

PART 5

Codes and Protocols

NORTHAMPTON BOROUGH COUNCIL

CODE OF CONDUCT FOR COUNCILLORS (AND VOTING CO-OPTTEES)

Part 1

GENERAL PROVISIONS

1. cope

1.1 Member must observe the Council's Code of Conduct whenever he/she:

1.1.1 conducts the business of the Council;

1.1.2 conducts the business of the office to which he/she has been elected or appointed; or

1.1.3 acts as a representative of the Council,

and references to a Member's official capacity shall be construed accordingly.

1.2 This Code of Conduct shall not, apart from paragraph 2.3 and sub-paragraph 2.4.1 below, have effect in relation to the activities of a Member undertaken other than in an official capacity.

1.3 Where a Member acts as a representative of the Council –

1.3.1 on another Relevant Authority, he must, when acting for that authority, comply with that other authority's Code of Conduct; or

1.3.2 on any other body, he must, when acting for that other body, comply with the Council's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

1.4 In this Code, "Member" includes a co-opted member of the Council.

2. GENERAL OBLIGATIONS

2.1 A Member must –

- 2.1.1 Promote equality by not discriminating unlawfully against any person;
- 2.1.2 treat others with respect; and
- 2.1.3 not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

2.2 A Member must not –

- 2.2.1 disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature, without the consent of a person authorised to give it, or unless required by law to do so; nor
- 2.2.2 prevent another person from gaining access to information to which that person is entitled by law.

2.3 A Member must not in his/her official capacity, or any other circumstance, conduct himself/herself in a manner which could reasonably be regarded as bringing his/her office or the Council into disrepute.

2.4 A Member –

- 2.4.1 must not in his/her official capacity, or any other circumstance, use his/her position as a Member improperly to confer on or secure for himself/herself or any other person, an advantage or disadvantage; and
- 2.4.2 must, when using or authorising the use of the resources of the Council –
 - 2.4.2.1 act in accordance with the Council's requirements; and
 - 2.4.2.2 ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which the Member has been elected or appointed.

2.5 A Member must when reaching decisions -

- 2.5.1 have regard to any relevant advice provided to him by –
 - 2.5.1.1 The Council's Chief Finance Officer acting in pursuance of his/her duties under Section 114 of the Local Government Finance Act 1988 and
 - 2.5.1.2 The Council's Monitoring Officer acting in pursuance of his/her duties under Section 5(2) of the Local Government and Housing Act 1989, and

2.5.2 give the reasons for these decisions in accordance with the Council's and any statutory requirements in relation to the taking of an Executive Decision.

2.6 In sub-paragraph 2.5.2 above and in paragraph 4.2 below, "Executive Decision" is to be construed in accordance with any Regulations made by the Secretary of State under Section 22 of the Local Government Act 2000.

2.7 A Member must, if he/she becomes aware of any conduct by another Member which he/she reasonably believes involves a failure to comply with the Council's Code of Conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him/her to do so.

PART 2

INTERESTS

3. Personal Interests

3.1 ***A Member must regard himself/herself as having a personal interest*** in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 8.1 and 8.2 below, or if a decision upon it might reasonably be regarded as affecting ***to a greater extent than other Council Tax payers, ratepayers or inhabitants of the Council's area, the well-being or financial position of himself, a relative or friends or –***

3.1.1 any employment or business carried on by such persons;

3.1.2 any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

3.1.3 any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or

3.1.4 any body listed in sub-paragraphs 8.2.1 to 8.2.5 of paragraph 8.2 below in which such persons hold a position of general control or management.

3.2 In this paragraph –

3.2.1 "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and

3.2.2 "partner" in sub-paragraph 3.2.1 above means a member of a couple who live together.

4. Disclosure of Personal Interests

4.1 A Member with a ***personal interest*** in a matter who attends a meeting of the Council at which the matter is considered ***must disclose*** to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- 4.2 Subject to sub-paragraph 7.1.2 below a Member with a personal interest in any matter who has made an Executive Decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

5. Prejudicial Interests

- 5.1 Subject to paragraph 5.2 below, a Member with a personal interest in a matter also has a ***prejudicial interest*** in that matter ***if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.***

- 5.2 A Member may regard himself/herself as ***not*** having a ***prejudicial interest*** in a matter if that matter relates to -

- 5.2.1 another Relevant Authority of which he/she is a member,
- 5.2.2 another public authority in which he/she holds a position of general control or management;
- 5.2.3 a body to which he/she has been appointed or nominated by the Council as its representative;
- 5.2.4 the housing functions of the Council where the Member holds a tenancy or lease with a relevant authority, provided that he/she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the Member's tenancy or lease;
- 5.2.5 Functions of the Council (if any) in respect of school meals, transport and travelling expenses, where the Member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
- 5.2.6 the functions of the Council in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
- 5.2.7 any functions of the Council in respect of an allowance or payment made under Sections 173 to 176 of the Local Government Act 1972 or Section 18 of the Local Government and Housing Act 1989.

6. Overview and Scrutiny Committees

- 6.1 For the purposes of this Part, a Member must if he is involved in the consideration of a matter at a meeting of an Overview and Scrutiny committee of the Council or a sub-committee of such a committee regard himself or herself as having a personal and prejudicial interest if that consideration relates to a decision made or action taken by another of the Council's -

- 6.1.1 Committees or sub-committees

6.1.2 Joint committees or joint sub-committees, of which he or she may also be a Member.

6.2 But paragraph 6.1 above shall not apply if that Member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

7. Participation in Relation to Disclosed Interests

7.1 Subject to paragraph 7.2 hereof a Member with a ***prejudicial interest*** in any matter must -

7.1.1 withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he/she has obtained a prior dispensation from the Council's Standards Committee; and

7.1.2 not exercise executive functions in relation to that matter; and

7.1.3 not seek improperly to influence a decision about that matter.

7.2 A Member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 6 above, participate in a meeting of the Council's –

7.2.1 Overview and Scrutiny Committees; and

7.2.2 Joint Committees and Area Partnerships

to the extent that such committees or partnerships are not exercising functions of the Council or its Executive.

7.3 For the purposes of this Part, "meeting" means any meeting of: -

7.3.1 the Council

7.3.2 the Executive of the Council; or

7.3.3 any of the Council's or its Executives committees, sub-committees, joint committees, joint sub-committees or area partnerships.

PART 3

REGISTER OF MEMBERS' INTERESTS

8. Registration of Financial and Other Interests

8.1 Within 28 days of the provisions of the Code of Conduct being adopted or applied to the Council or within 28 days of his/her election or appointment to office (if that is later) – a Member must register his/her financial interests in the Council's register maintained under Section 81(1) of the Local Government Act 2000 by providing written notification to the Council's Monitoring Officer of –

- 8.1.1 any employment or business carried on by him/her;
 - 8.1.2 the name of the person who employs or has appointed him/her, the name of any firm in which he/she is a partner, and the name of any company for which he/she is a remunerated director;
 - 8.1.3 the name of any person other than a relevant authority, who has made a payment to him/her in respect of his/her election or any expenses incurred by him/her to carry out his/her duties;
 - 8.1.4 the name of any corporate body which has a place of business or land in the Council's area, and in which the Member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - 8.1.5 a description of any contract for goods, services or works made between the Council and himself/herself or a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a body of the description specified in sub-paragraph 8.1.4 above;
 - 8.1.6 the address or other description (sufficient to identify the location) of any land in which he/she has a beneficial interest and which is in the area of the Council;
 - 8.1.7 the address or other description (sufficient to identify the location) of any land where the landlord is the Council and the tenant is a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a body of the description specified in sub-paragraph 8.1.4 above; and
 - 8.1.8 the address or other description (sufficient to identify the location) of any land in the Council's area in which he/she has a licence (along or jointly with others) to occupy for 28 days or longer.
- 8.2 Within 28 days of the provisions of the Code of Conduct being adopted or applied or within 28 days of his/her election or appointment to office (if that is later), a Member must register his/her **other interests** in the Council's register maintained under Section 81(1) of the Local Government Act 2000 by providing written notification to the Council's Monitoring Officer of his/her membership of or position of general control or management in any –
- 8.2.1 body to which he/she has been appointed or nominated by the Council as its representative;
 - 8.2.2 public authority or body exercising functions of a public nature;
 - 8.2.3 company, industrial and provident society, charity, or body directed to charitable purposes;
 - 8.2.4 body whose principal purposes include the influence of public opinion or policy; and
 - 8.2.5 trade union or professional association.

