

General Purposes Committee Meeting		Agenda Item: 4
Meeting Date	16 June 2014 (note this report will also be presented to Council on 18 June 2014)	
Report Title	Constitution Review	
Cabinet Member	Cllr Andrew Bowles, Leader	
SMT Lead	Mark Radford, Director of Corporate Services	
Head of Service		
Lead Officer	Katherine Bescoby, Democratic services and Elections Manager	
Key Decision	No	
Classification	Open	
Forward Plan	Reference number:	
Recommendations	<p>1. That the Committee considers the working papers attached to this report and make recommendations to Council.</p> <p>(Recommendations from this Committee will be presented to Council on 18 June 2014.)</p>	

1 Purpose of Report and Executive Summary

- 1.1 Reviewing the constitution regularly ensures it is fit for purpose and maintains good governance and decision making arrangements. The review of the constitution is an on-going task and it is timely to look at the items presented in this report.
- 1.2 The report sets out the details of a review of the Council Procedure Rules to ensure that business is conducted effectively and efficiently. Whilst a review of all the procedure rules has been undertaken, it should be noted that regulations and the statutory Modular Constitution guidance means that the review has concentrated on those areas where the Council has discretion. It suggests various amendments to Part 4.1 of the Council Procedure Rules of the Constitution.
- 1.3 The report also sets out the consequential amendments to the Procedure Rules for scrutiny following the establishment of the new Committee. It should be noted that the new Policy Development and Review Committee is not designated as an overview and scrutiny committee and is therefore subject to the Council Procedure Rules as set out in Part 4.1 of the Constitution.

- 1.4 The report also sets out details of proposed changes to the Head of Planning's delegations which were referred back from Council in February 2014.
- 1.5 Working papers are attached on the following areas for each of these matters for the Committee to consider.

2 Background

- 2.1 Working papers have been prepared which set out the background to each of these proposals.

3 Proposals

- 3.1 The Committee is asked to give a view and make recommendations to the Council regarding the points raised in the Working Papers in the report.

4 Alternative Options

- 4.1 There is discretion on the proposals set out in the Working Papers; matters where there is no discretion in relation to law and statutory guidance do not form part of this report.

5 Consultation Undertaken or Proposed

- 5.1 The review of the Constitution is the role of this Committee. All members do receive all council agendas and reports and can attend the Committee. All recommendations from this Committee have to be agreed by Council.

6 Implications

Issue	Implications
Corporate Plan	Having an up to date Constitution is important for good governance and decision making.
Financial, Resource and Property	None at this stage, it is anticipated that the work arising out of the review will be contained within existing resources.
Legal and Statutory	Where there is a change as a result of legislation or regulation, or suggested on the basis of legal advice this is set out in the working papers.
Crime and Disorder	None identified at this stage.
Sustainability	None identified at this stage.
Health and Wellbeing	None identified at this stage.

Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	None identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Working Papers

8 Background Papers

None

Working Paper 1 – Council Procedure Rules

- 1.1 The paper provides details of the Council Procedure Rules and highlights areas where the Council has discretion over how business is transacted. It is good practice to review governance arrangements from time to time to ensure it is fit for purpose. It also helps maintain good governance and decision making.
- 1.2 There are Regulations and the Modular Constitution under the Local Government Act which limit the discretion to change the Procedure Rules and the report identifies this where necessary.
- 1.3 The following provides details of the suggested amendments to the Constitution and the Procedure Rules. The Committee is asked to give a view and make recommendations to Council set out below.

1.4 Procedure Rule 1 – Annual Meeting of Council –

There have been occasions when it has been necessary to add additional items to the agenda of the adjourned annual meeting of Council. It is suggested that this be formalised by the inclusion of the wording in Recommendation 1. It is also proposed that for ease of conducting business and clarity that Chairman and Vice Chairman of Committees be appointed at this meeting and appropriate wording (as shown in italics) is set out in Recommendation 1

Recommendation 1: that the following be added to Procedure Rule 1:

(8) Decide to establish at least one Scrutiny Panel, a Standards Committee and such other Committees/For a as the Council considers appropriate, deciding their terms of reference and size, deciding the allocation of seats in accordance with political balance rules and *appointing Chairman and Vice Chairman of all Committees of the Council as set out in Part 3.2.1 of the Constitution* and committee members in accordance with nominations from Group leaders, where applicable.

