

## **Selection and Constitutional Review Committee**

**19<sup>th</sup> May 2011**

### **Report of the Head of Legal and Democratic Services**

#### **Background and Principles of Political Balance and Administrative Structure**

##### **Purpose of Report**

To consider the political balance for the Authority and to agree a number of other constitutional matters which need to be recommended to the Annual Meeting of the Council on the 26<sup>th</sup> May 2011. The balance calculation as contained in the Appendix to this report has been agreed by Group Leaders.

##### **External Consultees**

None.

##### **Internal Consultees**

The Leaders of Groups on the Council.

##### **Financial/Legal and Human Rights Implications**

The Authority is required to adopt a political balance which complies with the Local Government and Housing Act 1989 and associated regulations. Alternative arrangements are permitted only if no individual Member votes against the proposal.

##### **Staffing Implications**

None.

##### **Environmental Implications**

None.

##### **Corporate Strategy**

Not relevant in the context of this report.

## Introduction

1. Appendix A contains details of the draft political balance calculation for 2011/12 which needs to be recommended by this Committee for agreement at the Full Council.

## Background and Principles of Political Balance

2. The Local Government and Housing Act 1989 (as amended) requires the Council to allocate seats on its Committees and Sub-Committees to political groups in proportion to their relative strengths on the Council.
3. In allocating seats a number of principles must be adhered to, namely:-
  - (a) A political group (where there is more than one) may not have all of the seats on a Committee or Sub-Committee.
  - (b) The majority of seats must be allocated to the majority group. This allocation is calculated by reference first, to the total number of seats available on ordinary Committees of the Authority and secondly, to the total number of seats available on ordinary Sub-Committees. It does not follow that this results in the majority group upon the Council (in this case the Conservative Group) having the majority of seats on individual Committees or Sub-Committees as the regulations further provide:-
    - (i) That the total number of seats on the Council's Ordinary Committees must be allocated in the proportion as is borne by the number of members of any group to the membership of the Authority as a whole.
    - (ii) The seats on the Council's Ordinary Committees and Sub-Committees as a whole must be allocated in proportion to the political groups' membership of the appointing Council.

**NB: It is possible for the Council to agree to make other arrangements but it is essential that no member votes against them.**

4. The Constitution provides for a number of constitutional matters to be considered at the Annual Meeting of the Council, which will be in the form of recommendations from the Selection and Constitutional Review Committee.

## **Executive – Portfolio Holder Responsibilities**

The Leader has signified his wish to amend the composition of Portfolio Responsibilities and further information on this issue will be provided in due course prior to the meeting. Under the new legislation the new Leader of the Council will be elected for a 4 year term and will have the responsibility for appointing Members to the Executive. The Leader will also appoint a Deputy Leader.

## **Change of Scheme of Delegation to the Development Control Manager/ Strategic Sites and Design Manager**

The current delegation arrangements to the Development Control Manager/ Strategic Sites and Design Manager require that any application made under the Town and Country Planning Act 1990, where this Council is the applicant, has to be determined by the Planning Committee. This also applies to the approval of non material amendments. The suggested changes at Appendix C to this report set out proposed changes to the Scheme of Delegation to allow changes to non-material amendments to be approved by Officers without having to be considered by the Planning Committee.

## **Review of Groups and Task Groups**

The Leader has given an indication that he wishes for the roles and responsibilities and weaknesses/strengths of the various Groups/Task Groups currently constituted to be reviewed to take account of best practice. Any changes would need to be endorsed by the Selection and Constitutional Review Committee and Council in July or October.

## **Conclusion**

Many of the following recommendations are implied through the political balance calculation and the allocation of seats on Committees, however for completeness, the Selection and Constitutional Review Committee is asked to consider the following recommendations.