8.3 A Member must within 28 days of becoming aware of any change to the interests specified under paragraphs 8.1 and 8.2 above, provide written notification to the Council's Monitoring Officer of that change.

9. Registration of Gifts and Hospitality

9.1 A Member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the Council's Monitoring Officer of the existence and nature of that gift or hospitality.

OFFICERS' CODE OF CONDUCT

(Pending ratification of a National Code of Conduct
See Employment Handbook for obligations of Employees)

PROTOCOL ON MEMBER/EMPLOYEE RELATIONS

1. INTRODUCTION

- 1.1 As an adjunct to the Northampton Code of Conduct for Members this Protocol seeks to update the limited Protocol previously in the Constitution in respect of Member/Employee Relations to provide greater clarity in the current Local Government Environment.
- 1.2 Given the variety and complexity of Member/employee relations, this updated Protocol, which is intended as hybrid guidance and explanation, does not seek to cover everything or to be prescriptive in its application. General guidance is offered on some of the issues which most commonly arise or cause concern. It is hoped, however, that the approach which this Protocol adopts will serve as a guide to dealing with other related issues which may arise from time to time.
- 1.3 The Protocol seeks to encourage best practice and to promote greater clarity and certainty. If any Member is unsure about any matter they should contact the relevant Chief Whip and/or the Chief Executive for appropriate advice and assistance. If any employee is unsure about any matter, they should initially contact the relevant Director.
- NB A separate specific Code also exists in respect of conduct on planning matters and it is also anticipated that a National Code will shortly be introduced in respect of employee conduct.

2. GENERAL MEMBER/EMPLOYEE ISSUES

Key Issues

- 2.1 In order to ensure the business of the Council is transacted in an effective and efficient manner and with a view to ensuring that the Council is not brought into disrepute, the **key guiding principle** for Members and employees is one of **“engendering mutual trust, openness, honesty, fairness, transparency and treating everyone with respect”**;
- 2.2 **Employees must act in the best interests of the Council as a whole**, and must not give politically partisan advice. Anyone breaching this requirement could face disciplinary action.
- 2.3 Political Group meetings, while they perform an important part in the preliminaries to Council decision-making, are **not** formal decision-making bodies of the Council and, as such, are **not empowered, to make decisions** on behalf of the Council. Conclusions reached at such meetings do not, therefore, **rank as Council decisions**.
- 2.4 Employee support to Political Groups must **not** extend beyond providing information and advice in relation to **Council business**
- 2.5 it is good practice for Party political debates and decision-making at Political Group Meetings to take place **in the absence of employees**, in order to avoid any suspicion of impropriety or misunderstanding;

- 2.6 Employees must respect the confidentiality of any discussions on formulation of Policy with Members at which they were present; and
- 2.7 any breach of this part of the Protocol by an employee must be brought to the attention of the Chief Executive for consideration.

Legal and District Audit Considerations

- 2.8 Members of the Council do not, as elected Members, have any special immunity from civil or criminal wrongs involving fellow Members, employees or members of the public. Members must abide by the Code of Conduct for Members and ensure they do not, for example, slander or libel another person.
- 2.9 Members must also not pressurise any employee to change their professional opinion on any Council business matter or do anything that compromises, or which is likely to comprise, the impartiality those who work for, or on behalf of, the Council. It is also essential that Members are clear about their roles and the roles of employees, so as to avoid getting inappropriately involved in, for example, the internal office management, discipline and/or other employment related issues, as the actions of a Member may be held to be the actions of the Council as an “employer”.

Standards Board for England Issues

- 2.10 Any member of the public (including employees) can complain to the Standards Board for England in respect of any alleged breach of the Code of Conduct for Members and/or bring private civil litigation proceedings against an elected Member. The External Auditor can also take legal action against an elected Member and/or the Council as a whole, for any breaches of the law.

Public Relations Issues

- 2.11 The Council’s Public Relations Team are, subject to the direction of the Executive of the Council, responsible for dealing with the Press and other media organisations on behalf of the Council. It is important, therefore, that all official communications relating to the Council (but not party political or private matters) are dealt with by this Team, so as to ensure the proactive, effective and efficient management of the Council’s public image, relations and interface with the community.

3. SPECIFIC POINTS ON MEMBER/EMPLOYEE RELATIONS

- 3.1 The relationship between Members and Employees generally is characterised by **mutual trust, respect and courtesy**. These are **essential** for good local government and serve to enhance local democracy.
- 3.2 Close personal familiarity between individual Members and Employees can damage professional relationships and can prove embarrassing to other Members and Employees. Situations should be avoided, therefore, which could give rise to suspicion and/or appearance of improper conduct or behaviour.

Chief Executive

- 3.3 The Chief Executive is the employee of the Council as a whole with overriding

responsibility to the Council, and not to any party political group.

The Chief Executive is nevertheless expected to work closely with the Administration for the time being and to give them information, assistance, and advice. Subject to maintaining political neutrality he/she may develop a special relationship with the Administration leadership and will not without consent disclose to the other Groups any matters discussed with that leadership.

The political neutrality of the Chief Executive should be respected by everyone. The holder of the post should not be asked to play any role or undertake any task which is likely to prejudice that neutrality, or make it difficult to serve a different majority political party at some future time in the Council.

- 3.4 All Members of the Council have a right of access to the Chief Executive. Where a Member requires information, it will be provided if it is readily available, for example, in Executive or Committee papers or material published on behalf of the Council. The Chief Executive is free to give advice on a confidential basis about procedural matters to any Member. In doubtful cases, the Chief Executive is entitled to seek the instructions of the Leader or a Chair, Portfolio Holder, the Executive or a Committee before responding to a request from a Member.

- 3.5 The following principles govern the relationship between the Chief Executive and Groups not comprising all or part of the Administration:

It is proper for the Chief Executive to develop a working relationship with such other Groups on the Council.

The Chief Executive is free to provide information and answer procedural inquiries to Members of any Group, and will not advise as to the policies which any Group should pursue.

Subject to the confidentiality required by paragraph 6.13 the Chief Executive will ensure that the Leadership of the Administration is aware of any factual information provided by him/her to representatives of other Groups, unless it either be of a routine or trivial nature or to do so would be a breach of confidence or other statutory, formal or Guideline requirement.

Because the Chief Executive is the employee of the whole Council, he/she accordingly will draw the attention of the Leader to any case where consideration should be given to affording information, consultation, or representation to the Minority Parties.

In applying these principles to any given situation, the Chief Executive will have regard to the perceived customs of the Authority, to any established traditions, and to any statutory or accepted procedural rules governing the rights of other Groups to information, consultation or representation.

- 3.6 If the Chief Executive attends a meeting of any Group, the leadership of the other Parties on the Council need not be informed. The Chief Executive will ensure that the part played in the proceedings is consistent with the political neutrality of the Chief Executive's post and will not attend Group meetings at which there are persons present who are neither elected Members nor employees of the Council.

Other Employees

- 3.7 The foregoing principles apply similarly to all Directors (and employees acting under their direction), all of whom shall act under the general direction and after seeking the advice of the Chief Executive as statutory Head of Paid Service.
- 3.8 In pursuance of the requirement that any dealing between Members and employees should be conducted with mutual trust, respect and courtesy, neither party should seek to take an unfair advantage of his/her position. In particular, Members should recognise and pay due regard to their role as an employer in their dealings with employees, as inappropriate behaviour and conduct of Members could have repercussions for employment cases against the Council. In particular, it is quite proper for a Member to make written/oral representations about his/her constituent employee to the relevant Director, but the Member should avoid taking a proactive part to represent or in any other way advocate on behalf of any such employee in any disciplinary procedures.
- 3.9 In seeking advice and support, Members should have due regard to the seniority of the employees with whom they are dealing and recognise that, while those employees owe an overriding duty to the Council as a whole, such duties are first owed to their respective line managers and to the Chief Executive, and not to any individual Member. For this reason, Members should not give direct instructions to employees unless they are specifically authorised to do so by the Council's Constitution. If so authorised, instructions should, under normal circumstances, still be given to the relevant Director and not to a less senior employee.
- 3.10 Members must guard against putting inappropriate pressure in particular on junior employees, and must ensure that all communication between them (including written communication) does not bring the Council into disrepute, or lead to the breakdown of mutual trust, respect and courtesy in Member/employee relations.

