

Working Paper 1 - Casting Vote Procedure

1. The current casting vote procedure as set out in Part 4.1 Council Procedure Rules Paragraph 19(5) states:

"Where there are an equal numbers of votes for or against, the Chairman will have a second or casting vote. The following convention is commended to Chairmen namely: - In the event of Chairmen having to exercise a casting vote they are urged to use their casting vote to maintain the status-quo. When a casting vote is used to achieve a change in the Council's policy the resultant Minute shall be in Group 'A' if supported by the requisition of a third of the Members of Scrutiny Committee, Committee or Group present."

2. Although the casting vote procedure is not commonly used, the wording has led to some confusion as to how it should be exercised, particularly in relation to planning. The legal advice we have received advises that the term 'status-quo' is ambiguous and has no strict legal definition; therefore it could be interpreted differently, depending on the meeting and the recommendation being proposed.
3. **We are therefore seeking agreement to remove reference to this convention and replace the wording as follows: "If there are equal numbers of votes for and against, the Chairman will have a second or casting vote, regardless of whether he has used his first vote. There will be no restriction on how the Chairman chooses to exercise a casting vote."**
4. This reflects the wording used in other Council's Constitutions and also the advice provided in 'Knowles on Local Authority Meetings'.

Recommendation:

That the wording in Part 4.1 Council Procedure Rules Paragraph 19(5) be amended to read:

"If there are equal numbers of votes for and against, the Chairman will have a second or casting vote, regardless of whether he has used his first vote. There will be no restriction on how the Chairman chooses to exercise a casting vote."

Working Paper II - Rural Forum

1. The Constitution currently states (Part 3.3.3 Executive Panels and Advisory Boards) that "the membership of the Rural Forum is 15 Members from the Wards in the Leader+ Programme Area, the Borden Ward Member, the Executive Member for Environment, one County Councillor, and 3 KAPC representatives". There is slightly different wording in Part 2 - Article 10, which omits reference to the County Councillor and instead references "various organisations".
2. Currently the confirmed **voting membership** is only those Members stated above, i.e. 15 Members from the Wards in the Leader+ Programme Area, the Borden Ward Member, the Cabinet Member for Environment, one County Councillor, and 3 KALC representatives.
3. The following organisations have been formally co-opted onto the Rural Forum, (one representative per organisation, apart from the Swale NFU), but **there is no reference made in the Constitution as to whether they have voting rights**, and this requires clarification.

Kent County Council
Swale National Farmers Union (NFU) - 3 representatives
Diocese of Canterbury
SEESwale
Action with Communities in Rural Kent
Greening the Gateway Kent and Medway
Council for the Protection of Rural England (CPRE)
Kent Rural Police Force

4. **Members may wish to consider whether any of the organisations listed above should be included as voting members of the Rural Forum** (i.e. one vote per organisation, irrespective of the number of representatives appointed). Any additional voting members would affect the quorum and we would therefore change Part 3.5 (Membership of Cabinet, Council Committees and Advisory Boards) to reflect this. Alternatively, Members may wish to confirm that the organisations listed in paragraph 3 above are non-voting co-opted representatives. A recommendation is set out below.
5. Members are asked to agree the future voting arrangements for the Rural Forum and the subsequent amendments to the Constitution, to ensure that the wording is consistent throughout.

Recommendation

That Part 3.3.3 and Part 2 - Article 10 be amended to read:

"That membership of the Swale Rural Forum is 15 Members from the Wards in the Leader+ Programme Area, the Borden Ward Member, the Cabinet Member for Environment (including rural issues), one County Councillor and 3 KALC representatives, together with non-voting co-opted representatives from various organisations."

Working Paper III - Treatment of quasi-judicial matters

1. At a recent Council meeting reference was made to the way in which quasi-judicial matters and particularly the treatment of minutes varies. As was stated at the meeting Planning minutes are never referred to Council.
2. In light of this, it seems opportune to set out how matters are currently handled and to consider the impact that this can have on the effective and efficient discharge of Council business. Specifically it is the General Licensing Committee which has the most potential to repeat previous debates.
3. The minutes of General Licensing Committee are currently referred on to Council for approval. This can undermine the authority of the General Licensing Committee and is not effective decision making.
4. To align treatment of quasi-judicial matters, **it is suggested that changes are made to the Terms of Reference of the General Licensing Committee. It would be appropriate to make amendments so as to give the General Licensing Committee authority to make policy.**
5. To achieve this it would be necessary to change:
 - Item 1 of the current terms of reference to reflect that the Committee can make policy rather than recommend to Council.
 - Item 7 would also need to be changed to give the Committee authority to make decisions on Hackney Carriage and Private Vehicles and Drivers rather than recommendations to Council.