## **Recommendations**

**That:**

- (i) the Committee recommends the adoption of the political balance of the Authority as contained in Appendix A to this report subject to the Council agreeing that the requirements of the Political Balance Regulations be not applied to the Membership of the Appeals and the Audit Committees and the Sub-Committee of the Licensing and Health and Safety Committee established under the Licensing Act 2003 and Gambling Act 2005.**
- (ii) the following Committees be constituted for the 2011/12 Municipal Year as detailed in Part 3 of the Constitution:**

**Audit**  
**Overview and Scrutiny**  
**Planning**  
**Selection and Constitutional Review**  
**Licensing and Health and Safety**  
**Appointments**  
**Appeals**  
**Standards (including an Assessment Panel; a Hearings Panel and a Review Panel)**  
**Joint Arrangements – Joint Transportation Board**

**NB: Details of Members appointed to Membership of each Committee etc by Group Leaders is shown in Appendix B. Note: This will be subject to amendments from Group Leaders**

- (iii) the Council appoint the Chairman and Vice Chairman for each Committee etc as shown in Appendix B**
- (iv) the Scheme of Executive and Council Delegations as set out in Part 3 of the Constitution be reaffirmed, subject to the inclusion of the changes set out within Appendix C in respect of the Development Control Manager/Strategic Sites Manager.**
- (v) the intention of the Executive to reconstitute the Forums and Groups as listed in Part 3 Appendix 2 to the Constitution be noted.**

Terry Mortimer  
Head of Legal and Democratic Services

**THE POLITICAL BALANCE CALCULATION  
FINAL ARRANGEMENTS  
MAY 2011**

**A.1 All Committees to which balance applies**

	<b>Committee</b>	<b>Seats/Committee</b>	<b>=</b>	<b>Total Seats</b>
1 x 19	Overview and Scrutiny	19	=	19
1 x 14	Planning	14	=	14
1 x 13	Licensing and Health & Safety	13	=	13
1 x 12	Selection	12	=	12
1 x 8	Audit	8	=	8
1 x 5	Appointments	5	=	5
			<b>Total</b>	<u>71</u>

**B. Percentage of group in relation to total membership of the authority**

43 members =		%
30 Conservative	=	69.76744
5 Ashford Independent	=	11.6279
5 Labour	=	11.6279
2 Liberal Democrat	=	4.65116
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Note: 1 Independent = 2.32558		<b>99.99998</b>
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## C.1 Allocation of Seats on Committees in proportion to Group strength

<b>Committee</b>	<b>Con</b>	<b>AI</b>	<b>Lab</b>	<b>LD</b>	<b>Ind</b>	<b>Total</b>
1 x 19 O&S	13	2	2	1	1	19
1 x 14 Planning	10	2*	1	1	0	14
1 x 12 Selection	9***	1*	1	0	1	12
1 x 13 Licensing, Health & Safety	9	1	2**	1	0	13
1 x 8 Audit	5	1	1	0	1	8
1 x 5 Appointments	3	1	1	0	0	5
<b>Totals</b>	<b>49(50)</b> (49.534882)	<b>8</b> (8.255809)	<b>8</b> (8.255809)	<b>3</b> (3.3023236)	<b>3(2)****</b> (2.32550)	<b>71</b>

NB: During the rounding up and down of the percentage figures, it was not possible to achieve overall balance, and

\*1 On the Planning Committee the Ashford Independent Group took the additional seat which was available to either them or the Labour Group.

\*\*2 On the Licensing and Health & Safety Committee the Labour Group took the additional seat which was available to either them or the Ashford Independent Group.

\*\*\*3 To enable the Conservative Group to have their overall entitlement of 50 seats across all Committees, the Liberal Democrat Group gifted their seat on the Selection and Constitutional Review Committee as the balance across Committees had resulted in the Liberal Democrat Group being allocated an additional seat over and above their entitlement of 3 seats.

\*\*\*\*4 The Group Leaders wished to retain the Independent Member on the Audit Committee (in line with the arrangement agreed during the last Council) to draw upon his previous experience as a Local Authority Auditor. The Conservative Group gifted a seat on the Audit Committee to the Independent Member to enable this arrangement to continue to apply. Furthermore under the draft calculation all Groups had received their allocations on the Overview and Scrutiny Committee and the Selection and Constitutional Review Committee and in both cases one seat remained to be allocated on each of them. Group Leaders agreed to allocate these to the Independent Member.