Equality Issues

- 3.11 The Council has statutory duties in respect of equality issues and, in accordance with the Code of Conduct for Members, Members must also promote equality by not discriminating against others. Members and employees should not, therefore, by their behaviour or speech act discriminatorily with regard to a person's gender, race, age, disability, religion, ethnicity, nationality or sexual orientation.

Employee Conduct or Capability Issues

- 3.12 Members should not raise matters relating to the conduct or capability of an employee (or of employees collectively) at meetings held in public or before the Press, as employees have no means of responding publicly. If any Member feels that s/he has not been treated with the proper mutual trust, respect or courtesy or has any concern about the conduct or capability of an employee, s/he should raise the matter privately with the relevant employee and, if necessary, with the Director concerned. Any concerns with regard to a Director should be discussed privately with the Chief Executive and/or the Leader of the relevant Political Group.

Political Groups

- 3.14 Members of the Executive, Scrutiny and Regulatory Committees shall at all times

respect the political impartiality of employees, and must not expect or encourage them to give a political view on any matter.

- 3.15 Employees may properly be called upon to support and contribute to the deliberations of Groups but they must at all times maintain political neutrality. This applies in particular to politically restricted posts, where employees are governed by the Local Government and Housing Act 1989. All employees must, in their dealings with Groups and individual Members, treat them in a fair and even-handed manner.
- 3.16 Any request for advice given to a Group or Member will be treated with the strictest of confidence by the employees concerned, and will not be accessible to any other Group(s). Factual information upon which any advice is based will, if requested, be available to all Groups.
- 3.17 When attendance is requested for Group meetings:
- 3.17.1 the request to attend a Group meeting must normally be made through the Chief Executive, unless previously agreed by him/her;
- 3.17.2 such a request can only be made in relation to **Council business**; and
- 3.17.3 Employees will:-
- (i) provide relevant factual advice and assistance;
 - (ii) normally leave during the deliberations of the Group on the issue;
 - (iii) respect the confidentiality of any Group decision at which they are present; and
 - (iv) not champion, defend, action or spend any resources of the Council, or be held responsible for actioning in any way whatsoever the decisions of the Group(s), unless and until such decisions have become the formal decisions of the Council.

4. SPECIFIC POINTS ON OVERVIEW AND SCRUTINY ARRANGEMENTS

- 4.1 When considering calling employees to give evidence to any Overview & Scrutiny Committee, the Chair of the relevant Overview and Scrutiny Committee may call the Chief Executive, and/or Senior Officers to give evidence to the Committee as prescribed by the Overview and Scrutiny Procedure Rules (13.1).
- 4.2 When asking employees to give evidence before any Overview and Scrutiny Committee, questions should be confined, so far as possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Employees must respond to questions from Members in an open, constructive and helpful manner, and must not mislead or be economical with the truth.
- 4.3 Where they consider it appropriate, the Chairs of the relevant Overview and Scrutiny Committee may ask Directors to explain any advice given by them to the Executive or its members. For the avoidance of doubt, any private or confidential matter must be dealt with in a private or confidential manner.

Unacceptable or Inappropriate Behaviour:

- 4.4 The relevant Chair of the Overview and Scrutiny Committee shall ensure that Members of the Executive and employees are not questioned (whether through the nature, tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, victimising, discriminatory or otherwise unacceptable or inappropriate behaviour by a Member. Equally, such Committees have no jurisdiction to deal with matters which are of a disciplinary nature for the relevant Group (in respect of Members) or the relevant Director/Chief Executive (in respect of employees).

NB NOTE ON USE OF LOCAL AUTHORITY RESOURCES

- 4.5 The only basis on which the Council can lawfully provide support services to Members (eg computers, or other IT software, stationery, typing, printing, photocopying, transport etc.) is to assist them in the effective and efficient discharge of their duties and role as Members of the Council. Such support services must, therefore be only used for Council business. The same should not be used for, or in connection with, party political or campaigning activities, or for private purposes.

Probity in Planning Protocol

PROBITY IN PLANNING – PROTOCOL

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PROTOCOL – PROBITY IN PLANNING

1. INTRODUCTION

- 1.1 This Protocol has been prepared to assist Councillors and Officers in the discharge of the Council's planning functions. The highest standards of conduct and propriety are expected in the discharge of all Council functions. Decisions in respect of planning matters will be the subject of particularly close scrutiny as

these can have a considerable effect on the value of land and on the lives and amenities of people living near development sites. The principles upon which decisions must be made are set out in the Development Plan which may include statutory County Structure Plans and Local Plans, and in national Planning Policy Guidance Notes. The Town and Country Planning Act 1990 requires decisions to be made in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.

- 1.2 However, many planning decisions depend to a greater or lesser degree upon judgement and interpretation of policies and guidance. It is therefore essential that decisions are made having regard only to proper planning considerations and are made impartially and in a way that does not give rise to public suspicion or mistrust.
- 1.3 So far as questions of propriety are concerned Councillors and Officers should have full regard to the Members' Code of Conduct, the Officers' Code of Conduct and the Protocol on Member/Officer Relations set out in the Constitution of Northampton Borough Council.
- 1.4 The purpose of this Protocol is to set out in detail how Councillors and Officers should act and the procedures which should be followed to ensure that they not only act in a fair and proper manner, but are also seen to do so.

2. CONDUCT OF COUNCILLORS AND OFFICERS

Voting and Impartiality

- 2.1 Councillors must vote in the interests of the whole Borough. Their overriding duty is to the whole community, rather than just the people living in their Ward.
- 2.2 Members of the Planning Committee must not declare which way they intend to vote in advance of the consideration of an application by the Planning Committee. To do so would in effect be pre-judging the application and expose the Council to the possibility of legal challenge or a charge of maladministration. Members must not make their minds up until they have read the relevant Committee reports and heard the evidence and arguments on both sides.
- 2.3 If a Member of the Planning Committee does declare his or her **outright** support or opposition for a proposal before the matter has been put before the Planning Committee where that Member would be entitled to vote, he or she must declare a personal and prejudicial interest and leave the room whilst the item is discussed. They can take no part in the voting on that particular item.

This does not mean that Members of the Planning Committee cannot make a comment or reflect local concerns about a proposal before it is considered by the Planning Committee. But the view or comment must not predetermine or be seen to pre-determine the way that Councillor will vote.

- 2.4 Planning Committee Members who are also Members of parish councils and/or Area Partnerships may find that they are expected to express a view at a parish council or Area Partnership meeting or vote on whether or not the parish should object or comment on a proposal from a Parish point of view. In such circumstances if they wish to act as a Member of the Planning Committee determining the application, they should not declare outright support or opposition for a proposal and they should make clear that they are reserving

their position and are not prejudicing the decision that they will have to make as a Councillor. This will also ensure that the propriety of their vote at the Council Planning Committee cannot be challenged.

- 2.5 If a Councillor does declare his or her outright support or opposition to a planning proposal at a parish council and/or Area Partnership meeting or elsewhere they should, if they are in attendance at a Council Planning Committee meeting when that matter is being discussed or reported, declare a personal and prejudicial interest and leave the room whilst the item is discussed. They can take no part in the voting on that item.
- 2.6 Also, Councillors should not organise support for or against a planning application and should not lobby other Councillors since this would also signal that they had made up their mind before hearing the evidence. Each Councillor should make up his or her own mind on the evidence and facts presented to the Committee. (See Section on Lobbying, page 4)
- 2.7 Councillors must not favour or show bias against any particular person, company or group, or any particular site or locality. They should not put themselves in a position where they may appear to do so.

Gifts and hospitality

- 2.8 Councillors should not accept any gift or hospitality (other than minor refreshments).

Independence and Impartiality of Officers

- 2.9 Councillors must not instruct Officers to take a particular course of action or make a particular recommendation other than through a decision of the Council or one of its Committees. Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners must abide by the Royal Town Planning Institute's Code of Professional Conduct. Chartered Town Planners may only advocate their own professional view.
- 2.10 Whilst Chartered Town Planners appearing as the Council's expert witnesses at Planning Inquiries have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with the Royal Town Planning Institute's Code of Professional Conduct.
- 2.11 Similar codes of conduct apply to members of other professions who are involved in the planning process.

