of the Constitution, with tracked changes is attached as **Annex 1**.

4 Introduction and Background

Changes to operational arrangements

- 4.1 Members will be aware that Sharon Shelton, Director of Finance and Transformation is due to retire from the Council on 31 August, with her last working day being 25 July 2025. On 12 May 2025 the General Purposes Committee agreed to delete the post of Director of Finance and Transformation with effect from 1 September and create a new post of Head of Finance and Section 151 Officer.
- 4.2 The changes agreed by the General Purposes Committee necessitate various changes to the Constitution to reflect the new structure. Under Article 10.03 (a) and (b) I am authorised to make any necessary changes to the Constitution to give effect to any decision of Council, the Executive or a Committee or consequential upon changes to operational arrangements. Members are nevertheless requested to note the (tracked) changes at **Annex 1**. These changes will become effective from 28 July 2025.

Overview and Scrutiny Procedure Rules

- 4.3 The Constitution provides for the appointment of 2 Vice-Chairs for the Overview and Scrutiny Committee. The Chair of the Committee shall be the Leader of the largest minority opposition group, currently the Liberal Democrats. One Vice-Chair will be a member of a political party which is not the political party of the Chair, currently the Green Party. At least one of the Vice-Chairs will be a member of the party forming the executive, so the remaining Vice-Chair is currently held by a member of the Conservative Party.
- 4.4 It is presently unclear which vice-chair will assume the role of Chair in the event that the appointed Chair is absent from the meeting. In order to remove this uncertainty, I have made certain amendments to the Overview and Scrutiny Procedure Rules at Part 4 of the Constitution.
- 4.5 The amendments provide as follows:-
- (a) The First Vice-Chair will be a member of a party forming the executive. The reference to 'a party' rather than 'the party' accommodates the scenario where 2 or more parties form the executive.
 - (b) The Second Vice-Chair will be a member of a political party which is neither the political party of the Chair nor a political party forming the executive.
 - (c) In the event that the Chair is absent from a meeting of the Committee, the First Vice-Chair shall preside at the meeting. If both the Chair and First Vice-Chair are absent then the Second Vice-Chair shall preside.
- 4.6 The proposed amendments are set out at paragraph 6 of the Overview and Scrutiny Procedure Rules at Part 4 of the Constitution at **Annex 1**.

Rules for decision making during a period of serious and unexpected disruption

- 4.7 The existing rules (at Part 7 of the Constitution) allow for decisions to be made in an emergency i.e. under the Civil Contingencies Act 2004 or otherwise during a period of serious and/ or unexpected disruption to the conduct of Council business.
- 4.8 Where the rule applies, a decision may be taken, without the matter being put to Council, Cabinet or Committee (as relevant) if the decision maker obtains the agreement of the Chair of the Overview and Scrutiny Committee; or (if they are unable to act) the Mayor, Deputy Mayor and Political Group Leaders.
- 4.9 This raises a procedural difficulty where (as currently) the Chair of the Overview and Scrutiny Committee is also one of the political group leaders. In practical terms this could prevent a decision being taken under the emergency provisions.

- 4.10 In order to rectify this anomaly, I propose to amend the Rules so that a decision may be taken with the agreement of the Chair of the Overview & Scrutiny Committee or (if they are unable to act), the Mayor, Deputy Mayor and Political Group Leaders (other than the Political Group Leader who is the Chair of the Overview and Scrutiny Committee).
- 4.11 The proposed amendments are set out at paragraph 1.3 of Part 7 of Constitution at **Annex 1**.

Rules for public speaking at planning committees

- 4.12 The current public speaking rules in respect of planning applications may be summarised as follows:-
- Any person (or a representative of a Parish Council) who has made a written representation will be given the opportunity to speak at the relevant meeting of the Area Planning Committee. The applicant/ their agent will also be permitted to speak.
 - Any such person who wishes to take advantage of the opportunity to speak must register with the Democratic Services team no later than 5.00pm on the closest working day prior to the meeting.
 - Each speaker will be limited to 3 minutes for each application. Where there is more than one application for a site, for example an application for planning permission and listed building consent, the time allowed will be limited to 3 minutes for each application i.e. 6 minutes in total.
 - If the case is deferred for a site inspection or for a further report speakers will be permitted to speak again at a subsequent meeting.
- 4.13 The existing rules do not limit the number of people who may speak. In practice this can lead to an imbalance of speakers, usually in favour of those seeking to oppose a proposal for development. In a number of recent cases it has also led to an imbalance between the time spent on public speaking and that spent by Members in debating and determining the application.
- 4.14 Having considered the approaches of other authorities to the issue of public speaking, we believe that our rules are at variance with the significant majority of other Councils, both within Kent and more widely. More commonly Councils will allow for an equal number of speakers for and against an application to ensure that their approach is fair and equitable.
- 4.15 In the publication 'Probity in Planning', the Local Government Association & Planning Advisory Service provide the following guidance on public speaking:-

'Whether to allow public speaking at a planning committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film

and broadcast committee meetings. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

'In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the local planning authority in writing.'

- 4.16 Commonly Councils allow for one speaker in favour of the application and one objector. If there are several persons wishing to speak (whether objectors or supporters) then the usual approach is to give preference to the first person who properly registers to speak. However, to provide some flexibility it is also common for the Democratic Services team to advise other people who wish to speak of the registered speaker (provided that person has provided consent to share their contact details) and, if that speaker is agreeable, then an alternative speaker can be put forward (provided that the alternative speaker has also made a written representation).
- 4.17 A number of Councils also allow for a representative of the relevant Parish Council to speak in addition to the other public speakers.
- 4.18 In order to bring the Borough Council's approach in line with common practice elsewhere, it is proposed to make the following changes to the public speaking rules at planning committees.

