



To the Members of the Borough Council

Dear Sir/Madam

Notice of a Meeting, to be held as a Virtual Meeting on Microsoft Teams in accordance with Regulation 5 of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police Crime Panel Meetings) (England and Wales) Regulations 2020 on **Tuesday 4th May 2021 at 7.00 pm.**

IMPORTANT INFORMATION ABOUT THIS VIRTUAL MEETING:-

Please note the public cannot physically “attend” a Virtual Meeting. However any member of the press and public may listen-in to proceedings at this ‘virtual’ meeting via a weblink which will be publicised on the Council’s website at www.ashford.gov.uk at least 24 hours before the meeting. Members of the press and public may tweet, blog etc. during the live broadcast as they would be able to during a regular Council meeting at the Civic Centre. It is important, however, that Councillors can discuss and take decisions without disruption, so the only participants in this Virtual Meeting will be the Councillors concerned, the Officers advising the Council and the Officers designated to address the Council on behalf of any members of the public who have registered in advance to ‘speak’ on the items to be considered. This will take the place of the usual procedure for public speaking at the Council’s regular meetings at the Civic Centre. In order to register for this, written notice must be given on the Council’s website at <https://www.ashford.gov.uk/councillors-meetings-and-elections/councillorsandmeetings/public-participation/application-to-speak-at-a-public-meeting/> or by email to membersservices@ashford.gov.uk by 10am on the Friday before the meeting.

Summary of the Scheme of Public Participation for Virtual Meetings (referred to as “VMs”)

The public cannot physically “attend” a VM.

H.M. Government has recently changed the public’s legal right to attend meetings into a right to hear, by means of technology, the Councillors attending the VM remotely. Written notice of a wish to speak (by means of the procedure below) at a VM must be given, either to membersservices@ashford.gov.uk or on the Council’s website at <https://www.ashford.gov.uk/councillors-meetings-and-elections/councillorsandmeetings/public-participation/application-to-speak-at-a-public-meeting/> by 10:00 hours on the Friday before the VM – i.e. 10:00 a.m. on Friday, 30th April 2021 Those registered to speak must submit to membersservices@ashford.gov.uk by 10:00 hours on the day of the VM, a copy of their speech in written, legible English. It should be no longer than 400 words, on a single side of A4 paper, printed in 12-point non-italic sans-serif font (e.g. Arial). Any text above 400 words will not be read out. Speeches received as above will be read to the VM by a competent Officer for and on behalf of the speakers, at the normal times and in the normal order during the VM (subject to the Chairman’s normal discretion).

IMPORTANT: An Officer reading any speech on behalf of any speaker shall have discretion to omit/edit out any inappropriate language, information or statements. If any defamation, insult, personal or confidential information, etc. is contained in any speech received from any speaker, and/or is read to the VM by an Officer, each speaker accepts by submitting their speech to be fully responsible for all consequences thereof and to

indemnify the Officer and the Council accordingly.

Yours faithfully



T W Mortimer
Solicitor to the Council and Monitoring Officer

Agenda

Page Nos..

1. **Election of Mayor**
2. **Declaration of Acceptance of Office by the Mayor**
3. **Appointment of Mayor's Chaplain**
4. **Vote of thanks by the Mayor for his Election**
5. **Vote of thanks to the Retiring Mayor and Mayoress**
6. **Response by the Retiring Mayor**
7. **Election and Appointment of Deputy Mayor**
8. **Declaration of Acceptance of Office by the Deputy Mayor**
9. **Apologies for Absence**
10. **Declarations of Interest**

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To declare any interests which fall under the following categories, as explained on the attached document:

- a) Disclosable Pecuniary Interests (DPI)
- b) Other Significant Interests (OSI)
- c) Voluntary Announcements of Other Interests

See agenda item 10 for further details

11. **To consider the Minutes of the Council Meeting held on the 15th April 2021**
12. **To receive any announcements from the Mayor**
13. **Confirmation of Cabinet Arrangements for 2021/22 by the Leader of the Council.**

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14. **To consider the Minutes of the Meeting of the Selection and Constitutional Review Committee held on the 26th April 2021 (to follow)**
15. **To consider the Minutes of the Meeting of the Cabinet held on the 29th April 2021 (to follow)**
16. **Short-Term Changes to the Constitution of the Council, to Assist Decision-Making during the Coronavirus Crisis** 11 - 24

DS
23 April 2021

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Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted).

However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency alone, such as:

- Membership of amenity societies, Town/Community/Parish Councils, residents' groups or other outside bodies that have expressed views or made representations, but the Member was not involved in compiling or making those views/representations, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: Where an item would be likely to affect the financial position of a Member, relative, close associate, employer, etc.; OR where an item is an application made by a Member, relative, close associate, employer, etc., there is likely to be an OSI or in some cases a DPI. ALSO, holding a committee position/office within an amenity society or other outside body, or having any involvement in compiling/making views/representations by such a body, may give rise to a perception of bias and require the Member to take no part in any motion or vote.]

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG's Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution alongside the Council's Good Practice Protocol for Councillors dealing with Planning Matters. See <https://www.ashford.gov.uk/media/2098/z-word5-democratic-services-constitution-2019-constitution-of-abc-may-2019-part-5.pdf>
- (c) Where a Member declares a committee position or office within, or membership of, an outside body that has expressed views or made representations, this will be taken as a statement that the Member was not involved in compiling or making them and has retained an open mind on the item(s) in question. If this is not the case, the situation must be explained.