Recommendations:

6. *The following sets out the suggested changes:*
 - *Item 1: to review and make decisions upon policy in licensing matters under the Miscellaneous Provisions Act 1982 Schedule 3 (Sex Establishments) and Miscellaneous Provisions Act 1982 Schedule 4 (Street Trading) and the statement of principles.*
 - *Item 7: to make decisions on matters relating to the Council's responsibilities in respect of Hackney Carriage and Private Hire Vehicles and Drivers.*

The current terms of reference are set out in Appendix 1 for ease of reference.

Appendix 1

1. To review and make recommendations to Council upon policy in licensing matters under the Miscellaneous Provisions Act 1982 Schedule 3 (Sex Establishments) and Miscellaneous Provisions Act 1982 Schedule 4 (Street Trading) and the statement of principles;
2. To discharge the Council's functions as a Licensing Authority under the Miscellaneous Provisions Act 1982, within agreed policies;
3. To arrange for the delegation of any of the licensing functions exercisable by the Committee to an Officer of the Licensing Authority subject to the limitations set out in Schedule 3 and Schedule 4 of the Miscellaneous Provisions Act 1982;
4. To consider enforcement action against Hackney Carriage and Private Hire Vehicle Operators under the Local Government Miscellaneous Provisions Act 1976 and Town Police Clauses Act 1984;
5. To discharge functions under Part C of Schedule 1 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000;
6. To exercise the Council's functions under any of the relevant statutory provisions relating to Health and Safety at Work etc. Act 1974, as far as they are the responsibility of the District Council, as specified in Section C of Schedule 1 of the local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).
7. To make recommendations to Council on matters relating to the Council's responsibilities in respect of Hackney Carriage and Private Hire Vehicles.

Working Paper IV

Review of Overview and Scrutiny

1. The current Scrutiny and Policy Overview Committees were established in 2009. Whilst the arrangements have worked well, there has been some confusion regarding the role of each committee, and at times a lack of clarity as to which committee an item should be considered by. There is also a need to review the 'call in' procedure to make this easier to understand and to bring them in line with best practice.
2. It would therefore seem timely to review the arrangements, to define more clearly the roles of each committee and update the call in procedure.
3. The Council is required to have at least one formal Scrutiny Committee, to satisfy the requirement under legislation (S.9F of the Local Government Act 2000 as inserted by the Localism Act 2011). It is therefore proposed that a new Scrutiny Committee is established, with revised terms of reference.
4. Experience has shown that 'pre-scrutiny' and involvement of scrutiny in matters that the Cabinet intends to consider is a very useful tool, and so it is proposed that a new committee is established which focuses on this area, in particular development of policy. This will be called the Policy Development and Review Committee. This will not be designated as an overview and scrutiny committee and therefore will not consider 'call in' items.

Policy Development and Review Committee

5. Membership – 11 Members; meet every 6 weeks if it has business to consider; elects its vice-chairman and vice-chairman at the beginning of each civic year.
6. The proposed terms of reference of the Committee is set out in Appendix I.
7. In addition, any non-executive members would be able to suggest a review of an existing or suggest a new policy by way of a motion to the full Council.
8. A policy shall not be re-considered by the committee within two years or before its built in review period, unless by resolution of the full Council or Cabinet, or as required by a change in legislation or national guidance.

Scrutiny Committee

9. Membership – 13 Members; meet monthly if it has business to consider; elects its chairman and vice-chairman at the beginning of each civic year.
10. The proposed terms of reference of the Committee is set out in Appendix II.
11. Existing arrangements regarding the production of an Annual report will continue.

Call in

12. Procedure Rule 15 has been updated to give clearer guidance as to what decisions are subject to call in. In addition, a call in form has been developed. These are set out in Appendix III respectively.