(12) Any plan or strategy which forms part of the policy framework requiring implementation from the start of the civic year

(13) Any other urgent item that cannot reasonably wait until the next ordinary meeting of the Council

N.B. This does not mean that any other variations to the policy framework cannot be considered at a later date during the civic year.

1.5 Procedure Rule 2- Election of Mayor and Deputy Mayor

Within the current wording is the phrase “prior to the February Council meeting, Group Leaders will meet to informally discuss nominations”. It is understood that this does not happen in practice and so it is suggested that this reference is deleted.

Recommendation 2: that the reference to informal discussions between the Group Leaders in Procedure Rule 2 is deleted

1.6 Procedure Rule 3 – Ordinary Meetings

The Council has discretion over the order of certain aspects of the agenda. Concerns have been raised over the treatment of reports when meetings have been protracted. Whilst there is no hard and fast rule, it is considered best practice that regard should be given to what items interest members of the public the most and placing them earlier on the agenda. It is recommended that:

Recommendation 3: The agenda is restructured to take reports before Motions and after questions submitted by the public, questions submitted by Members and the Leader’s statement.

1.7 Procedure Rule 7 – Attendance at meetings

A minor amendment is required to reflect the new Standards arrangements. It is recommended that:

Recommendation 4: the wording in Procedure Rule 7 “(with the exception of Standards Referral and Review Sub-Committees)” is replaced with “(with the exception of the Standards Hearing Sub Committee).

1.8 Procedure Rule 14 – Questions by Members

It has been suggested that for the efficient conduct of the meeting consideration be given to introducing a time limit for the consideration of questions by members. This could be accommodated and it is recommended that:

Recommendation 5: A maximum time limit of 30 minutes is introduced for Questions by Members. Questions to be placed on the agenda in order of receipt by the Proper Officer and will be dealt with on that chronological basis at the meeting. All questions will receive a written response.

1.9 Procedure Rule 15- Notices of Motion

To focus debate and to maximise the productivity of motions, it has been suggested that consideration could be given to amending the time limit for debate, restricting time limits for speeches and restricting motions at key budget meetings. Recent experience has indicated that the discussion of fees and charges and the budget setting meeting can adversely impact the conduct of other business. It is considered that as these are substantial matters in their own right no motions should be allowed at these meetings. It is recommended that:

Recommendation 6: A maximum time limit of 30 minutes debate for each motion is introduced. A revised time limit is introduced for speeches: 5 minutes by the proposer and 3 minutes per speaker including summing up

(right of reply). Any consequential amendments to Procedure Rule 17 Rules of Debate will be made to align time limits and length of speeches.

No more than 2 motions per meeting to be accepted and debated at any one meeting and no motions to be accepted, subject to the Mayor's discretion in respect of urgent matters, at key budget decision meetings. The latter are defined as the Budget setting meeting and the meeting setting fees and charges. Motions are to be dealt with on a first come first served basis and in order of receipt by the Proper Officer.

The Mayor may agree to late motions, in addition to a maximum of two that have been accepted for debate, being added to the agenda where he/she is of the opinion that they are urgent.

1.10 Procedure Rules 16 (Motions without Notice) and 17.8 (Motions which may be moved during debate) and 17.9 (Closure Motions)

Procedure Rule 16 contains model standing order provisions as issued under the Local Government Act 2000. There is an element of duplication within these procedure rules and it is suggested that these be consolidated in one place for ease of reference. There is no material change to the detail of Procedure Rule 16 with the exception that it is suggested that:

- (7) Extending the time limit for speeches and (17) Giving consent of the Council where the consent of the Council is required by these rules or the Constitution are removed. (Not referred to in Model Standing Orders)
- the procedural treatment of closure motions set out in Procedure Note 17.9 (i),(ii) and (iii) be included in Procedure Rule 16.
- Motions submitted in accordance with the scrutiny arrangements are added to those that may be moved without notice

Recommendation 7 –that Procedure Rule 16 is extended to include the wording currently contained in 17.9 (i), (ii) and (iii) and that Procedure Rules 17.8 and 17.9 be deleted.