If any Member has any doubt about any interest which he/she may have in any item on this agenda, he/she should seek advice from the Director of Law and Governance and Monitoring Officer, or from other Solicitors in Legal and Democracy as early as possible, and in advance of the Meeting.

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Ashford Borough Council

Minutes of a Virtual Meeting of the Ashford Borough Council held on Microsoft Teams on the **15th April 2021**.

Present:

His Worshipful the Mayor, Councillor J S Link (Chairman);

Cllrs. Anckorn, Barrett, Bartlett, Mrs Bell, Bell, Blanford, Buchanan, Burgess, Campkin, Chilton, Clarkson, Clokie, Farrell, Feacey, Forest, Harman, Hayward, B Heyes, T Heyes, Howard, Howard-Smith, Iliffe, Knowles, Krause, Ledger, Michael, Mulholland, Ovenden, Pauley, Rogers, Shorter, Spain, Sparks, L Suddards, Turner, Walder, Webb, Wedgbury, White, Wright.

Prior to the commencement of the meeting, His Worshipful the Mayor said a few words of tribute to the Duke of Edinburgh who had passed away the previous week. He then asked Members to respect a period of silence. The Reverend John Emmott then said prayers.

Apologies:

Cllrs. Cornish, Pickering, C Suddards.

In Attendance:

Chief Executive, Deputy Chief Executive, Solicitor to the Council and Monitoring Officer, Head of Culture, Tourism and Leisure, Executive Research Officer to the Leader of the Council, Civic Engagement Officer, Member Services Manager (Operational).

299 Exempt or Confidential Items

The Mayor asked whether any items should be dealt with in private because of the likely disclosure of Exempt or Confidential information. There were none.

300 Minutes

Resolved:

That the Minutes of the Meeting of the Council held on the 4th March 2021 be approved and confirmed as a correct record.

301 Announcements

(a) The Mayor

The Mayor said that first and foremost, he wanted to say how pleased he was to be back with everyone this evening as Chairman of this Full Council meeting. He was also happy

to report that his long awaited hip operation had been successful and he had been a good boy and followed the excellent example of the Leader by doing his exercises regularly! He wanted to thank everyone for their good wishes for a speedy recovery – the messages had been greatly received and he was delighted to be getting around once more. At the last Full Council meeting his Deputy had taken the Chair, and he wanted to thank Councillor Callum Knowles for stepping in.

It was difficult to believe that they had been fighting the COVID virus for over one year now and with the incredible work in rolling out the vaccine they may just be able to begin easing their way back to a more normal way of life. However, they should not let this moment pass without remembering and reflecting on the many family, friends and loved ones that had lost their lives during this most dreadful of times. Their hearts went out to each one and to all of those who continued to suffer.

It had, indeed, been a challenging year, but the limited times that he had been able to venture out into the communities across the Borough had been inspirational. Together with his wife, Jill, they had experienced the community spirit at events such as Egerton's Battle of Britain Ceremony and the humbling presentation of one of the Council's Ashford Achieve Award winners. Accompanied by the High Sheriff, they visited Ashford's Cinnamon Spice Restaurant, where the owner (even now) continued to provide free meals and support to the area. This was just one of the many examples of those who had given their all during the pandemic. Then they had embarked on a series of visits to meet and talk to the volunteers, owners and supporters of a number of the Borough's local attractions and businesses. This included a superb trip on the wonderful Kent and East Sussex Railway in Tenterden, where their team had been working hard to continue to provide a service. Then the enlightening visit to Green Farm in Shadoxhurst with their outreach and charity work woven into their business – it had been a bit of a difficult year but also a rather special one.

He and the Mayoress had also met up with their three charities, understanding their needs and sharing time with the teams and their clients. He was pleased that through the Members' Grant Scheme, these worthy charities had been helped with funding towards their projects, giving them the opportunity to move forward as they emerged from the pandemic. All of these communities, charities, businesses and individuals were making such a big difference across this great Borough and he was so proud of them all. The diversity of their skills, their passion and their dedication to the people they served and worked alongside was a credit to them all. Therefore, he wanted to thank all of them for their commitment in changing lives and making a difference across the Ashford Borough.

This would be his final Full Council before the Annual Meeting when he would hand over the Chains of Office to the next Mayor. So he thought he would finish by letting everyone know that he was planning 'The Mayor of Ashford's Sunday Service' - a special small gathering at St Mildred's Church, Tenterden. It was scheduled for Sunday 2nd May and would give him the chance to give thanks for his time in office – not quite a year! As the restrictions continued, he had ensured that this ceremony would be streamed live so that those who would have normally been with him could enjoy the occasion from the comfort of their own home.

In conclusion, as some may know, the Council's long serving Member Services Manager Keith Fearon was retiring the following week. Keith had worked for Ashford Borough Council for more than 35 years and had provided immaculate service and advice for a long list of Elected Members, and indeed Mayors, since 1986. They would all miss his sage advice and friendship and he was sure that colleagues would join him in wishing Keith well for a long and happy retirement.

(b) Leader of the Council

The Leader said that he wanted to take a few minutes to update colleagues on just a few points of interest because he was mindful that they were in the election purdah period and would therefore be respectful of this and restrict his comments to factual matters only.