## C.2 Allocation of seats on all ordinary Committees to achieve overall proportionality

**Political Group entitlement in relation to all seats: 71**

<b>Conservative</b>	<b>49.534882</b>	<b>=</b>	<b>50</b>
<b>Ashford Independent</b>	<b>8.255809</b>	<b>=</b>	<b>8</b>
<b>Labour</b>	<b>8.255809</b>	<b>=</b>	<b>8</b>
<b>Liberal Democrat</b>	<b>3.3023236</b>	<b>=</b>	<b>3</b>
<b>Note -Independent – 2 seats to be allocated</b>		<b>=</b>	<b>2</b>

Total	<b>71</b>
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**D. Committees to which balance will not apply either as a direct result of statute or the Council agreeing, i.e. no member votes against this arrangement, on each occasion the Council adopts a revised political balance for the Authority.**

*1 x 15	Appeals	3 Members per meeting drawn on rota from a panel of 15 Members	=	15
+1 x 5	Standards	(Special arrangements apply as to the Membership of this Committee) ◇See note below re Sub-Committees	=	5
° 1 x 15	Community Partnership Groups		=	15
° 1 x 19	Policy Advisory Group		=	19
x 1 x 7	Joint Transportation Board		=	7
° 1 x 7	Local Development Framework Task Group		=	7
*1 x 8	Audit		=	8
+1 x 3	Licensing Sub-Committee (3 Member Panels)		=	3

\* Council's choice as to whether balance will apply to this Committee. **This may only happen if no member votes against this arrangement.**

+ Balance disapplied by statute.

◇ The Head of Legal & Democratic Services has been given delegated authority to set up an Assessment Panel, a Review Panel and a Hearings Panel, each comprised of 3 Members. All members will be drawn from those on the Standards Committee. Balance is, however, disapplied by statute.

° Balance does not apply to Groups.

x Due to the Joint Arrangements and the manner in which seats are allocated by the Kent County Council, it is impossible to have a balanced allocation of seats.

<b>Committee</b>	<b>Con</b>	<b>AI</b>	<b>Lab</b>	<b>LD</b>	<b>Ind</b>	<b>Total</b>
<b>*1 x 15 Appeals</b>	<b>10</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>15</b>
<b>+1 x 5 Standards</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>
<b>1 x 15 Community Partnership Group</b>	<b>10</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>15</b>
<b>1 x 19 Policy Advisory Group</b>	<b>13</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>19</b>
<b>*1 x 7 Joint Transportation</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>7</b>
<b>*1 x 7 Local Development Framework Task Group</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>7</b>

- \* + That the requirements of the 'Political Balance' regulations be not applied to the membership of the Appeals and the Licensing and Health & Safety Panels of 3 Members which are drawn for each meeting.













**Joint Transportation Board (7 members plus Portfolio Holder for Environmental Services (non-voting) and the Chairman of the Transport Forum (ex-officio))**

<b>Conservative (5)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (0)</b>	<b>Independent (0)</b>
(PH) (Non Voting)				
Chairman of Transport Forum (EO)				

**Grants Gateway Panel (5 members including the Portfolio Holder for Cultural Services & IT)**

<b>Conservative (3)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (0)</b>	<b>Independent (0)</b>
(PH)				

**Joint Consultative Committee (6 members) – One from each Group - two from the administration.**

Membership is to include the Leader or appropriate Portfolio Holder.

<b>Conservative (2)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (1)</b>	<b>Independent (1)</b>
				Smith

**Nature Conservation Forum (6 members including Portfolio Holder for Environmental Services)**

<b>Conservative (4)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (0)</b>	<b>Independent (0)</b>
(PH)				

**Community Partnership Group (15 Members)**

<b>Conservative (10)</b>	<b>Ashford Independent (2)</b>	<b>Labour (2)</b>	<b>Liberal Democrat (1)</b>	<b>Independent (0)</b>

**Parish Forum (6 members)**

Membership to include the Leader of the Council and the Leaders of Groups

<b>Conservative (2)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (1)</b>	<b>Independent (1)</b>
				Smith