1.11 Procedure Rule 17.4 –Amendments to Motions

In addition to those amendments proposed under Procedure Rule 15, it is suggested that the description emphasise that the treatment of recommendations contained in cabinet or officer reports to be considered by Council will be debated in the same way as amendments to motions; however, there is no restriction on what that amendment could be. It is also suggested that the treatment of amendments be clarified by removing the Mayor's discretion to permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the Council's business.

Recommendation 8 – that an explanatory note is added to Procedure Rule 17.4 relating to the treatment of recommendations in cabinet or officer reports considered by Council and the current provision is deleted which allows two or more amendments to be discussed together.

1.12 Procedure Rule 21 – Minutes

This Rule needs to be aligned with the Modular Constitution statutory guidance. To achieve this, existing paragraphs in this Rule need to be split into (i) and (ii) and 21(ii) include the phrase that this rule cannot be suspended.

Recommendation 9 – the existing paragraphs in Rule 21 are split into (i) and (ii) and 21(ii) include the phrase that this rule cannot be suspended and that consequential amendments are made to Rule 31 to reflect those Rules which are prescribed and cannot be suspended and regulations relating to recorded votes for Budget decisions.

Working Paper 2 – Scrutiny Procedure Rules

- 1.1 The paper provides details of the revisions required to reflect the new scrutiny arrangements agreed at Council on 19 February 2014. These are procedural in nature and reflect the decisions made previously. The revision to the call in procedure part of the Procedure Rules was agreed by Council so does not require any discussion or further recommendations.
- 1.2 The main changes relate to the election of Chairman and Vice Chairman at the beginning of the civic year (paragraph 6) and how policy review and development will work with the establishment of the Policy Development and Review Committee (paragraph 9) .
- 1.3 **It is proposed that the revised Overview and Scrutiny Procedure Rules set out in this paper be recommended to Council.**

PART 4.5 - OVERVIEW AND SCRUTINY PROCEDURE RULES

1. The number and arrangement for Scrutiny

The number and terms of reference of Scrutiny Committees will be agreed by Council. The Council agreed to establish a Scrutiny Committee at its meeting on 19 February 2014 (Minute No. 610/2/14).

The Terms of Reference of the Scrutiny Committee is set out in Part 3 of the Constitution and replicated at Appendix i. The Scrutiny Committee may from time to time appoint task and finish groups to assist with their reviews. Such groups may comprise of any non-Executive Members on the Council.

The Council also agreed previously the Guiding Principles of Overview and Scrutiny and these are attached as Appendix ii.

A procedure for agreement of final Scrutiny Reports is attached as Appendix iii.

2. Who may sit on a Scrutiny Committee

All Councillors, except Members of the Cabinet, may be appointed as Members of the Scrutiny Committee. However, no Member may be involved in scrutinising a decision in which he/she has been directly involved.

3. Co-optees

The Scrutiny Committee shall be entitled to appoint a number of people as non-voting co-optees on an ad-hoc basis.

A Scrutiny Committee may invite people other than those people referred to in the above paragraph to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and shall invite such people to attend. Attendance is, of course, entirely optional.

4. Meetings of the Scrutiny Committee

The number of ordinary meetings of the Scrutiny Committee will be determined by Annual Council at the beginning of the Civic year. In addition, extraordinary meetings may be called from time to time as and when appropriate. A Scrutiny Committee meeting may be called by the Chairman of the Scrutiny Committee, by any five Members of the Committee or by the proper officer if he/she considers it necessary or appropriate.

5. Quorum

The quorum of the Scrutiny Committee shall be set out as for committees in the Council Procedure Rules in Part 4 of this Constitution.

6. Election of Chairman

The election of Chairman and Vice Chairman will take place at the beginning of the Civic year.

7. Work Programme

The Scrutiny Committee will be responsible for setting their own work programme and in doing so they shall take into account the wishes of Members on that Committee.

8. Agenda Items

Any Member of a Scrutiny Committee shall be entitled to give notice to the proper officer that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. On receipt of such a request the proper officer will ensure that it is included on the next available agenda.

Any Member of the Council who is not a member of the Scrutiny Committee may give written notice to the proper officer that they wish an item to be included on the agenda of the relevant Committee. If the proper officer receives such a notification, then he will include the item on the first available agenda of the relevant Committee.