He was pleased to report that Ashford had again been confirmed as the highest recycling Local Authority in Kent. The latest figures published by DEFRA showed that Ashford's recycling rate remained comfortably above the national target of 50%. The overall figure for Ashford (54.2%) placed them 48th in the entire country, 16th in the South East of England and top in Kent. Ashford's continued improvement could be attributed to a number of factors, but the most important was the residents who had actually engaged so much with recycling. They had strong contract management and excellent delivery by Biffa. This was something that all should be very proud of indeed.

The Leader wanted to say that as they now began to come out of Lockdown, it was right to reflect on how tragic it had been that so many had lost loved ones and friends to this dreadful disease. He knew that Ashford had handled the pandemic well and the team spirit had been very evident. Council colleagues had worked tirelessly with many partner organisations and volunteers - be they organised groups or individuals – and they could take pride in a job well done. Now however they had to face a number of challenges, not least of which was to promote the Borough's economic and social recovery. One particular aspect would be the creation of meaningful employment for the people of Ashford. As of the end of February 2021, the total unemployment for Ashford was at 6.1% (4725) which was in line with the Kent figure of 6.1% and slightly under the national figure 6.5%. Unemployment for the 18-24 age group however, was at 11.2% (990) which was 1.5% above the Kent average of 9.7% and 2.2% above the national average figure of 9%. It was clear therefore that they had much to do to encourage and incentivise more meaningful jobs and more apprenticeships for the Borough's young people.

He said he had been pleased to learn earlier that day that the Council would be able to undertake an additional road-cleansing programme for a number of the Borough's designated A roads. This programme would be undertaken over the next eight-week period and the cost would be funded by Ministry of Housing, Communities and Local Government. This was in recognition of the additional heavy use of the Borough's roads following the EU Transition and where there had been additional litter irresponsibly deposited along those routes.

302 Audit Committee – 16th March 2021

Resolved:

That the Minutes of the Meeting of the Audit Committee held on the 16th March 2021 be received and noted.

303 Appointments Committee – 8th March and 24th March 2021

(a) Appointments Committee – 8th March 2021

Resolved:

That the Minutes of the Meeting of the Appointments Committee held on the 8th March 2021 be received and noted.

(b) Appointments Committee – 24th March 2021

Resolved:

That the Minutes of the Meeting of the Appointments Committee held on the 24th March 2021 be received and noted.

304 Questions by Members of which Notice Had Been Given

(a) Question from Councillor Michael to Councillor Clokie, Portfolio Holder for Corporate Property and Projects

“It is good news that all units at Elwick Place are now let. It has taken many months for this to be realised, and I ask whether the return on investment (net of direct and indirect costs) is in line with the original business case for making the investment, and if not, what is the projected return and pay-back period? On the question of investments, I ask Members to be updated on all investments with their projected returns, and that a document with the latest update is circulated to Members since this would be seen to be good open governance. Given the sale of Carlton Road units, going forward is the strategy to dispose of some existing investments to realise other investment opportunities or to reduce debt?”

Reply by Councillor Clokie

“Councillor Michael asks a question which I know is of interest to a number of colleagues now that the shops are becoming to come alive again. The coronavirus pandemic has had a devastating effect on the UK’s hospitality sector over the last 14 months or so. Before this, the sector had already been severely affected by the lack of corporate funding which resulted in a number of restaurant chains going in to administration. Despite this the Council has never lost faith in the sector and has continued our efforts

to attract local restaurants and leisure businesses, rather than national brands, to fill the remaining ten units. This work has continued against the backdrop of business uncertainty caused by Brexit, an accelerating decline in High Street retail, as well as the pandemic bombshell that has thrown the UK economy in to turmoil. It is pleasing therefore to report that the units are all now signed, although one has withdrawn due to health reasons and we wish that individual and their family well. Despite the declining restaurant market, the Council has been able to secure competitive rental values, but these have not met the original business plan. It is however pleasing to note that as the country continues to recover from the pandemic, we have seen increased demand for the units at Elwick Place. This is evident from a number already being open and ready for business. The reduction in rental values is partly offset against the reduction in payment to the developer which is therefore reflected in the overall capital spend for the project. The revenue budget has taken in to account the signed leases and this will be regularly reviewed as part of the overall management of the portfolio. It is expected that the Picturehouse will re-open on the 17th May following the next stage of the easing of the Lockdown and I am sure colleagues will be pleased to hear that. This will further enhance this fantastic facility in which the Council has invested. All of this will be reflected in the Annual Investment Report which is presented to the Cabinet each September on the performance of the Corporate Property portfolio for the previous financial year. The Head of Corporate Property and Projects, in liaison with Members of the Economic Regeneration and Investment Board, has taken the opportunity to realise capital receipts with the sale of a number of units at Carlton Road. These receipts, less the cost of the blocks themselves, have helped to replenish the Council's reserves. The Council has reviewed, and will continue to, all of its assets as part of its agreed Asset Management Strategy. The Council will consider the opportunity to dispose of assets which are either not economic, or where the receipt will be beneficial to the Council's financial position."

Supplementary Question by Councillor Bernard Heyes

"Does the Portfolio Holder have any concerns about the disposal of one of the units at Carlton Road. Will disposal of an individual unit not make the whole thing less attractive to an institutional investor and as a consequence will this make the other units worth less? What does the Portfolio Holder think about this situation?"

Reply by Councillor Clokie

"I am not sure I agree with the premise. The Council is quite happy to have the income from these units and if it is appropriate to sell one because it is not economic to maintain or retain, or the price being paid is such that it improves our financial position, then we would be right to take it."