**Transport Forum (7 members including the Portfolio Holder for Environmental Services)**

<b>Conservative (5)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (0)</b>	<b>Independent (0)</b>
(PH)				

**Member Training Panel (8 Members)**

<b>Conservative (2)</b>	<b>Ashford Independent (2)</b>	<b>Labour (2)</b>	<b>Liberal Democrat (1)</b>	<b>Independent (1)</b>

**Local Development Framework Task Group (7 Members)**

<b>Conservative (5)</b>	<b>Ashford Independent (1)</b>	<b>Labour (1)</b>	<b>Liberal Democrat (0)</b>	<b>Independent (0)</b>





**Development Control Manager/Strategic Sites and Design Manager**

**Executive Functions**

Nil

**Non-Executive Functions**

- 17.1 To determine applications for lawful use or development certificates save that the Portfolio Holder may request in writing that the determination of an application be elevated to the Planning Committee. In this event the delegation to the Development Control Manager/Strategic Sites and Design Manager to determine the application shall be suspended in relation to that application, unless the Portfolio Holder revokes his request in writing.
- 17.2 The determination of all applications and/or notifications (including applications for non material amendments and the discharge of conditions) made under the Town and Country Planning Act 1990 (as amended), the Listed Buildings and Conservation Areas Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004 (as amended) or any Orders or Regulations made thereunder with the exception of:-
- (a) the provisions of dwellinghouses where:
    - (i) the number of dwellinghouses to be provided is 10 or more; or
    - (ii) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (a) (i).
  - (b) the provision of a building or buildings where the floor space to be created by the development is 1000sq metres or more (Revised (a) & (b) Minute No 112/6/06 refers).
  - (c) applications submitted by or on behalf of a Member of the Council or Member of staff or his or her partner.
  - (d) applications which, in the opinion of the Development Control Manager/Strategic Sites and Design Manager, are sensitive and should be determined by the Planning Committee.
  - (e) applications submitted, promoted or sponsored by or on behalf of the Borough Council be submitted to the Planning Committee and be not subject to the Scheme of Delegation.

The exceptions listed above shall not include applications for non material amendments to permissions or consents and all applications to discharge conditions imposed on any permission or consent (see paragraph 17.2A below).

17.2A To determine all applications for non material amendments to permissions or consents and all applications to discharge conditions imposed on any permission or consent made under the Town and Country Planning Act 1990 (as amended), the Listed Buildings and Conservation Areas Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004 or any Orders or Regulations made thereunder.

- NB:**
- (i) In parished areas, if the Parish Council and the Ward Member together or the Ward Member acting alone consider that the application raises issues of significant local importance they or he/she may request in writing that determination of any application be elevated to the Planning Committee. In this event the delegation to the Development Control Manager/Strategic Sites and Design Manager to determine the application be suspended in relation to that application.**
  - (ii) In unparished areas, if the Ward Member considers the application raises issues of significant local importance he/she may request in writing that the determination of an application be elevated to the Planning Committee. In this event the delegation to the Development Control Manager/Strategic Sites and Design Manager to determine the application be suspended in relation to that application. (Minute No. 123/7/05 refers).**
  - (iii) Irrespective of the area, the Portfolio Holder may request in writing that the determination of the application be elevated to the Planning Committee. In this event the delegation to the Development Control Manager/ Strategic Sites and Design Manager to determine the application shall be suspended in relation to that application unless the Portfolio Holder revokes his request in writing.**

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**17.2B** To make minor amendments or corrections (of a clerical, grammatical or editorial nature only) to the wording of conditions, obligations, reasons, informatives, etc in order to give effect to the decisions of the Planning Committee.

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**17.3** To determine any request for approval or respond to any consultation submitted by the Concessionaires or Railtrack pursuant to the provisions of the Channel Tunnel Act 1987 where such request or consultation falls within the Terms of Reference of the Planning Committee and:

- (a) the application concerned attracts no objection as a result of neighbour/Parish Council or other consultation and
- (b) is one which the Development Control Manager/Strategic Sites and Design Manager considers should be approved and
- (c) is one which the appropriate Ward Member has not asked to be referred to the Planning Committee for determination.