Recommendations

- 1. The Committee is asked to recommend the new Scrutiny and Policy Review and Development Committees, which will replace the existing Scrutiny and Policy Overview Committees.*
- 2. The Committee is asked to recommend the revised Call in procedure and to note the Call in form.*

Terms of reference for the Policy Development and Review Committee:

Within its terms of reference, the Committee will:

- (i) consider any built-in review of any existing policies, strategies or plans of the Council;
- (ii) consider existing policies in the light of changes to legislation or national guidance;
- (iii) consider other reviews of existing council policy referred by a Cabinet Member or by resolution of Cabinet, Scrutiny Committee or Full Council;
- (iv) consider proposals for new council policy referred by a Cabinet Member, Cabinet or Full Council;
- (v) provide pre-decision comment on policy decisions.

A policy shall not be re-considered by the committee within two years or before its built in review period, unless by resolution of the full Council or Cabinet, or as required by a change in legislation or national guidance.

The chairman may invite Cabinet Members and officers of the council or other persons to attend committee meetings to answer questions pertinent to the business of the committee.

Having considered an item, the committee may make recommendations to the person or body that referred the item to it; Cabinet, Cabinet Member, Officer of the Council or the Full Council.

The Policy Development and Review Committee shall exercise overall responsibility for any finances made available to it.

Annual Report – the Policy Development and Review Committee must report annually to the Full Council on their work and make recommendations for amended working methods if appropriate.

Terms of Reference for the Scrutiny Committee:

Preamble: the Scrutiny Committee satisfies the requirement under legislation (S.9F of the Local Government Act 2000 as inserted by the Localism Act 2011) to include provision for the appointment of one or more committees. The Scrutiny Committee plays a particular role in scrutinising the Executive’s annual budget proposals as part of the Budget and Policy Framework Procedure Rules (Part 4.3 of the Constitution refers).

General role: Within the terms of reference, the Committee will:

- (i) review or scrutinise decisions made, and performance of, the Cabinet and Committees and Council Officers both in relation to individual decisions and over time;
- (ii) review or scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (iii) require Members of the Cabinet and/or Committees and Chief Officers to attend before it to answer questions about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (iv) make recommendations to the Cabinet or appropriate Committee or Council arising from the outcome of the scrutiny process – it is expected that reviews of policy arising out of the work of the committee would be referred to the Policy Development and Review Committee;
- (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance;
- (vi) make reports or recommendations to the authority or the executive with respect to the of any functions which are not the responsibility of the executive;
- (vii) make reports or recommendations to the authority or the executive on matters which affect the authority’s area or the inhabitants of the area;
- (viii) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the executive;
- (ix) consider Councillor Call for Action requests in accordance with the Councillor Call for Action Protocol contained in Part 5 of this Constitution; and
- (x) in accordance with Section 19 of The Police and Justice Act 2006, to act as the Council’s “Crime and Disorder Committee” in terms of reviewing and scrutinising decisions made, or other actions taken, in connection with the responsible authorities discharge of their Crime and Disorder functions.

The Scrutiny Committee shall exercise overall responsibility for any finances made available to them.

Annual Report – the Scrutiny Committee must report annually to the full council on its work and make recommendations for amended working methods if appropriate.

Overview and Scrutiny Procedure Rule 15

Context:

A key element of the overview and scrutiny function is to hold the Cabinet (Executive) to account for the discharge of its functions. This can be achieved by a call-in facility that allows for the scrutiny of cabinet decisions, prior to their implementation.

Swale Borough Council provides for its elected Members to call-in these decisions prior to implementation. This is to ensure transparency of the decision making process of the Cabinet and officers in the decisions that affect the community.

The call-in procedure will not apply to the Licensing, Planning, Standards or Audit Committee and the following types of decisions:

1. Decisions of any Committee exercising quasi-judicial functions.
2. Decisions to be determined by the Council.
3. Decisions on applications for consents or permissions required under the Town and Country Planning Acts.
4. Decisions in respect of redundancy, disciplinary or grievance cases, codes of conduct for both staff and elected Councillors.
5. Any decision where there is a risk of financial loss, legal liability or a threat to public safety and action needs to be taken before the next appropriate Scrutiny Committee. In such circumstances consultation with the Chair of the Scrutiny Committee will take place on the imperatives involved.
6. Any decision relating to a matter in respect of which a deadline for action has been imposed by a third party, such as a Government deadline, which will expire before the next appropriate Scrutiny Committee, subject to consultation with the Chair of the Scrutiny Committee.
7. A decision of the Cabinet/Cabinet Member taken as a matter of urgency and in accordance with Paragraph 16 Call-in procedure and urgency below.
8. A decision made by an employee exercising delegated authority (within the Scheme of Officer delegations).
9. Decisions of the Appointments Sub-Committee.
10. A matter where the associated report has already been considered by the Scrutiny Committee who have endorsed the recommendations or made recommendations to the Cabinet/Cabinet Member/Officer.