Any Member of the Council can refer any matter relating to local government or any crime and disorder affecting their ward to the Scrutiny Committee. This power is available only where the matter is of direct concern to the ward the Member represents; and can be referred even if no citizen has asked him/her to consider it; and there is no requirement for councillors in multi-member wards to agree. (A protocol will be drafted on arrangements for this as part of review of scrutiny arrangements).

The Scrutiny Committee shall also respond, as soon as their work programme permits, to requests from the Council and, if it considers it appropriate, the Cabinet, to review particular areas of Council activity. Where they do so, the Scrutiny shall report their findings and any recommendations back to the Cabinet and/or Council. The Cabinet and/or Council shall consider the report of the Scrutiny Committee within one month of receiving it.

9. Policy review and development

The role of the Scrutiny Committee in relation to the development of the Council's budget is set out in detail in the Budget and Policy Framework Procedure Rules.

In relation to the development of the Council's approach to other matters not forming part of its budget, the Scrutiny Committee may make reports and recommendations to the Cabinet.

10. Reports from Scrutiny Committee

Once it has formed recommendations on proposals for development, the Scrutiny Committee will prepare a formal report and submit it to the proper officer for consideration by the Cabinet. The report from the Scrutiny Committee will have been subject to the agreed protocol which gives the witnesses and portfolio holders' opportunities to draw attention to any factual inaccuracies in the report.

If the Scrutiny Committee cannot agree on one single final report to the Cabinet, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.

The Cabinet shall consider the report of the Scrutiny Committee as soon as is convenient, and in any event, within no more than two months of it being submitted to the proper officer.

11. Making sure that Scrutiny Committee reports are considered by the Cabinet

The reports will be included on the agenda for Cabinet meetings under the heading 'Scrutiny Committee Reports'. The reports of the Scrutiny Committee referred to the Cabinet shall be included at this point in the

agenda (unless they have been considered in the context of the Cabinet's deliberations on a substantive item on the agenda) within two months of the Scrutiny Committee completing its reports/recommendations. The Cabinet must respond within two months of receipt of the reports and recommendations.

Responses from the Cabinet, together with the recommendations from the Scrutiny Committee, may be considered at the next full Council.

Scrutiny Committee will in any event have access to the Cabinet's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from the Scrutiny Committee, following a consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

12. Rights of Scrutiny Committee Members to documents

(1) Rights to copies

Subject to paragraph (2) below, the Scrutiny Committee (including its Task and Finish Groups) will be entitled to copies of any document which is in the possession or control of the Cabinet or its Committees and which contains material relating to:-

- (a) any business transacted at a public or private meeting of the Cabinet or its Committees; or
- (b) any decision taken by an individual Member of the Cabinet.
- (c) any papers in relation to private decisions of the Cabinet before the decision is made.

(2) Limit on rights

A Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form; or
- (b) the advice of a political adviser.

13. Members and Officers giving account

(a) The Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any (other) member of the Cabinet, the head of paid service and/or any senior officer to attend before it to explain in relation to matters within their remit:

- i) any particular decision or series of decisions;
- ii) the extent to which the actions taken implement Council policy; and/or
- iii) their performance.

and it is the duty of those persons to attend if so required.

Where any Member or officer is required to attend a Scrutiny Committee under this provision, the Chairman of the Committee will inform the proper officer. The proper officer shall inform the Member or officer in writing giving at least 5 working days notice of the meeting at which he/she is required to attend. The notice will state

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

Where, in exceptional circumstances, the Member or officer is unable to attend on the required date, then the Scrutiny Committee shall in consultation with the Member or officer arrange an alternative date for attendance (to take place within a maximum of 5 days from the date of the original request).

14. Attendance by others

The Scrutiny Committee may invite people other than those people referred to in paragraph 13 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend. Attendance is of course entirely optional.

15. Call-in

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 Chairman 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).

Procedure:

(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 urgency procedure

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.

17. The Party Whip

Definition

“Any instruction given by or on behalf of a political group to any Councillor who is a Member of that group as to how that Councillor shall speak or vote on any matter before the Council or any Committee or Sub-Committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he speak or vote in any particular manner.”