(b) Question from Councillor Michael to Councillor Shorter, Portfolio Holder for Planning and Development

"I know that the Head of Planning and his team are working hard to find an answer to the Stodmarsh issue, but in the meantime a number of developments are put on hold, and this has been further exacerbated by pandemic regulations causing delays to developments that were able to proceed. I ask will this annual loss of housing number have to be made up within the present five-year land supply, i.e. increase numbers in

remaining years, or can they be amortised over a longer period; and what does this housing number loss mean for the Local Plan and its subsequent revisions?"

Reply by Councillor Shorter

"I thank Councillor Michael for his question. In essence this question relates to whether, and to what extent, the national "presumption" in favour of sustainable developments will be engaged because of Stodmarsh and/or COVID – i.e. will our Local Plan remain up to date and relevant given a lack of housing delivery? The final issue is whether a revised Local Plan will need to "catch up" any lost housing.

I would like to start by clarifying that those planning permissions that have already been given, can continue to be built out and as such there will be a delay in the net effect of this delay of being able to give planning permissions for proposals within the Stour Valley catchment area. So, it is important to note in responding to this query that the Council is already in a position where the presumption is engaged on account of the current and published 4.8 year Housing Land Supply figure, published in October 2020. In terms of the national test, there are two national tests that could lead to the presumption being engaged. The first is the Five Year Land Supply Test and the second is the Housing Delivery Test. Dealing with Five Year Land Supply Test first, this is largely about assuming a rate of housing delivery on a range of sites within the five year period. These sites are largely made up of existing applications and allocated sites, but can also include assumed housing windfall sites – sites not allocated within the published Local Plan. However it is worth noting that the supply figure is also impacted by how many houses are delivered in past years and the current year of assessment. This is the objective part of the assessment. If housing completions fall below the amount needed to keep parity with the Land Supply figure, the amount of supply you can rely on is reduced, and as with Councillor Michael's premise, the supply figure is worse. In this context, non-delivery because of Stodmarsh or COVID will impact the five year test results but we will not know this until the July figures are published at the earliest – that is the routine monitoring period that was reviewed last year and published in October. Indeed, there may even be a lag of a year because the actual impact of Stodmarsh and COVID may not present itself until then, given the time between securing permission and getting buildings on the ground. For now, the Council position remains at 4.8 years of Housing Land Supply. This is the published position and the context on which we invite decision makers to judge applications – that's either the Local Planning Authority or an Inspector. Unless changed by an appeal, this will remain our position. Our published position of 4.8 years Housing Land Supply doesn't assume a lack of housing delivery because of Stodmarsh or COVID, as there is nothing to suggest that the market won't catch up and deliver at a higher rate than traditionally is the case. There is no impediment, other than Stodmarsh, to not achieve this higher rate of housing delivery and we are content to continue to rely on the 4.8 year position until we need to change it because of either an appeal, or known housing completion figures. Turning to the Housing Delivery Test because although not mentioned in question, it is very relevant here. It is the other national test that could lead to the presumption being engaged. In practice this is a much more objective test – i.e. it relates to actual completions as opposed to assumptions about future sites. Falling below a certain amount of housing completions this year, would mean that we fall into the position of where the presumption would apply next year (July onwards). This is irrespective of whether we can achieve a five year supply or not, they are linked but they are also

separate tests. However, again, we will not have an answer to this until the Housing Monitoring is done, which will be in June or July to keep consistency with other years. Regarding the impact on a future Local Plan, in simple terms and as currently understood, any revised Local Plan would not need to “catch up” housing that wasn’t delivered as per meeting our housing need under what will be the past regime. The current regime, which the Plan will be assessed against, urges the Council to meet our nationally derived “top down” housing targets, provided by Government. This does not require us to look at past housing delivery and rectify any lack of delivery - in practice it has already been taken into account. However, the Plan cannot proceed at this time because of the Stodmarsh issue. At the moment this issue limits our ability to plan future sites. Broad locations as a solution to the Stodmarsh issue cannot be demonstrated so there is no plan led solution that can be progressed at this point. I thank Councillor Michael for his acknowledgement right at the beginning of his question about the efforts that the Planning team are undertaking at the time. I would just like to make the global point that Ashford Borough Council is not working in isolation. We are working with other Boroughs and Districts as well as other organisations outside of the Council on a broad approach to addressing the problem we have in front of us.”

Supplementary Question by Councillor Michael

“I would like to thank Councillor Shorter for answering my question so comprehensively and I have picked up all of the bits he said. The one supplementary question I have is that given the Stodmarsh issue, are we, or any other Councils, banding together to lobby the Government to make the point that we have some specific circumstances peculiar to us and that we need some lee-way on this so that we don’t get caught out with the presumption?”

Reply by Councillor Shorter

“Yes, I would like to reassure Councillor Michael, and other Councillors, that we are indeed addressing this beyond the local area and indeed the Leader raised this very matter at the Ashford Strategic Delivery Board last Autumn. The matter has been taken to the highest level and those communications continue, but I can’t discuss those in detail at this time.”