Declaration of Interests

- 2.12 Councillors must always declare personal interests and personal and prejudicial interests at meetings of the Council's Planning Committee in accordance with the Local Government Act 2000 and the Council's Code of Conduct. If in doubt, an interest should be declared. It is the duty of each Councillor to declare an interest and also to advise the Council's Monitoring Officer of any new interest which must be added to the Register of Members' Interests kept by him/her.
- 2.13 A personal interest in a matter is one where the matter relates to an interest in respect of which notification must be given under paragraphs 8.1 and 8.2 of the Council's Code of Conduct for Councillors (eg their employment or business,

land in which they have a beneficial interest) or if a decision upon it might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers or inhabitants of the Council's area, the well-being or financial position of himself, a relative or friends or other circumstances listed in paragraph 3.1 of the Code.

- 2.14 A Councillor with a personal interest also has a prejudicial interest in an application if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgement of the public interest. The question which Councillors should ask themselves is not whether they think they are prejudiced, but whether others, knowing all the facts, might conclude that they are prejudiced. There are statutory exemptions listed in paragraph 5.2 of the Code.
- 2.15 A Member with a personal interest must disclose the existence and nature of the interest at the commencement of consideration of the item or when the interest becomes apparent, but may take part in the debate and vote. However, a Member with a personal and prejudicial interest must withdraw from the room whenever it becomes apparent that the matter is being considered at that meeting. The responsibility for declaring an interest lies with the Councillor, but the Council's Monitoring Officer can provide advice prior to the meeting. Further details on declaration of interests are given in the Council's Code of Conduct for Councillors set out in the Council's Constitution.

Involvement of Councillors with Applicants

- 2.16 Members of the Planning Committee should not act as agents or submit planning applications for other parties or voluntary bodies. To do so would give rise to suspicion that the Councillor was not impartial or may influence other Councillors in the decision making process. Any Councillor who is a planning or similar agent will not be appointed to the Planning Committee.
- 2.17. Where Councillors need to submit planning applications on their own behalf, or on behalf of their employer as part of their job, they must declare a personal and prejudicial interest and take no part in the processing of the application or in the decision making process. While they may properly seek pre-application advice from Officers in exactly the same way as any other applicant, they should avoid all contact, whether direct or indirect, with Members of the Planning Committee concerning the application. The same rule applies if a Councillor's employer submits an application, irrespective of whether the Councillor is involved in the application, its presentation or submission.

Council Development Proposals

- 2.18 The Council's own planning applications must be dealt with on exactly the same basis as applications submitted by members of the public. Officers must make recommendations having regard only to proper planning matters and must not have regard to any other benefit, financial or otherwise, which may accrue to the Council as a result of any particular decision on a planning proposal.
- 2.19 Members of the Council who have previously expressed a forthright view either in favour of or in opposition to a Council proposal, including at the originating Committee or in Council, must make an open declaration of that view to the Committee and take no part in voting on that particular item. Alternatively, as Planning Committee Members who are also Members of an originating

Committee, they may abstain from any originating Committee or Council debate or vote in order to make clear that they are not prejudicing any decision they might have to make as a Planning Committee Member.

Development Proposals of Councillors and Officers

2.20 Proposals to the Council by serving and former Councillors and Officers and their close relatives and friends can give rise to suspicions of impropriety. Such proposals can take a variety of forms including planning applications and development plan proposals. It is, of course, perfectly legitimate for such proposals to be submitted. However it is vital that they are handled in a way which gives no grounds for accusations of favouritism. Consequently all such applications should be identified to the Head of Planning Transportation and Regeneration and shall be determined by the Planning Committee rather than by Officers under delegated powers. Members of the Planning Committee must, of course, consider whether the nature of any relationship with any Member submitting the planning application requires that they make a declaration and withdraw from the meeting.

Lobbying of Councillors and Circulation of Unofficial Information

2.21 Lobbying is an attempt to influence a Councillor's view in order to achieve a particular decision. It is a normal part of the political process but where Councillors are making statutory decisions, such as planning decisions, it can result in decisions being made improperly.

2.22 Planning decisions must be made strictly on the basis of the facts and policies relating to each case. Councillors must not only act in a way that is fair to all parties but must be seen to do so. In particular, Councillors determining an application must not prejudge proposals before they have read the Officer's reports and considered all the evidence.

2.23 Lobbying can take two forms:

Lobbying of Councillors by applicants, agents or objectors;
Lobbying by other Councillors.

Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors.

2.24 It can cause particular problems if Councillors are given information or assurances by applicants which are not part of the formal application or proposal and which are not, therefore, enforceable. Problems can also arise if Councillors are given information by objectors which may be misleading, untrue or irrelevant. It is also problematical if Officers are unaware of submissions by applicants and objectors and are, therefore, unable to consider them and advise the Planning Committee about their relevance or enforceability.

2.25 Circulation of unofficial papers at a Committee meeting also constitutes lobbying. Planning applications must be determined on the basis of the documents and information formally submitted. Only submissions from applicants, agents, objectors or other interested parties, which are formally received by the Planning Transportation and Regeneration Division can properly be taken into account in making a decision. The Committee could be materially misled if Councillors or other parties circulated "unofficial" documents or introduced new information on

behalf of an applicant or objector, or expressed what they believed to be an applicant's intention, if this did not form part of the application documents and correspondence which had been submitted to the Planning Transportation and Regeneration Division. (See also Appendix I – Procedures for Determining Planning Applications).

Political Decisions on Planning Applications

2.26 A Member level decision on a planning application cannot be made before the Planning Committee meeting has considered all available information. Any Political Group meeting prior to the Committee Meeting should not be used to decide how Councillors should vote. The view of the Local Government Ombudsman is that the use of political “whips” at group meetings in this way is contrary to the National Code of Local Government Conduct, amounting to maladministration.

3. THE DECISION MAKING PROCESS

Pre-Application Discussions

3.1 Councillors should not, **themselves**, seek to advise applicants or agents about the likely acceptability of planning proposals. They should advise prospective applicants to contact the appropriate Officer for advice on both merits and procedures. If Councillors do give an indication of their initial reaction to a proposal, they should make it clear that they will only be in a position to take a final decision after having considered the Officer's reports and any representations and heard any debate at the Committee meeting.

3.2 Councillors must not have discussions with applicants or agents in connection with major or contentious proposals or enter into negotiations about such proposals either prior to or after the submission of an application, unless at least one Planning Officer is present. Such meetings must be arranged through the Head of Planning Transportation and Regeneration who will ensure that the appropriate Officers are present. A note will be taken of any such meetings held. This will be put on the office working file and will constitute a Background Paper for the purposes of the Local Government Act 1972. The fact that Councillors have discussed any such proposal with the applicant or objectors must be made clear when the application is before the Committee for determination.

Site Inspections

3.3 The Members of Planning Committee may resolve to carry out a site visit. To ensure site visits are dealt with correctly and fairly, the protocol set out in Appendix II will apply.

Reports to Committee

3.4 Officer reports to Committee should be accurate and cover all the relevant policies, considerations and issues and the views of consultees and objectors. Councillors must have regard to any planning policies or national advice eg. PPGs, referred to in Officers' reports. Reports should be in writing and contain a clear written recommendation. It may be necessary, on occasion, to supplement written reports with updated oral information from Officers, but attempts will be made to keep this to a minimum. Amended plans submitted to overcome an identified objection can only be taken into account if they are received in time for

the amendment to be properly assessed by the Council's Officers. A further site inspection or further consultations may be necessary. Normally, only minor amendments can be taken into account after the agenda has been published.

The Committee's Decisions

- 3.5 The Planning Committee's decisions must be in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. Where Councillors propose to make a decision contrary to the Officer recommendation, the proposer must set out clearly the reasons for so doing. The Chair will ensure that the Planning Officer is given an opportunity to comment before a vote is taken. Any decision contrary to the provisions of the Development Plan must be clearly justified and recorded. The personal circumstances of an applicant will rarely provide such grounds.

Public Speaking at Committee Meetings

- 3.6 The procedures for public speaking at Planning Committee are set out in Appendix 3 – Speaking at Planning Committee meetings.

Deferred Decisions

- 3.7 The decision on any application should not be deferred without proper justification. Justification for deferring a decision might be to ensure that all the proper consultation procedures have been followed, or to ensure amendments, without which the application would have to be refused, or for a site visit to take place. Any proposal for a deferment must be justified in planning terms and hold a reasonable prospect that substantial benefit will accrue as a result. The reasons must be clearly set out by the proposer and recorded in the minutes. Deferrals for the purpose of a site visit shall be subject to the protocol set out in Appendix II.