When considering any matter in respect of which a Member of a Scrutiny Committee is subject to a party whip, the Member must declare the existence of the whip and the nature of it before the commencement of the Committee’s deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the Minutes of the meeting.

18. Procedure at Scrutiny Committee meetings

(a) The Scrutiny Committee shall consider the following business:

- i) Minutes of the last meeting;
- ii) declarations of interest (including whipping declarations);
- iii) consideration of any matter referred to the Committee for a decision in relation to call in of a decision;
- iv) responses of the Cabinet to reports of the Scrutiny Committee; and
- v) the business otherwise set out on the Agenda for the meeting.

(b) Where the Scrutiny conducts investigations, the Committee may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:

- i) that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- ii) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
- iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

(c) Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

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 discharge 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.

The Guiding Principles of Overview and Scrutiny

The key local principles forming the foundation of the overview and scrutiny function at Swale Borough Council are as follows:

1. The focus for scrutiny must be based upon the achievement of outcomes rather than upon process and procedures in order to develop a function that can make a real difference to the Council and the borough.
2. That Overview and Scrutiny be positive, objective and constructive, seeking to add value to any service that it considers. Scrutiny should acknowledge good practice where found and recommend improvements where necessary.
3. It is essential that the Council has an active and challenging scrutiny function that reflects corporate priorities regarding the provision of services.

The Four Principles of Good Scrutiny

As a matter of good practice, the Overview and Scrutiny function at Swale Borough Council incorporates the Four Principles outlined by the Centre for Public Scrutiny in all its work.

“To provide a ‘critical friend’ challenge to executive policy-makers and decision-makers”

- Clarity of purpose
- Constructive, robust and purposeful challenge
- A constructive working relationship with Cabinet, colleagues including external bodies
- Be open, transparent and inclusive in its actions

“Enable the voice and concerns of the public and its community”

- Ensuring an ongoing dialogue with the public to create an ‘accountability relationship’
- Representing and engaging diverse communities and addressing inequalities where they exist in the borough
- Promoting public understanding of the scrutiny role

“Independent minded governors’ should lead and own the scrutiny process”

- Champions of the value and potential for good public scrutiny as the vehicle for public accountability
- Active engagement of non-executive members in a scrutiny role
- Ensure adequate public accountability and community leadership

“Drive improvement in public services”

- Promote community wellbeing and improve the quality of life
- Harness public concern as a lever for addressing wider issues
- Co-ordinate reviews of policy and service performance in line with strategic objectives.

Procedure for finalising Scrutiny reports

- (1) That, following each Task and Finish Group Meeting, Co-ordinators update the next Committee meeting in writing.
- (2) That, where witnesses do not attend, they be given the opportunity to comment on the factual and other content of the draft report, on matters relating to their organisation. Written confirmation must be received, even if it is no comment.
- (3) That it be made clear to witnesses the nature of comments required and that their comments will be included within the report.
- (4) That the relevant Cabinet Member(s) be asked for their comments on the draft report.
- (5) That, where approval of the final report needs to be made outside of a meeting (for example via e-mail), Committee Members respond via Democratic Services.
- (6) That the use of a backstop date is adopted for all comments; for example, if no reply is received within five working days then this would be taken to mean no comment. This is to apply for Committee Members, Cabinet Members and witnesses.
- (7) That the order of approval be completed as follows:
 - Draft report to Scrutiny Committee
 - Draft report to Witnesses/Cabinet Member for comments
 - Draft report to Scrutiny Committee for final approval
 - Final report to Cabinet

Call in Form

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

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:		For office use only
Democratic Services, Swale House, East Street, Sittingbourne.		Form received by: Date and time:

Working Paper 3 –Revisions to Head of Planning delegation

- 1.1 This matter was previously considered at the last meeting of this Committee and recommendations were made to Council. Council asked that the matter be referred back for more information and further discussion with the relevant Cabinet Member and Committee Chairman.
- 1.2 The paper sets out further explanation of the reasons for the suggested changes to the delegation. These have been discussed with the Cabinet Member and the Chairman of the Planning Committee.
- 1.3 The variations to the delegations to the Head of Planning are needed to streamline planning applications and improve service delivery. Any delegated power is exercised by the Head of Planning subject to the overriding authority of Members and it is open to any Member to query how delegated powers have been exercised. Members' attention is drawn to Section 3.4 of the Constitution (Pages 42 and 43) which sets this out.
- 1.4 There are three proposed changes to the current delegations:

1 Planning Obligations (minor changes)

Minor variations to planning obligations such as a change of application number, correction of a typographical error, clarification of a term or amendment of a plan which does not conflict with what has already been approved by Members should not require a return to Planning Committee. In cases where there is any doubt the matter will be referred to the Chairman of the Planning Committee and reported to Planning Committee if required. A change is also proposed to allow minor amendments to conditions for the same reason.