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Agenda Item No: 16

Report To: COUNCIL

Date of Meeting: 4 May 2021

Report Title: **Short-Term Changes to the Constitution of the Council, to Assist Decision-Making during the Coronavirus Crisis**

Report Authors & Job Titles: Terry Mortimer - Solicitor to the Council & Monitoring Officer;
Jeremy Baker - Principal Solicitor (Strategic Development) & Deputy Monitoring Officer

Portfolio Holder Cllr. Paul Bartlett
Portfolio Holder for: Legal and Democracy



Summary: After 6 May 2021, the emergency Coronavirus Regulations allowing virtual meetings, and the Council's Procedure Rules and Scheme of Public Participation for Virtual Meetings, will expire. In-person meetings are expected to resume, but it is not possible for the full Council to meet in person on Council premises in a COVID-secure way. Therefore, this report recommends a short-term extension to the powers of the politically-balanced Selection and Constitutional Review Committee, to enable it to make appropriate decisions that would otherwise require a meeting of the full Council to be convened in a very large off-site hall.

Recommendation: To resolve that, until the Annual Meeting in the year 2022, or until it becomes possible to hold full Council meetings in the Council Chamber in a COVID-secure way (whichever is earlier):-

- (i) the Constitution be amended to add to the terms of reference of the Selection and Constitutional Review Committee decisions on the matters highlighted in yellow in the Appendix;
- (ii) the Monitoring Officer and the Deputy Monitoring Officer be authorised to make all necessary consequential amendments to the Constitution to give effect to the above;
- (iii) the Chief Executive be authorised, in consultation with the Monitoring Officer, the Executive Leader of the Council and the Chairman of the Overview and Scrutiny Committee, to:-
 - (a) extend (with or without modifications) the Procedure Rules for Virtual Meetings, and the Scheme of Public Participation for Virtual Meetings, to facilitate the continuation of Virtual Meetings (if permitted by law); and/or
 - (b) adapt the Procedure Rules for Virtual

Meetings, and the Scheme of Public Participation for Virtual Meetings, to suit in-person meetings held with COVID-secure arrangements from time to time.

Policy Overview:	<p>The Constitution sets out the procedures by which the Council's business is conducted.</p> <p>One of its purposes is to "enable decisions to be taken efficiently and effectively" (Art. 1.02.5).</p> <p>The Monitoring Officer has a duty to review the Constitution and keep it up to date, and this includes ensuring that the Constitution provides an efficient and legally-sound framework for the conduct of Council business.</p>
Financial Implications:	<p>The ability to make decisions in an effective and efficient manner contributes to sound financial management and the minimisation of risks to the Council's financial position.</p> <p>Holding fewer meetings of the full Council will reduce the need to hire large halls/rooms, public address systems etc. from third-party providers, thus reducing the additional costs arising which have not been budgeted for.</p>
Legal Implications:	<p>The law requires certain very important decisions (such as the election of a Mayor; the setting of the annual Budget and Council Tax; the adoption of a local plan or a neighbourhood plan) to be taken by the full Council. These will not be changed by the proposals in this report, and the law will over-ride any conflicting provision.</p> <p>Councils have freedom to decide the level at which other decisions are taken. The Council's Constitution currently requires a significant number of such decisions to be taken by the full Council, when this is not a legal requirement. The Council has power to amend its Constitution, and the proposals in this report seek to reduce the need to call meetings of the full Council during the next 12 months.</p>
Equalities Impact Assessment:	<p>The recommendation relates only to procedures and levels of decision-making within the Council, and does not detrimentally affect persons with protected characteristics.</p>
Data Protection Impact Assessment:	<p>No new material implications with regard to personal data.</p>
Risk Assessment:	<p>The consequences of not extending the powers of the Selection and Constitutional Review Committee as recommended are explained in the report.</p>
Sustainability Implications:	<p>Holding fewer meetings of the full Council will reduce travel to and from third-party premises by Members, Officers and others such as public address system suppliers.</p>
Other Material Implications:	<p>None</p>

**Exempt from
Publication:**

No

**Background
Papers:**

Letter to Council Leaders of Principal Councils in England from Luke Hall MP, Minister of State for Regional Growth and Local Government, MHCLG, dated 25 March 2021.

Report Title: **Short-Term Changes to the Constitution of the Council, to Assist Decision-Making during the Coronavirus Crisis**

Introduction and Background

1. The Council's Constitution is a fundamental part of the legal framework within which the Council operates. Its purposes include enabling decisions to be taken efficiently and effectively, and ensuring that those responsible for decision-making are clearly identifiable to local people. Therefore, the Constitution sets out the responsibilities for decision-making within the Council.
2. The law divides the functions of councils into "Council functions" and "Executive functions". Under the arrangements which this Council operates, Executive functions are vested in the Executive Leader, and he may exercise them himself or make arrangements as to how they are to be exercised. **This report does not deal with Executive functions**, but only with Council functions (including functions which councils may allocate to their Executive Leaders, which have not been so allocated in this Council's Constitution).
3. In line with legal requirements, the Constitution requires the most important decisions to be taken by the full Council. These include:-
 - electing the Mayor and Deputy Mayor
 - electing the Executive Leader of the Council
 - establishing committees and their sizes
 - setting the policy framework, the annual Budget and the Council Tax
 - adopting plans and strategies for borrowing, investment and capital expenditure
 - consulting on, submitting and adopting a Local Plan
 - making a Neighbourhood Plan (after a referendum result in favour).
4. Councils have freedom to decide the level at which all other decisions are taken – e.g. by committees, by sub-committees, by joint committees (such as the Joint Transportation Board) or by officers.
5. The Constitution currently requires a significant number of decisions to be taken by the full Council even though this is not a legal requirement. A full list of the decisions which either the law and/or the Constitution require the full Council to take is in the Appendix.