4. ADMINISTRATIVE MATTERS

Training of Planning Committee Members

- 4.1 All Members of the Planning Committee should receive training in the planning system either before serving on the Committee or as soon as possible after appointment to the Committee. Members should also receive training periodically thereafter. Members should not seek or accept nomination to the Planning Committee unless they are prepared to accept this responsibility.
- 4.2 Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, usually by written reports to the Planning Committee.
- 4.3 A record will be kept by the Head of Planning Transportation and Regeneration of training undertaken by each Councillor.

Record Keeping

- 4.4 The planning application files should contain sufficient information itemising events so that the reason for the ultimate decision can be understood by anyone who reads the file without a detailed knowledge of the application. However, only "Background Papers" as defined in the Local Government Act 1972 are

automatically available as of right to third parties. This would include, in addition to the application documents, associated letters and supporting information, replies from consultees and letters from objectors. (See Appendix I, Paragraph 21).

Monitoring of Decisions

4.5 The Planning Committee will monitor planning decisions taken, on an annual basis, both in terms of quality and consistency. A review of decisions will take place each year (normally in June). This will include a sample of a broad range of categories of applications and sample appeal decisions, enforcement cases and, where appropriate, Listed Buildings cases. Statistics will be produced to identify the number of cases where Officers' recommendations were not accepted and the outcome of any related appeal decisions. The results of the monitoring

will be summarised and reported to the Planning Committee along with any recommendation to improve quality, consistency or performance.

Complaints

4.6 Any complaints received about the way in which a planning application or other planning matters have been dealt with in terms of procedures or fairness, will be dealt with in accordance with the Council's Complaints Procedure. The fact that someone may disagree with the decision the Council has reached is not a complaint which will necessitate investigation as such, although Officers will endeavour to explain the reasons for the Council's decision in any particular case.

4.7 Where any complaint about a Council decision made contrary to the Officer's recommendation is received, a copy will be forwarded to the Chair of the Planning Committee.

APPENDIX I

PROCEDURES FOR DETERMINING PLANNING APPLICATIONS

1. This note sets out the procedures to be followed by the Council's Planning Committee in determining planning applications. These procedures have evolved in order to ensure that most applications can be determined within the eight week period prescribed by the law, while at the same time ensuring that Councillors have before them all relevant information and responses.
2. The Best Value Performance Indicators require 60% of major applications to be determined in 13 weeks, 65% of minor applications in 8 weeks and 80% of other applications in 8 weeks. Some applications will inevitably take longer to determine, either because they relate to contentious proposals or because the issuing of a decision is subject to a Section 106 Obligation. Any applications deferred by the Committee will, therefore, affect the Council's overall performance figures.

Procedure Rules

3. The Council's Procedure Rules will apply to the conduct of business, unless waived by resolution of the Committee. Any suspension (waiving) of these rules

shall be for the duration of the discussion of the specified item(s) under consideration only.

Decisions on Items on the Agenda of the Planning Committee and Schedule of Planning Applications

4. The Chair will call each item on the Agenda and in the Schedule of Planning Applications and each item will be voted on individually, following presentations from Officers and (if appropriate) debate by the Committee. Where a proposal is put and vote taken, the item will be decided in accordance with that vote.

Expiry of Representation Periods

5. Applications will not generally be reported to Committee until after the expiry of any consultation, or re-consultation, period. In the event that a consultation period expires after the preparation of the agenda but before the meeting, any representations received will be reported verbally.
6. In any case where a consultation period extends beyond the date of the meeting, the Committee will consider the application and any representations received and may then authorise the Head of Planning Transportation and Regeneration to make a decision, subject to there being no further representations received in respect of matters not previously raised.

Speaking at Meetings

7. Councillors should endeavour to obtain any factual information they may require about applications from Officers prior to the meeting and, when speaking at meetings, endeavour to do so concisely.

Committee Agendas

8. The agenda for Committee meetings will, for each planning application, contain a report summarising the relevant background, site descriptions, policies, consultations and responses, together with Officer comments and a recommendation. A fuller report will be made on Principal items.
9. At the meeting, Officers will make a brief presentation if need be to update the written report and/or to clarify details of the proposal with reference to the submitted plans, Ordnance Survey plans and other illustrative material.

Updating of Reports

10. Any information received after the publication of a Committee agenda which is relevant to the determination of an application will be reported orally by Officers but attempts will be made to keep this to a minimum.

Amended Plans

11. Amended plans which are anticipated but not received until after the preparation of the agenda will be taken into account, provided there has been sufficient time for appraisal by the Council's Officers.
12. Amended plans received after the publication of the agenda will not normally be

able to be taken into account in determining an application, unless they are able to be checked carefully by the Council's Officers and involve only minor changes to a proposal which would not necessitate re-consultation with or re-notification of the parish council, neighbours or other interested parties.

13. Amended plans seeking to overcome a reason for refusal of an application set out in the agenda will only be taken into account if there has been sufficient time for Officers to assess the proposals and no further consultations are necessary.
14. In cases which do not fulfil these requirements, the Committee should defer the application for further consideration by Officers with a view to a subsequent report to the Committee.

Statements by Councillors at Committee Meetings

15. Councillors should not seek to report to the Committee new information they may have been given or told by applicants or a third party which has not been submitted to the Planning Transportation and Regeneration Division in connection with the application under consideration. To do so could lead to the Committee being materially misled and it may be that such information, if submitted in advance, would have resulted in Officers making a different recommendation.

Clarification and Correction of Information by Officers

16. Where statements are made by Councillors at a Committee meeting in relation to any particular application, the Chair of the Committee will give the Officers present the opportunity to seek clarification or to comment upon or correct anything which has been said, prior to the item being put to a vote.

Circulation of Unofficial Documents at Committee

17. The only documents which may be taken into account in determining a planning application are those submitted formally to the Planning Transportation and Regeneration Division in connection with the application under consideration. Councillors, applicants or third parties must not circulate other papers to Members in the Committee room prior to or during the meeting. All documents need to be seen by the Council's Officers prior to the Committee meeting so that they can be properly assessed. Taking into account letters or documents which have not been submitted as part of the application could result in the Council's decision being challenged.

Declaration of Letters and Documents Received by Councillors

18. Any Councillor receiving a letter from or on behalf of an applicant or third party in connection with an application before the Committee, should establish whether the letter has first been formally submitted to the Council (via the Planning Transportation and Regeneration Division) and if not the Councillor should declare receipt of such letter or document to the Committee prior to any decision being taken on the application.

Decisions Contrary to Officers' Recommendations

19. Where a proposal is put contrary to the Officer's recommendation, the proposer **must** set out clearly the planning justification in support of the proposal and, as

appropriate, the proposed reasons for refusal or the principal conditions to be imposed.

20. The final formal wording of reasons for refusal and planning conditions shall be delegated to the Head of Planning Transportation and Regeneration to determine in consultation with the Borough Solicitor and shall appear in the minutes of the meeting submitted to Council.

Background Papers

21. For the purposes of the Local Government Act 1972 all consultation replies referred to in the planning report, along with the application documents and any accompanying letters or reports submitted by the applicant, constitute "Background Papers" which are available for inspection following publication of the Committee report, unless such documents contain exempt information as defined in the Act.

APPENDIX 2

SITE VISITS

To ensure that all site inspections are dealt with consistently and fairly, the following will apply:

1. Authority for site visits

The Planning Committee shall authorise site visits which shall be notified in writing by the Head of Planning Transportation and Regeneration.

2. Attendance

Inspections shall be attended only by:

Members of the Planning Committee;
Ward Councillors;
appropriate Council officers
the applicant and/or his agent
with the applicant's consent up to two persons who have made representations and expressed a wish to attend

3. Declarations of Interest

Any Councillors who have interests to declare shall make such declarations prior to reaching the relevant site and shall sign the declarations of interest register to that effect. They shall not attend or participate in the inspection in question if the interest is one which is personal and prejudicial and would require them not to vote when the application is considered by the Committee.

4. Procedure at Site Inspections

4.1 The Planning Officer shall explain the proposal and the issues to the Members of the Committee and point out that the purpose of the visit is to look at the site and not to hear representations about the merits or otherwise of the application.

4.2 Members may then ask factual questions to facilitate later discussion and

decision making.

- 4.3 Discussion may take place but there shall be no expression of view or any indication as to any Member's voting intention, as the debate on the application will take place later. Lobbying shall not be permitted and no one may make any representations.