17.4 To determine any request or application for approval under Schedule 6 of the Channel Tunnel Rail Link Act 1990.

17.5 To make all decisions pursuant to the Heritage Agreements entered into for the purpose of the Channel Tunnel Rail Link Act 1990, except in relation to the approval of sites for the relocation of listed buildings.

17.6 To make decisions or respond to consultations in relation to restoration schemes submitted for approval under the provisions of the Channel Tunnel Rail Link Act 1990.

17.7 To respond on the Council's behalf to consultations by the Kent County Council on any application or request for approval or other matter under the Channel Tunnel Rail Link Act 1990.

17.8 To agree any other scheme, plan or code submitted for approval under the Channel Tunnel Rail Link planning regime or to respond to consultations on the Council's behalf in respect thereof and to take any other action on the Council's behalf in relation to planning or heritage matters under the Channel Tunnel Rail Link Act 1990.

17.9 To exercise all functions of the Local Planning Authority under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended):

17.10 To respond to any application for a Goods Vehicle Operators' Licence.

17.11 To exercise all functions of the Local Planning Authority under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended).

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17.12 To decline to determine applications in accordance with the powers in Section 70A of the Town and Country Planning Act 1990 (as amended) and Section 43 of the Planning and Compulsory Purchase Act 2004 (as amended).

17.13 To determine whether to take, or not to take:

- (a) enforcement or other action under Part 7 of the Town and Country Planning Act 1990 (as amended).

- (ii) action under Section 215 to 219 of the Town and Country Planning Act 1990 (as amended) and
- (iii) action under Chapter 4 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

Save that the Portfolio Holder may request in writing that the determination in respect of a particular matter be elevated to the Planning Committee. In this event the delegation to the Development Control Manager/Strategic Sites and Design Manager to make the determination shall be suspended in relation to that matter, unless the Portfolio Holder revokes his request in writing.

- 17.14 To take all such emergency action as in his opinion may be required to deal with any dangerous tree.
- 17.15 To determine whether to serve a Hedgerow Retention Notice in response to the service upon the Council of a Hedgerow Removal Notice and in circumstances where a hedgerow is removed in contravention of the Hedgerow Regulations 1997 (as amended) to determine whether a Hedgerow Replanting Notice should be served upon the landowner concerned.
- 17.16 To determine whether injunction or criminal proceedings should be taken against any landowner for contravention of the Hedgerow Regulations 1997 (as amended).
- 17.17 To respond to consultation or notifications by the Forestry Authority.
- 17.18 To determine all matters relating to Tree Preservation Orders, trees in Conservation Areas and other landscape matters both for approval or refusal with or without third party representations.
- 17.19 Make and serve a Tree Preservation Order pursuant to the powers contained in Sections 198 and 201 of the Town and Country Planning Act 1990 (as amended).
- 17.20 To confirm any Tree Preservation Order where no objections have been received.
- 17.21 To undertake all matters associated with the High Hedge Legislation (Part 8 of the Anti-Social Behaviour Act) (as amended). Any cases considered to be exceptional be referred to the Planning Committee for decision. (Minute No. 71/6/05 refers).
- 17.22 Subject to the Portfolio Holder not having requested in writing that the response be made by the Planning Committee, to respond on the Council's behalf to:

(i) Kent County Council on any consultation made under [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2010](#), and directions made thereunder, and

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(ii) All other consultations of a planning nature and including those relating to planning applications and listed building consent applications in neighbouring authorities and those arising under the Planning Act 2008 [\(as amended\)](#) (for example national policy statements and applications for development consent).

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17.23 Power to decline to determine applications submitted under the Town and Country Planning Act 1990 [\(as amended\)](#) and the Planning (Listed Buildings and Conservation Areas) Act 1990. [\(as amended\)](#)

#### **Powers Relating to Functions that can be Executive, Non-Executive, Incidental to Either or Administrative**

Nil