The Covid-19 Coronavirus Crisis: Lock-downs

6. On 23 March 2020, the Prime Minister announced a countrywide "lockdown" with immediate effect. This, together with public health advice issued by the Government and Public Health England, made physical meetings of councillors, and the physical attendance of members of the public and Press, contrary to over-riding interests of public health and effectively impossible.
7. The Secretary of State for Housing, Communities and Local Government then made The Local Authorities and Police and Crime Panels (Coronavirus)

(Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (“the Regulations”) on 1 April 2020.

8. With effect from 4 April 2020, the Regulations changed the long-standing legal requirements upon councils and their committees and sub-committees to hold physical meetings, and to permit the Press and public to attend those meetings.
9. As an alternative, the Regulations introduced a new legal type of meeting, namely a meeting of persons not present in the same place, and/or held in “more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers”. This type of meeting became known as a “Virtual Meeting”.
10. In preparation for holding Virtual Meetings, the Chief Executive, acting under her delegated authority for Urgent Matters, approved Procedure Rules for Virtual Meetings, and a Scheme of Public Participation for Virtual Meetings, on 20 April 2020.
11. The Council was the first in Kent, and one of the first in the country, to hold a Virtual Meeting, when the Planning Committee met on 22 April 2020 and resolved to grant planning permission for the Newtown Works Film Studios. Since then, dozens of successful Virtual Meetings have been held with very few problems, and many interested parties and members of the public have been able to watch the live-stream of such meetings at home, by courtesy of the internet.
12. Public participation in the Council’s Virtual Meetings has been secured by enabling public speakers to submit their written speeches in advance, followed usually by an officer reading the speech at the meeting, or less frequently by the speaker speaking by telephone.

The Covid-19 Coronavirus Crisis: The Roadmap

13. The Regulations were introduced for a temporary period to address the Coronavirus crisis, and were subject to a “sunset clause” under which they will expire after 6 May 2021. Thereafter - in line with the long-standing general understanding of the law - physical meetings of councillors will need to be held once again.
14. On 21 April 2021, the High Court heard an expedited legal claim brought by Lawyers in Local Government and other sector representatives, seeking a judicial declaration that councils may hold meetings virtually even without the Regulations. The judgment is expected shortly, but it has not come in time to avoid the need to prepare prudently for a negative outcome of the case, by publishing this report to the Council.
15. The local government sector lobbied the Government to extend the Regulations, or create new legislation, to expressly allow Virtual Meetings to continue. However, on 25 March 2021 the Ministry of Housing, Communities and Local Government wrote to Council Leaders that the Government had “concluded that it is not possible to bring forward emergency legislation on this issue at this time.”

16. The Minister's letter reminded councils that their options to deal with this situation include delegating more decision-making (he suggested, to "key individuals such as the Head of Paid Service") in order to minimise the number of physical meetings needed. Of course, the Council already has a well-established delegation to the Chief Executive for use in case of Civil Emergencies and/or Urgent Matters.
17. The Minister's letter also stated that councils can "hold meetings in person ... during the pandemic with appropriate measures in place". This means applying "the COVID-19 guidance to ensure meetings take place safely", and the Government updated its "guidance on the safe use of council buildings" to highlight ways to minimise the risks from in-person meetings. He pointed out that from 17 May, the Government's Roadmap will allow a much greater range of indoor activity to resume.
18. Detailed consideration has been given to this by officers. Initial inspections indicate a maximum Council Chamber capacity of 22 persons. Holding Cabinet and Committee meetings in line with this parameter will be challenging, but feasible, and will require the specific persons in attendance for each agenda item to be closely controlled and managed during meetings.
19. Until social distancing requirements are relaxed somewhat, it is highly unlikely to be possible to accommodate all non-Committee members who might wish to attend Committee meetings, such as Cabinet meetings. Investigations are also continuing into the extent to which in-person public attendance will be possible at the larger Committee meetings. It will be necessary to retain the arrangements that have operated well for public speakers to submit their speeches in advance for an officer to read out at the meeting; the possibility of dialling-in to speak 'live' will be examined further.
20. These matters are being investigated further, in advance of the Planning Committee's scheduled meeting on 19 May and the Cabinet's scheduled meeting on 27 May, which seem likely to be the first in-person meetings for well over a year.
21. In parallel with the Regulations, the Council's Procedure Rules for Virtual Meetings, and Scheme of Public Participation for Virtual Meetings, will also expire after 6 May 2021. If the High Court case is successful, it will be necessary to extend these (possibly with modifications to reflect the Court's judgment and/or other factors), in order to continue holding effective and lawful Virtual Meetings after 6 May.
22. Alternatively, if the High Court case is unsuccessful, it will be necessary to convert the Procedure Rules for Virtual Meetings, and the Scheme of Public Participation for Virtual Meetings, into new versions to suit in-person meetings held with COVID-secure arrangements, and thereafter to review and modify these as COVID requirements change.
23. Therefore it is recommended that, depending on the outcome of the High Court case (or indeed any new legislation that might follow it), the Chief Executive be authorised to extend, introduce and modify Procedure Rules and public participation arrangements to suit whatever types of meetings are to be

held, in consultation with the Monitoring Officer, the Executive Leader of the Council and the Chairman of the Overview & Scrutiny Committee.