5. Notification of inspections to interested parties

5.1 The applicant and third parties

The applicant or the applicant's agent and up to two persons who have made representations and expressed a wish to attend shall be notified in advance of the date and time of the visit. The applicant's consent will be required in respect of the attendance by third parties.

5.2 Neighbours

If it is necessary for the Members to gain access to land neighbouring an application site, the owner/occupier of that land shall be notified in advance, wherever possible, of the date and approximate time.

In both cases, the parties shall be advised of the fact that representations cannot be made to the Members of the Committee during the visit.

6. Meeting as a group

Members shall visit sites as a group and shall not enter an application site or an objector's land or premises, other than as a group. Individual Members shall not discuss matters with any person, other than another Member of the Committee or Officer, during the course of the inspection. Members shall not either as a group, or individually, hear any representations from the applicant, the applicants agent, third parties or ward councillors. They shall only be shown the property and obtain factual information relevant to the assessment of the issue in question.

7. Written material

No written representations from the applicant or any third party shall be accepted by the site visit group.

8. Non-attendance

The inability on a Member's part to attend the site inspections will not preclude that Member from taking part in the discussion, debate and vote on the matters under consideration, but all Members will use their best endeavours to attend site inspections so that they are fully appraised of the issues involved.

APPENDIX 3

SPEAKING AT PLANNING COMMITTEE MEETINGS

THE FOLLOWING CAN SPEAK AT PLANNING COMMITTEE MEETINGS

Up to two people who wish to object to and up to two people who wish to support an

individual planning application, an enforcement recommendation or any other quasi-judicial matter on the Agenda

Ward Councillors who are not members of the Planning Committee. (If both Ward Councillors sit on the Planning Committee, they may nominate a substitute Councillor to speak).

Members of Parliament with the whole or part of their constituency within Northampton Borough Council's boundaries

A representative of a Parish Council

ARRANGEMENTS FOR SPEAKING

It is necessary to register with the Meeting Services Section at The Guildhall as soon as possible and in any event not later than 12 noon on the day of Committee. This applies to all speakers, including Ward Councillors.

Registration can be by:

Telephone (01604 837358 or 837355),

In writing to: Solicitor to the Council, The Guildhall, St Giles Square, Northampton NN1 1DE, for the attention of The Meeting Services Officer, Planning Committee

By e-mail to: mtgsservices@northampton.gov.uk,

By fax to: The Solicitor to the Council for the attention of the Meeting Services Officer, Planning Committee (01604 838729).

Late representations will not be heard. The Council will operate a "first come first served" policy. In the event that two people have already registered a person wishing to make their views known to the Committee should contact them to see if they can put across their points as well.

If objectors intend to speak the applicant will be contacted to ensure that they have the opportunity to reply.

PROCEDURE AT THE MEETING

A planning officer may update the written committee report then those objecting to or supporting the application and Ward Councillors will be invited to speak.

A planning officer may summarise issues before the matter is debated by the Planning Committee Members and a vote taken.

TIME

All speakers are allowed to speak for a maximum of three minutes.

NOTES

Speakers are only allowed to make statements. They may not ask questions or enter into dialogue with Councillors, officers or other speakers.

Consideration of an application will not be delayed simply because someone who has registered to speak is unable to attend the meeting.

Addresses should only be about planning issues and should not refer to non-planning issues such as private property rights, moral issues, loss of views or effects on property values.

Fresh material may not be circulated to the Councillors which has not first been seen by officers of the Planning Division.



NORTHAMPTON
BOROUGH COUNCIL

Cabinet Member Decisions Protocol

Useful Contact Numbers:

Francis Fernandes
Solicitor to the Council
and Monitoring Officer ext 7334

Jim Inch
Senior Solicitor ext 7335

Frazer McGowan
Team Leader,
Meeting Services ext 7101

CABINET MEMBER DECISIONS – PROTOCOL

1. INTRODUCTION

1.1 The Council has formally delegated powers to the Leader of the Council to prepare a Scheme of Delegations for individual Cabinet Members. This scheme is separate from the Scheme of Delegations for Officers. To prevent any confusion between the different schemes this Protocol will refer to the Leader's Scheme of Delegations Protocol. This Protocol accompanies the Leader's Scheme of Delegations but does not formally form part of it. However, the Protocol will appear in the Constitution.

Under the Leader's Scheme of Delegations the following will have delegated powers to make Executive decisions:-

- Cabinet collectively
- The Leader
- The Deputy Leader
- Individual Members of Cabinet

Under the Leader's Scheme of Delegations Cabinet Members will **not** be able to make Key Decisions. Cabinet will be the main body making Key Decisions, although the Leader or the Deputy Leader, when deputising for the Leader, will be able to make Key Decisions when they are required urgently.

The Council has never operated delegated Executive decision-making and there is therefore a need for close attention to be paid to this Protocol. It is also important for legal advice to be taken whenever there is uncertainty or lack of clarity.

This Protocol is aimed at:-

- Members of Cabinet
- Senior Staff advising Cabinet Members
- Staff responsible for preparing and submitting reports for decision
- Staff operating the Protocol's requirements (e.g. Meetings Services)

The Leader will be able to change this Scheme of Delegations but will only be able to do so if the following is complied with. At least 21 calendar days written notice will be given to all Cabinet Members; the Chair of Overview and Scrutiny; the Head of Paid Service; the Council's Monitoring and Section 151 Officers. Any changes to the scheme will not affect the validity of decisions already taken.

1.2 Decision- making some brief comments

Council functions and the decisions that follow have various legal classifications and the classification impacts upon who can make a decision. For the purposes of this Protocol only what the law classifies as “Executive functions” will be discussed.

Executive functions are defined by the Local Government Act 2000 (the 2000 Act) and its associated regulations. After the changes brought about by the 2000 Act, the Executive (Cabinet) are responsible for functions of the Council not allocated by legislation or the Constitution elsewhere. The way this works is that there are some decisions that can only be made by the Executive, there are some decisions that may be made by the Executive (referred to as Local Choice functions) and some decisions that cannot be made by the Executive (for example development control and licensing decisions).

Post the 2000 Act changes, full Council is responsible for the broad strategic/policy decisions, for example the policy framework and the Executive are responsible for decisions within that framework (unless of course they have been allocated elsewhere). The legal analysis can be complicated and often there needs to be a proper legal assessment of whether a decision is an Executive decision, or whether some other body should make the decision, for example, full Council or the Improvement Board.

2. DELEGATED DECISIONS

Once an Executive decision has been identified, the issue the report writer needs to grapple with is who will be making the decision. There are a number of possibilities. It may be covered by the Officer’s Scheme of Delegations in which case the Officer with the delegations should be approached in the normal way. If the decision is covered by the Leader’s Scheme of Delegations an assessment needs to be made whether it is a decision for Cabinet, Improvement Board, the Leader or individual Cabinet Member. **If in doubt seek legal assistance.**

If the decision is an Executive decision and it has a strong improvement/recovery impact then the Constitution allows the decision to be made by the Improvement Board (technically by Executive members on the Improvement Board). In cases where improvement or recovery is a strong theme a manager at Corporate Manager level or above should be consulted as to where the decision lies. Legal advice should be sought if appropriate.

Whatever the case the Officer requiring a decision will have to prepare a formal report. A decision by a Cabinet Member must **not** under any circumstances be made without a full written report outlining all the relevant issues. A report will have to be completed in the format attached at **Appendix 1**. The report will need to have clear recommendations and the body of the report will need to have sufficient information to enable the decision-maker to make an informed decision. Normal compliance issues such as legal and financial implications will need to be considered very carefully. It is extremely important to bear in mind

that the vigour and approach in relation to delegated decision-making must not in any way be less than the approach for normal decision-making meetings.

Whilst the report represents the end product of a required decision, Officers and Cabinet Members should develop effective working relationships and the expectation is that there should be clear and effective dialogue between the Cabinet Member concerned and the senior management before a report is prepared and presented for decision.

2.1 The process to be followed

When an Executive decision is required, unless it is urgent (see further provisions for urgent decisions) the Officer requiring the decision will need to notify Meetings Services of the decision required and the title of the likely report. Proper authority must be obtained from the relevant Corporate Manager or Director. Meetings Services will not accept reports unless there is confirmation in writing (or e-mail) that Corporate Manager or Director authority has been obtained.