2. Public and Member Objections (non-material)

Matters are currently reported to Committee if there are three or more objections from the general public based on relevant planning considerations. However, currently where an objection is raised by a Member of the Borough Council it does not have to be based on relevant planning considerations. The suggested amendment to 2 (a) (i) aligns both types of objection so that they have to be based on relevant planning considerations. Where any Member makes a representation on relevant planning grounds and requests that it be considered at Committee the matter will be referred to the Committee for decision.

Sometimes the objections received are not relevant to planning and therefore should not be considered as part of the determination process. It is proposed to reemphasise the existing constitution so as to discount non-planning related representations and where there are three or more legitimate objections from the public, based on relevant planning considerations, to refer these to the Ward

Councillor who will decide whether the application should be reported to Committee.

Examples of non-planning issues would be:

- Matters controlled under building regulations or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc.
- Private issues between neighbours e.g. land/boundary disputes, damage to property, private rights of access, covenants, ancient and other rights to light etc.
- Opposition to the principle of development when this has been settled by an outline planning permission or appeal
- Applicant's personal circumstances (unless exceptionally and clearly relevant, e.g. provision of facilities for someone with a physical disability)
- Previously made objections/representations regarding another site or application
- Factual misrepresentation of the proposal
- Opposition to business competition
- Loss of property value
- Loss of view

Ward members will be automatically consulted and given time to consider whether they would wish to refer the planning application to the Planning Committee for determination. Ward members would have the opportunity to discuss with the case officer how best to express planning related reasons should they wish.

If such non-material objections were to be received then they would be covered in the delegated report before permission was granted or refused.

From June 2014 onwards, Planning Committee reports will include a section setting out which Councillor called in the planning application and their reasons for doing so. This should enable Planning Committee members to focus more quickly on the key issues relating to a planning application.

3. Enforcement

As Members are aware there is a desire to respond more quickly and pro-actively to enforcement issues, allowing officers in consultation with the Chairman of Planning and the relevant Ward Member(s) will allow action to be taken as soon as possible without waiting for the next committee cycle. Anything of a controversial nature would be reported to Committee before action was taken. When enforcement action is taken one of the ways that it can be resisted is to say that Members did not authorise action. A clear scheme of delegations is the best way to ensure that there is no challenge on this basis.

1.5 It is proposed that the revised delegations set out in the attached document be recommended to full Council.

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) [any](#) Member of the Borough Council;

(ii) a statutory consultee; or

(iii) a Parish or Town Council;

provided that any [such](#) representations ~~from (ii) or (iii) above~~ are, in the opinion of the Head of Planning based upon relevant planning considerations, ~~;~~ [The Head of Development Services has raised concern about this change.](#)

(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](#)

~~(c) applications where a Borough Council Member has asked that the matter be referred to the Committee for determination and has confirmed that request in writing within the specified representation period; (see 2 (i) above)~~

~~(cd)~~ applications submitted by Members of the Council and Members of Staff; and

~~(de)~~ 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.

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,

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.

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 ~~extreme~~ urgency between meetings to ~~resolve to~~ serve a "Stop Notice", a "Temporary Stop Notice" ~~and to serve an~~ Enforcement Notices or ~~a~~-Listed Building Enforcement Notice (following consultation with the Chairman or the Vice-Chairman of the Planning Committee and a relevant Ward Member).
15. To serve a requisition for information under Section 330 of the Town and Country Planning Act 1990.

Conservation of Historic Environment

16. In cases of extreme urgency between meetings to ~~resolve to secure the preservation of buildings under to serve a Building preservation Notice 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 ~~in Circular No. 18/84~~ for minor developments by Government departments.
23. To accept non-material amendments to approve schemes including minor amendments to conditions and planning obligations
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.