24. However, given the size of the Council Chamber, full Council Meetings in the Chamber will simply not be possible while numbers continue to be restricted due to social distancing requirements. There are no other places where the full Council can meet in person on Council premises in a COVID-secure way. The Budget meeting of the Council, for example, will thus have to be convened in some large off-site hall (at least three times the size of the Council Chamber) hired for the purpose and equipped with public address, visual display and broadcast/streaming technologies, as well as ancillary rooms for connected purposes such as robing.
25. Normally, in addition to the Budget Meeting, and the Annual Meeting of the Council (which has been brought forward to this meeting), there would be four other meetings of the full Council each year. In order to reduce this number and ensure that off-site full Council meetings only need to be convened for decisions that really require the full Council's attention, a short-term extension to the powers of the Selection and Constitutional Review Committee ("S&CR") is recommended.

Proposal: Additional Powers for the Selection and Constitutional Review Committee ("S&CR")

26. The purpose of this proposal is to enable S&CR to make appropriate decisions that would otherwise require a meeting of the full Council to be convened. This would not apply to any of the decisions that the law requires the full Council itself to make, but it would allow other decisions to continue to be taken efficiently and effectively without full Council meetings.
27. The decisions that are proposed to be added to S&CR's terms of reference for a temporary period are those listed in the Appendix and shaded yellow. Those which are not shaded yellow would remain with the full Council.
28. S&CR has 12 members and is the obvious 'small version' of the full Council to choose for this role:-
 - (a) S&CR is small enough to be able to meet in the Council Chamber in a COVID-secure way, with a very limited number of members of the public and Press present. It is hoped that any relevant Ward Member(s) for particular items of business could also be accommodated, and this is being investigated as explained above.
 - (b) At the same time, S&CR is large enough to have representation from all political groups in a proportionate way, in line with the Political Balance calculations. Meetings of S&CR can therefore readily consider and debate views from across the spectrum of Members.
29. Some Members will no doubt recall that the former name of S&CR was "Selection and Recess Committee", because its role included meeting during recess periods between Committee cycles (e.g. in the summer holidays) to decide matters requiring decision when the ordinary Committees were not meeting. This proposal is similar to that previous role.

30. It is recognised that this state of affairs should not become a permanent or semi-permanent arrangement, with S&CR performing the full Council's powers in the medium term. Therefore, a "sunset clause" is proposed, under which S&CR's temporary additional terms of reference, outlined in this report, will **end at the Annual Meeting in the year 2022** – i.e. in 12 months' time. This will be a shorter period than the period for which the Regulations were introduced by the Government last year.
31. In the meantime, it is possible that Government guidance on indoor meetings and the use of Council buildings in a COVID-secure way may change sufficiently to make it possible to recommence meetings of the full Council in the Council Chamber in a COVID-secure way before May 2022. If so, then the temporary additional terms of reference of S&CR should end at that point in any event.

Conclusion and Recommendation

32. Following the Government's decision not to extend the Regulations, or provide any other new relevant legislation, it is prudent to seek to manage the additional costs and workload that will fall on this Council by reconsidering whether all decisions currently taken by the full Council need to be taken in that way. For the reasons set out in the report, it is felt that those shaded yellow in the Appendix should be passed to S&CR for a temporary period.
33. These changes seek to facilitate decision-making in a timely and politically-inclusive manner in the new circumstances in which the Council finds itself.
34. The Council is recommended to agree to amend the Constitution to add the additional terms of reference for S&CR identified in this report, and to authorise the Monitoring Officer or his Deputy to make all necessary consequential amendments to the Constitution to give effect to this.
35. In addition, it will be necessary to make procedural provision and public participation arrangements for whatever types of meetings can be legally held, and this should be delegated to the Chief Executive.

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APPENDIX
EXTRACTS FROM THE CONSTITUTION, LISTING DECISIONS
TAKEN BY FULL COUNCIL

The decisions recommended to be added to the terms of reference of the Selection & Constitutional Review Committee are shaded in yellow

(Recommendation and paragraphs 5, 27 and 32 refer)

Article 4 – Full Council

4.01 Meanings

(a) **Policy Framework.** The policy framework means the following plans and strategies:-

- ☐ Sustainable Community Strategy;
- ☐ Crime and Disorder Reduction Strategy;
- ☐ Local Transport Plan;
- ☐ Plans and strategies which are **Local Development Documents** and alterations thereto.

[NOTE: The full Council will retain Local Plans, in line with legal requirements – but **other Local Development Documents, such as Statements of Community Involvement, Supplementary Planning Documents etc. will be passed to S&CR]**

The Council can adopt additional plans to form part of the policy framework.

(b) **Budget.** The budget includes:-

- (i) The allocation of financial resources to different services and projects;
- (ii) Provision of contingency funds, such as balances;
- (iii) Council Tax base;
- (iv) Setting the Council Tax;
- (v) Decisions relating to the control of the Council's borrowing requirement;
- (vi) Overall control of the Council's capital expenditure, and funding and
- (vii) Setting of virement limits.

(c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under Section 35 of the Leasehold Reform, Housing and Urban Development Act 1993 for the inclusion of a disposal in a disposals programme or for consent to that disposal under Section 32

(power to dispose of land held for the purposes of Part II) or Section 43 (consent required for certain disposals not within Section 32) of the Housing Act 1985.

4.02 Functions of the full Council

Only the Council will exercise the following functions. A more detailed list of functions is contained in Part 3, Appendix 1.