Meetings Services will, on receipt of a title of a report, send these details to the Leader and Deputy Leader for their information.

On receipt of the title of a proposed report Meetings Services will add to the Non-Statutory Decision List (the List) and an updated List will be published on prearranged publication dates. The List will take effect on the first working day of each month and the List will be published at least 14 calendar days before it takes effect. The format of the List will be similar to the draft attached at **Appendix 2**.

From the publication of the List, Councillors or members of the public will have at least 14 calendar days before the List comes into effect to request that a certain item should be held in public (i.e at least 14 calendar days working backwards from the first working day of each month). If the Councillors or members of the public comply with this time limit, the item will be considered in a normal open, public meeting. The normal rules of access, notice requirements for publication of agendas, etc. will apply as currently apply in the Council's Constitution.

The operations of the timings are relatively complicated, so Meetings Services should be contacted for guidance if required.

It should be noted that there are provisions in the Constitution that protect against abuse of the requirement for the holding of public meetings. For example where block requests are made without good reason. In these cases the Council's Monitoring Officer will be asked to determine whether there has been unreasonable abuse of the requirement to hold public meetings. If the Monitoring Officer is of the opinion that there has been abuse (a written decision by the Monitoring Officer will be required) then any request to hold a public meeting can be disregarded.

2.2 Delegated decision-making where prior notification of requirement for a public meeting

Where a Councillor or a member of the public indicates that a decision on the Non-Statutory Decision List should be held in public (and the time limits are complied with) then the matter will be considered in a public meeting. The normal rules for public meetings will apply. Papers will be published at least 5 clear days before the meeting etc.

It is important to point out that if grounds set out in Schedule 12A (as amended) of the Local Government Act 1972 apply, then a matter will be considered in private notwithstanding that a valid request for the matter to be held in public is made.

2.3 Delegated decision-making where no prior notification of requirement for a public meeting

Where Cabinet Member delegated decisions are **not** to be made in public meetings, the following requirements will apply.

At least 5 clear working days before the decision is made:

- A copy of the report in the required format, with Appendices must be submitted and published on the intranet. Meetings Services will need to be contacted in relation to this.
- All Councillors will be notified by Meetings Services by e-mail of the publication of the report.

Unless the decision is urgent, the Cabinet Members will not be able to make the decision until the 5 clear days have passed (5 clear working days means that the day of publication or the date the decision is actually made is not included in calculating the 5 days).

During the 5 clear working days notice period, Councillors will be entitled to make any comments, observations or representations to the Cabinet Member concerned about the report. These can be sent to the Cabinet Member direct or sent to Meetings Services for forwarding on. The Cabinet Member will have regard to the comments if appropriate and will be entitled to refer the report back to Officers for comments and advice as appropriate.

A flow chart outlining the main decision points is attached at **Appendix 3**.

2.4 Once the decision is made

Once the decision has been formally made by the Cabinet Member (outside the 5 clear working days), a decision notice in the form of the template appended at **Appendix 4** will be completed and posted on the Council's inter-intranet. A hard copy of the decision notice will be sent to the Chair of Scrutiny by Meetings Services, together with electronic copies

of the decision notice to all Members of Overview & Scrutiny Committee. The decision notice will clearly specify the date the decision was made, the date it was posted on the inter-intranet and the date the call-in period expires. The decision will not be implemented by Officers until 3 clear working days have passed from the date of publication (unless the Urgency and Special Urgency provisions apply). This is to enable the normal call-in provisions to apply.

2.5 General principles for Individual Cabinet Member decisions

Individual Cabinet Members will apply the same strict criteria to decision-making that they would in normal open meetings:

- A decision should not be made if
- a conflict of interest arises
- a personal and prejudicial interest exists
- the procedures outlined in this Protocol have not been complied with
- the Monitoring Officer or the Section 151 Officer has advised that the decision cannot be made
- In making any decision, Cabinet Members **must have due regard to professional advice received from Officers, especially legal and financial advice.** No decision should be made unless proper advice has been sought and provided. Normally details of professional advice should be clear within the body of the report.

2.6 Reporting Requirements

Each Cabinet Member will be required to report periodically (at least every 6 months) to Cabinet on all the delegated decisions made by the Cabinet Member concerned. Details of all items considered together with the decision and the date of the decision will be provided.

2.7 Matters of Urgency

There may be times where urgent decisions will need to be made and if not made will seriously prejudice the Council's or the public's interests. In these cases it may not be practicable for normal procedures to be followed, such as complying with the publication of the item on the Non-Statutory Decision List.

In these cases the decision can still be made so long as the procedures in the Overview and Scrutiny Procedure Rules are complied with (Part 4 of the Council's Constitution). These rules provide that:

“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”.

Urgent decisions that have not appeared on or cannot by reason of time, be put on the Non-Statutory Decision List and/or which by reason of urgency need implementation immediately (so Call-In does not apply) can be made so long as the Mayor consents that the matter is to be treated as an urgent matter and that it is reasonable to use the urgency procedure. If the Mayor is unavailable the Deputy Mayor's consent shall be required. In the absence of the Deputy Mayor the Head of Paid Service or his or her nominee's consent shall be required.

Please note that the above applies to non-Key Decisions.

Unlike other Cabinet Members the Leader or the Deputy Leader when deputising for the Deputy Leader will be able to make Key Decisions when a decision is required urgently. Where the Key Decision is not on the Forward Plan, then the urgency provisions and the special urgency provisions will apply (as outlined in Part 4 of the Council's Constitution (clauses 25 and 16)).

These rules provide for decisions to be made and implemented immediately so long as notice requirements are complied with and the Chair of Scrutiny is consulted and in some cases his or her agreement is obtained.

Whilst the Leader has the power under the Leader's Scheme of Delegations to make urgent Key Decisions this power will only be used in exceptional circumstances. Key Decisions will therefore, in the main, be made by Cabinet collectively.

Matters for Cabinet Members to consider before making a decision

- *Were you consulted or contacted prior to the report being prepared?*
- *Has a report in the proper format been submitted?*
- *Does the decision fall within the Leaders Scheme of Delegations?*
- *Is the decision one you would rather or the Leader has requested be referred to Cabinet?*
- *Is the decision an Improvement Board matter?*
- *Have there been proper departmental consultations especially legal and financial implications?*
- *Is a Key decision involved?*
- *Are there any reasons why you cannot make the decision for example a personal and prejudicial interest?*
- *Has the report appeared on the Non- Statutory Decision List?*
- *Can the decision be made in private or must it be made in a public meeting?*

Matters for Officers to consider before making a decision

- As above
- *Have you got senior management authority to submit a report for decision?*
- *Have you had early discussions with the Cabinet member about any report to be submitted?*

- *If you are asking for an urgent decision, have you taken legal advice on whether the urgency criteria apply?*

Useful Contact Numbers:

- Francis Fernandes
Solicitor to the Council ext 7334
- Jim Inch
Senior Solicitor ext 7335
- Frazer McGown
Team Leader –
Meetings Services ext 7101

APPENDIX 1



Item No.
[Item number and title as
on agenda]

CABINET MEMBER DELEGATED DECISION

Date: [Insert Date of Decision]
Cabinet Member: [Insert Name here]
Portfolio: [Insert Post Here]
Corporate Manager: [Insert Name here]
Directorate: [Insert Directorate Here]

Report Title	
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1. Recommendations

2. Summary

3. Report Background

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4. Options and Evaluation of Options

--

5. Resource Implications (including Financial Implications)

--

6. Risk and Opportunity Issues

--

7. Consultees (Internal and External)

Internal	
External	

8. Compliance Issues

A: How Proposals Deliver Priority Outcomes

Recovery Plan
Corporate Plan

--

B: Other Implications

Other Strategies

Finance Comments

Legal Comments

8. Background Papers

Title	Description	Source

Name	Signature	Date	Ext.
Author	(in absence of electronic signature please insert name here)		
Corporate Manager	(in absence of electronic signature please insert name here and ensure that the Corporate Manager has approved the report)		

Cabinet Member:

I declare no conflict of interest applies

I agree the report's recommendations

I do not agree the report's recommendations

I agree the report's recommendations subject to the following amendments:

The reason for the decision are as follows:

Cabinet Member: [_____]

Signature: _____

**LEADER'S SCHEME OF DELEGATED DECISION PLAN
FOR THE PERIOD DD.MM.YYYY TO DD.MM.YYYY**

PUBLIC MEETING REQUEST DEADLINE 12NOON DD/MM/YYY (only applicable to new decisions)

Leader's Scheme of Delegation Decision Plan sets out the non-key decisions, which are expected to be taken by the individual Cabinet Member outside of the Cabinet meeting or in some instances by the Cabinet. It lists the planned decisions for a period of four months. The Plan is updated monthly, and published 14 calendar days prior to the date when it comes into effect (which would be the first working day of each month).