Parished areas

- 5 speakers will be permitted on each application, plus the applicant (or their agent) and a representative of the relevant Town or Parish Council in whose area the red line of the planning application is situated. In the event that the red line of the planning application straddles 2 Town/ Parish Council areas then representatives of both councils shall be permitted to speak.
- Any person who wishes to take advantage of the opportunity to speak must register with the Democratic Services team no later than 5.00pm on the closest working day prior to the meeting.
- Speaking rights will be allocated on a first come, first served basis.
- The order of speaking at Committee shall be as follows:
 - Nominated Town or Parish Council representative for the area in which the red line of the planning application is situated

- 5 public speakers
- Applicant or agent

Unparished areas

- 6 speakers will be permitted to speak on each application, plus the applicant (or their agent).
- The process for registration and allocation of speaking rights will be as per parished areas
- The order of speaking at Committee shall be as follows:
 - 6 public speakers
 - Applicant or agent

Speaking time

- Each public speaker will be allowed a maximum of 3 minutes. No additional time will be permitted in the event that there is more than one application for a site e.g., an application for planning consent with an accompanying application for listed building consent.

Deferrals

- If an application is deferred for a report from the Director of Central Services & Deputy Chief Executive under Rule 15.25 of the Committee Procedure Rules then public speaking will not be permitted at future meetings of the Area Planning Committee or full Council at which the application is considered.
- If an application is deferred for reasons other than a report under Rule 15.25 of the Committee Procedure Rules then public speaking will be permitted at future meetings of the Area Planning Committee at which the application is considered.

4.19 The proposed amendments to the rules are set out in Annex 1.

Committee Procedure Rules

4.20 Paragraph 15.24 of the Committee Procedure Rules provides as follows:-

‘If, during discussion at an Area Planning Committee of an item of business and before the vote is taken, not less than three members of the Council require it, the item shall instead be referred direct to the Council for decision.’

- 4.21 Elsewhere in the constitution (paragraph 15.25), provision is made for certain planning applications to be determined by full Council where an Area Planning Committee resolves to determine an application contrary to the advice of the Director of Central Services & Deputy Chief Executive i.e. where the advice indicates that there is likely to be a risk of significant costs awarded against the Council at appeal, or a potential liability to pay compensation.
- 4.22 Whilst the latter of these rules provides a sensible opportunity for members to reflect on a decision which might expose the Council to a risk of costs, the provisions of paragraph 15.24 are subject to no qualification relating to the proposed decision; rather they simply allow for 3 members of an Area Planning Committee to require that the matter be referred to full Council. Without good reason, the provisions of this paragraph may therefore be considered disproportionate and may indeed be employed to circumvent the powers delegated to Area Planning Committees. It is therefore proposed that paragraph 15.24 be removed.

5 Other Options

- 5.1 In respect of rules for public speaking at planning committees, the other options considered were:-
- Make no changes to the existing rules
 - Amend the rules so as to allow for a greater number of public speakers
- 5.2 In light of the comments made in paragraphs 4.3 to 4.5, it is not considered that the rules should remain unaltered, or that a greater number of public speakers should be permitted.

6 Financial and Value for Money Considerations

- 6.1 None arising from the proposals in this paper.

7 Risk Assessment

- 7.1 In respect of the rules for speaking at planning committees, the proposed amendments will bring the Council's rules for public speaking in line with recommended good practice as set out in the LGA/Planning Advisory Service guidance and will reduce the risk of any challenge to the determination of planning applications.

8 Legal Implications

- 8.1 Article 10 of the Constitution sets out the procedure for review and revision of the Constitution. Except in specified circumstances, changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

9 Consultation and Communications

- 9.1 If agreed, the amended rules in respect of public speaking at planning committees will be brought to the attention of applicants/ agents, Parish Councils and those parties making written representations.
- 9.2 The amended constitution will be published on the Council's website.

10 Implementation

- 10.1 The changes relating to the deletion of the post of Director of Finance and Transformation upon the retirement of the current postholder and the creation of the new post of Head of Finance and s151 Officer will be implemented with effect from 28 July 2025.
- 10.2 If agreed, the changes to the rules for public speaking at planning committees will be implemented with effect from the date of the next Area 1 Planning Committee on 31 July. In practical terms this will mean that the changes will take effect from publication of the agenda for that Committee meeting, which will occur on 23 July 2025, as this is the date that potential speakers will be notified of their right to register to speak.
- 10.3 For clarity it is not proposed that the changes would apply to the meeting of the Area 3 Committee on 10 July 2025.
- 10.4 The changes will be notified to Parish/ Town Councils and applicants, agents and residents (via the Council's website).
- 10.5 It is proposed that the remaining changes set out in this report will be implemented immediately.

11 Cross Cutting Issues

- 11.1 Climate Change and Biodiversity
 - 11.1.1 Limited or low impact on emissions and environment.
 - 11.1.2 Climate change advice has not been sought in the preparation of the options and recommendations in this report.
- 11.2 Equalities and Diversity
 - 11.2.1 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.

Background Papers	LGA/ Planning Advisory Service guidance – Probity in Planning
Annexes	Annex 1 – Revised constitution (with tracked changes)