(a) Adopting and **changing the Constitution**;

(b) Approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;

(c) Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;

(d) Electing the Leader;

(e) Agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;

(f) Appointing representatives to outside bodies unless the appointment is a matter for determination by the Cabinet (Executive) or has been delegated by the Council;

(g) Changing the name of the area, conferring the title of Honorary Alderman or the Freedom of the Borough;

(h) Adopting an Allowances Scheme under Article 2.05;

(i) Confirming the appointment or dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer;

(j) Making, amending, revoking, re-enacting, adopting or enforcing bylaws and the promotion of opposition to the making of local legislation or personal Bills;

(k) The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities in relation to the discharge of functions which are not the responsibility of the Cabinet (Executive);

(l) Power to resolve not to issue a Casino Premises Licence;

(m) **Functions in relation to** the Council's Licensing Policy. This includes the adoption of statements of principles in relation to Family Entertainment Centre Gaming Machine Permits or Prize Gaming Permits.

[NOTE: The full Council will retain the adoption of the Licensing Policy – but **amending it will be passed to S&CR]**

Part 3 Responsibility for Functions

Appendix 1 Council Functions

Functions Exercised by the Council

1. The Full Council takes the following decisions itself:-

1.1 The Constitution

Adopts and agrees changes to:-

(a) The Articles of **the Constitution**.

[NOTE: The full Council will retain the Articles of the Constitution, in line with legal requirements – but **the Scheme of Delegations will be passed to S&CR]**

(b) The Procedure Rules as contained in Part 4 of this Constitution.

(c) The Codes and Protocols as contained in Part 5 of this Constitution.

(d) Considers reports by the Monitoring Officer.

(e) Considers reports by the Chief Finance (Section 151) Officer.

1.2 Appointments and Disciplinary Action

(a) Elects the Mayor and Deputy Mayor.

(b) Elects the Leader of the Council.

(c) Appoints the Chairmen and Vice-Chairmen of the Council's Committees and Sub-Committees annually.

(d) Confirms or rejects recommendations by the Independent Members Interview Panel (or any other Panel set up for the purpose) for the appointment of the Independent Person and to make such appointments.

(e) Where necessary, considers recommendations from the Hearing Panel of the Standards Committee regarding sanctions for Code of Conduct breaches.

(f) Approves the absence of a Member from meetings of the Council for more than six months.

(g) Confirms or rejects the recommendation of the Appointments Committee on the appointment of the Chief Executive (Head of Paid Service), the Chief Finance (Section 151) Officer, the Monitoring Officer.

(h) Confirms or rejects the recommendations of the Investigation and Disciplinary Committee (having taken into account the views of the Panel established for the purpose of Schedule 3) in respect of the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151) confirmed by a vote in favour of at least two-thirds of the Membership of the Council.

1.3 Committees

Determines the number of Committees, their terms of reference, the total number of places on them and the allocation of those places to Political Groups in accordance with the political balance calculation.

1.4 Finance

(a) Agrees the Council's annual budget.

(b) Setting of the Council Tax base.

(c) Setting of the Council Tax.

(d) Sets the limits defining key financial decisions.

(e) Sets the limits for virement or other budget changes and the level below which the Council's balances must not fall.

(f) Determines any expenditure proposed by the Cabinet (Executive) which is outside the limits referred to in (d) and (e) above.

(g) Agrees the Members Allowance Scheme as set out in Part 6 of this Constitution.

(h) Agrees the Treasury Management Plan.

(i) Makes arrangements for the proper administration of financial affairs.

(j) Issues relating to local government pensions.

1.5 Policy

(a) Determines and approves the plans and strategies which comprise the policy framework as contained in Article 4 of this Constitution and any changes, proposed to them.

(b) Determines any proposed action by the Cabinet (Executive) which is at variance with any plan or strategy contained in the policy framework.

(c) Takes decisions in respect of functions which are not the responsibility of the Cabinet (Executive) and which have not been delegated by the Council to a Committee, Sub-Committee or Officer.

1.6 Elections

(a) Appoints the Electoral Registration Officer and Deputy Electoral Registration Officer.

(b) Appoints the Returning Officer and Deputy Returning Officer for Local Government Elections.

(c) Approves the provision of assistance at European Parliamentary Elections.

(d) Divides the Parliamentary Constituency into Polling Districts.

1.7 Name and Status of Areas and Individuals

(a) Approves any change of name of the Council.

(b) Approves any change of name of a Parish Council area.

(c) Confers the Title of Honorary Alderman or admits an individual to be an Honorary Freeman.

1.8 Employees

(a) Agrees the overall management structure proposed by the Chief Executive as contained in Part 7 of this Constitution.

(b) Determines the terms and conditions on which staff will be appointed, hold office and the procedures for their dismissal.

(c) Appointment of Officers for particular purposes ie "Proper Officers".

1.9 Other Functions

(a) Makes, amends, revokes, re-enacts or enforces by-laws.

(b) Promotes or opposes local or personal Bills in Parliament.

(c) Power to resolve not to issue a Casino Premises Licence.

(d) Functions in relation to the Council's Licensing Policy. This includes the adoption of statements of principles in relation to Family Entertainment Centre Gaming Machine Permits or Prize Gaming Permits.

[NOTE: The full Council will retain the adoption of the Licensing Policy – but amending it will be passed to S&CR]

(e) Deals with any other matter reserved to the Full Council by Statute.

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