The Cabinet Portfolio Holder will determine these decisions on the expected date specified in the Plan (unless there is a change in circumstance). The decision will be determined individually unless a public meeting is requested within the specified timeframe.

All the decisions will be accompanied by a Report, which will be available at least 5 clear working days prior to the actual date of decision. The publication of the report will be electronic on the Council's website and notification of the publication will be received by all Northampton Borough Councillors.

Some matters can be considered after the exclusion of the press and public on the grounds set out in the Local Government Act 1972(Schedule 12A as amended). In the information about the expected decision to be made, the words "(in private)" will also appear if this is the case. Such matters will be exempt from a public meeting request.

Public Meeting Request

Request for a public meeting on any new decision(s) should be made by 12noon a day prior to when the Plan comes into effect. **Please contact Bijal Shah on 01604 837356 or email bshah@northampton.gov.uk to request a meeting or if you require any more information.**

Example: If the Plan was for the Period 3rd July to 31st October 2006, the Plan would be published on the 19th June 2006 and the meeting request for any decision(s) should be made no later than 12noon on 3rd July 2006.

NB: As the Plan is updated on a monthly basis any decisions carried forward from the previous Plan will be exempt from public meeting requests, as the opportunity for these would have lapsed.

The Members of the Cabinet and their areas of responsibility are:

Councillor Tim Hadland	Leader of the Council and Financial Strategy and Performance	cllr.thadland@northampton.gov.uk
Councillor David Palethorpe	Deputy Leader and Business Intelligence People Support and e Govt	cllr.dpalethorpe@northampton.gov.uk
Councillor Yousuf Miah	Residential Operations	cllr.ymiah@northampton.gov.uk
Councillor Penny Flavell	Local Environment	cllr.pflavell@northampton.gov.uk
Councillor John Caswell	Economy and Infrastructure	cllr.jcaswell@northampton.gov.uk
Councillor Phil Larratt	Community Engagement and Democratic Services	cllr.plarratt@northampton.gov.uk

Post Decision

Once a decision has been made either individually or in public the procedure below will be followed:

- A decision notice will be published on the Council Website, Guildhall Office Notice Board. All Councillor's will receive the publication notification. The Decision Notice would include details of the call-period after which the decision would be implemented.
- The Cabinet members and the Chair of Overview and Scrutiny Committee would be sent an electronic copy of the Decision notice.

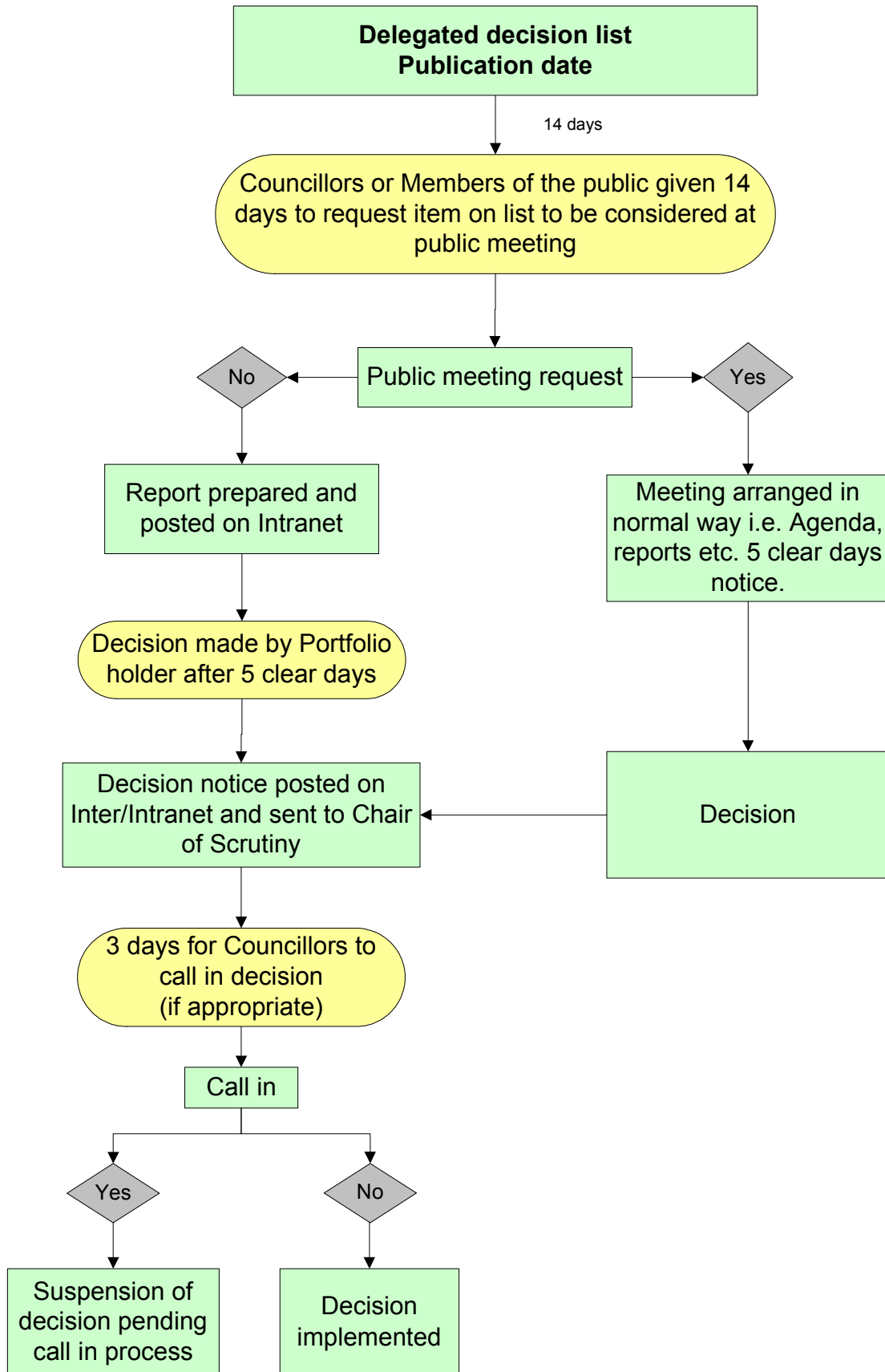
For more details, please contact Frazer McGown, Meeting Services Manager at The Guildhall, St Giles Square, Northampton NN1 1DA, 01604 837101; e-mail: fmcgown@northampton.gov.uk. Alternatively, you can register your request for a public meeting by e-mailing meetingservices@northampton.gov.uk.

LEADER'S SCHEME OF DELEGATED DECISION PLAN : DD.MM.YYYY to DD.MM.YYY

Expected Decision Date	Subject	Summary of Expected Decision	Decision to be taken by	Name of <u>Report Author</u> and the Corporate Director Responsible	Can public meeting be requested?
				LEAD OFFICER: DIRECTOR: INSERT DIRECTOR NAME	YES/NO
				LEAD OFFICER: DIRECTOR: INSERT DIRECTOR NAME	YES/NO
				LEAD OFFICER: DIRECTOR: INSERT DIRECTOR NAME	YES/NO

APPENDIX 3

PORTFOLIO HOLDER
DECISION MAKING FLOW CHART





DELEGATED DECISION NOTICE

NOTE: Set out below is a summary of the decision taken. The wording used does not necessarily reflect the actual wording that will appear in the minutes.

Implementation of Decision

Once the Decision is approved it will be implemented subject to the Call-In procedure and after the Call-In.

SUBJECT

**DECISION
SUMMARY**

DECISION OF

DECISION DATE

CALL IN EXPIRY

**Lead Officer Name
and Contact**

If you have any queries about this decisions please contact the Lead Officer,Via [01604](tel:01604) or alternatively by e-mail at the below address@northampton.gov.uk

APPENDIX 3

**PORTFOLIO HOLDER
DECISION MAKING FLOW CHART**

APPENDIX 3

**PORTFOLIO HOLDER
DECISION MAKING FLOW CHART**