A call in request will also not be agreed in the following circumstances:

- The call-in form is not completed correctly.
- The call-in form is received after the specified time.
- The reason for the call-in is unclear or does not relate directly to the decision specified on the call-in form.
- The reason for the call-in is a question, the answer to which can be found in the report relating to the decision which is being called in.

On occasions the Scrutiny Committee will wish to hold the Cabinet (Executive) or other Key-Decision maker to account in relation to the discharge of its functions which have staffing implications. Where this is the case, it should be noted that there are proper staff consultation processes. Swale Borough Council has a recognised trades union which represents the staff on matters of formal HR consultation.

When matters of this type are considered by the Scrutiny Committee the appropriate way to seek staff views is through the formal consultation process and this will be part of the report presented for consideration.

It is not appropriate for staff to lobby the Scrutiny Committee direct.

Call-in should only normally be exercised in exceptional circumstances; for example where the relevant chairman or non-executive members are satisfied that the executive decision maker failed to make the decision in accordance with the principles set out in Article 13 (Decision Making).

15. Call-in

(Except decisions outside the budget or policy framework which are set out in the Budget and Policy Framework Procedure Rules)

When a decision is made by the Cabinet, an individual Member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, or under joint arrangements, the decision shall be published, including, where possible, by electronic means, and shall be available at the main offices of the Council normally within four working days of being made. Members of the Scrutiny Committee will be sent copies of the minute or record of all such decisions within the same timescale, by the person responsible for publishing the decision.

That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless it is called in.

During that period, the Proper Officer shall call-in a decision for scrutiny by the Scrutiny Committee if so requested by the Chairman of the Scrutiny Committee, or in his absence, the Vice-Chairman, or any five non-Cabinet Members and shall then notify the decision-taker of the call-in.

The Scrutiny Committee is responsible for the co-ordination of 'call in' requests.

Requests to call-in a decision should be made using the call-in form with specific reasons. The Proper Officer will review the call-in form and determine the validity of the request, in-line with the limitations on call-in, as set out below. In any cases where the request is determined to be frivolous or defamatory the Proper Officer may reject the call-in.

Once the call-in has been agreed as eligible, the Proper Officer shall call a meeting of the Scrutiny Committee on such date as he may determine, where possible after consultation with the Chairman of the Scrutiny Committee, and in any case within five working days of the decision to call. The meeting will be held as soon as is reasonably practicable, whilst ensuring compliance with the Access to Information Procedure Rules.

If, having considered the decision, the Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns. If referred to the decision maker, they shall then reconsider within a further ten working days, amending the decision or not, before adopting a final decision.

If, following a request to call-in the decision the Scrutiny Committee does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the Scrutiny Committee meeting. Decisions that have already been subject to call-in cannot be called-in again.

16. Call - in procedure and urgency

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

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

The Mayor must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the head of paid service or his nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

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

Suggested Call in Form

NB: Please note that urgent decisions are not subject to Call in. (See paragraph 16 of O&S procedure rule 15)

Decision/Minute Number:		Deadline Date for Call in:	
Reason for making the Call in (*please continue on a separate sheet as appropriate)			
Please also tick the boxes as appropriate:			
Decision outside Policy and budgetary framework			
Inadequate consultation relating to the decision			
Viable alternative not considered			
Relevant information not considered			
Justification for the decision open to challenge on the basis of the evidence considered			
The Alternative proposal is (*please continue on a separate sheet as appropriate)			
Called in by:			
Chairman of the Scrutiny Committee			
Vice Chairman of the Scrutiny Committee, in the absence of the Chairman			
Five non Cabinet Members			
Name	Signature	Date	
Checklist			Yes/No
Does the reason and alternative proposal cover any of the types of decisions (1-10) in the Constitution Overview and Scrutiny Procedure Rules?			*Specify which exemption

Is the call-in form completed correctly?	
Has the call in form been received within the specified time?	
The reason for the call in is unclear or does not relate to the decision specified on the call-in form	
The reason for the call in is a question the answer to which can be found in the report	
Is the request frivolous or defamatory?	
Authorisation	
Discussed with scrutiny support/ Democratic Services	
Monitoring Officer is justification for call-in valid?	
Please return hard copy to: Democratic Services, Swale House, East Street, Sittingbourne.	For office use only Form received by: Date and time:

DELEGATIONS TO THE HEAD OF PLANNING

Development Control

- 1. To determine applications, to [agree minor variations to planning obligations](#), to respond to prior notifications and to make observations on behalf of the Borough Council in accordance with the provisions of the appropriate Development Plan or other adopted Borough Council Planning Policy Guidance.
- 2. The delegated powers in paragraph 1 above shall not be exercised in the following circumstances:
 - (a) applications where the decision of the Head of Planning would conflict with any written representation received within the specified representation period from:
 - (i) a Member of the Borough Council;
 - (ii) a statutory consultee; or
 - (iii) a Parish or Town Council;

provided that any [such](#) representations are, in the opinion of the Head of Planning based upon relevant planning considerations.

(b) applications where the decision of the Head of Planning would conflict with letters of representations from at least three separate addresses received within the specified representation period from persons or bodies other than those set out in (a) above, provided that any [such](#) representations are, in the opinion of the Head of Planning, based upon relevant planning considerations [and a relevant Ward Member requests that the application should be reported to the Planning Committee](#)

[\(see 2 \(i\) above\)](#) (c) applications submitted by Members of the Council and Members of Staff; and

(d) applications which the Head of Planning considers are sufficiently major or raise difficult questions of policy interpretation or any unusual or difficult issues which warrant Member determination.

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Trees, Hedgerows and High Hedges

- 3. To respond to notifications under the Town and Country Planning Act 1990 of intention to cut down, uproot, top or lop a tree within a Conservation Area or for trees covered by Tree Preservation Orders.
- 4. To determine Felling Licence applications.
- 5. To make and confirm, where there are no objections, Tree Preservation Orders.
- 6. Refusals of permission to cut down trees and approvals to lopping, silvacultural thinning of woodlands and routine cutting of coppice woodland not affecting draw trees.
- 7. Authority under Regulation 12 of the Hedgerows Regulations 1997 (as amended) and Section 214B of the Town and Country Planning Act 1990 (as amended) to enter onto land.
- 8. To respond to hedgerow notifications in consultation with the appropriate Ward Member(s).
- 9. Subject to consultation with the Head of Legal, to serve notices relating to dangerous trees,

Working Paper V

In accordance with Section 23 of the Local Government (Miscellaneous Provisions) Act 1976.

10. To consider and determine the Council's response to the formal complaints in relation to high hedges, to issue remedial notices and determine all other matters in relation to high hedges in accordance with Part 8 of the Anti-Social Behaviour Act 2003. Formatted: Space After: 0 pt

Enforcement

11. To serve Enforcement Notices and/or to issue "breach of condition notices" to secure compliance with planning conditions.
12. To serve Notices under the Town and Country Planning Act 1990 requiring the proper maintenance of land and the removal or obliteration of any placard or poster.
13. To make representations on behalf of the Council where appropriate to the granting or variation of Goods Vehicle Operators Licences under Section 12 of the Goods Vehicles (Licensing of Operators) Act 1995.
14. In cases of urgency between meetings to serve a "Stop Notice", a "Temporary Stop Notice", an Enforcement Notice or a Listed Building Enforcement Notice (following consultation with the Chairman or Vice-Chairman of the Planning Committee and/or the relevant Ward Member as appropriate).
15. To serve a requisition for information under Section 330 of the Town and Country Planning Act 1990.

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Conservation of Historic Environment

16. In cases of extreme urgency between meetings to resolve to secure the preservation of buildings under Section 3 Building Preservations Notice of the Planning (Listed Buildings and Conservation Areas) Act 1990.
17. To serve Urgent Works Notices and carry out works where it is considered urgently necessary for the preservation of a listed building.
18. To input to consultations by Church Authorities under the Ecclesiastical Exemption Regulations.

Miscellaneous

19. To exercise powers of entry in accordance with Sections 196A and 324 of the Town and Country Planning Act 1990 (as amended) and Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).
20. To screen and scope Environmental Impact Assessments, in accordance with The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended).
21. To determine applications for Certificates of Lawful Use or Development.
22. To carry out consultations under the procedure set out for minor developments by Government departments. Deleted: in Circular No. 18/84
23. To accept non-material amendments to approve schemes including minor amendments to conditions and planning obligations Formatted: Indent: Left: 0 cm
24. To approve details reserved in conditional permissions (facing materials, landscaping, joinery details etc.)
25. To determine whether an applications should not be considered in outline.