

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

|                        |  |
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| <b>Decision Maker:</b> | Regulatory Committee                                     |
| <b>Date:</b>           | 19 <sup>th</sup> October 2022                            |
| <b>Title:</b>          | Update Report on Local Protocol for Regulatory Committee |
| <b>Report From:</b>    | Legal Services, Corporate Services                       |

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#### **Purpose of report**

- 1 The purpose of this report is to inform Regulatory Committee members of the updated Local Protocol on Planning, Rights of Way, Commons and Village Greens Registration for Members of Regulatory Committee, Substitute Members of Regulatory Committee and Officers (“the Protocol”), the reasons for the update and the governance requirements required to bring this updated Protocol into effect. The Committee are asked to consider the amendments to the Protocol and decide whether to recommend the Protocol for adoption by full Council. If recommended the Protocol will be taken to the next full Council meeting (on the 24<sup>th</sup> of November 2022) for adoption.

#### **Recommendation**

2. That Regulatory Committee recommends adoption of the updated Protocol together with the onward governance requirements necessary to give effect to the Protocol.

#### **Contextual information**

3. Hampshire County Council’s Legal Services has recently undertaken a review of the Protocol. This is to ensure the Protocol is compliant with current legislation and to reflect good practice. The Protocol was last reviewed in February 2014.
4. The current Protocol forms part of the County Council’s Constitution and can be found at Part IV Appendix B within the Constitution.
5. The Protocol has been redrawn to provide a clearer document setting out the conduct responsibilities of both Members and Officers when considering

matters brought to Regulatory Committee. These responsibilities are set out separately for Members and Officers for easier reference. They have been updated where necessary in accordance with current legislation.

6. The proposed changes to the Protocol have been informed by discussions with the County Council's Monitoring Officer. Legal Services has also worked with officers from Economy Transport and Environment and Culture, Communities and Business Services departments that work closely with Regulatory Committee. An Equalities Impact Assessment has been completed and is annexed to the report below.
7. The Protocol now has an index to aid interpretation and permits easier cross-referencing via hyper-links to other relevant documents or parts of the Constitution when viewed electronically.
8. The intention of the updated layout of the Protocol is to better group together the content of the Protocol to make accessing the relevant procedural rules more intuitive.
9. A breakdown of all of the updates and changes to the Protocol is set out below at paragraphs 21 – 42. The more substantive updates for Members to consider are described in paragraphs 10 - 19 below.

### **Member's Training**

10. The Protocol expands the rules on Member Training. Paragraph 4.3 provides that it is a requirement for Members to have attended basic training in advance of their first sitting on Regulatory Committee.
11. There is more detail around the practicality and requirement of attending and the content of refresher training sessions at paragraphs 4.4 – 4.9.
12. The provision for periodic tours in Paragraph 4.10 removes the reference in an earlier draft of the Protocol of an 'expectation' on Members to attend
13. Paragraphs 4.11 and 4.12 include a mechanism for referral to the Chair and Monitoring Officer if a Member consistently fails to attend training. The reference to exclusion included in an earlier draft of the Protocol has been removed.

### **Amendments to Recommendation**

14. Paragraph 11.3 that concerns decisions departing from recommendation has been updated to clarify the procedure for compiling the reasons of members by the officers in the event a recommendation is not adopted.
15. The Protocol now incorporates at paragraphs 13.5 – 13.12 an express procedure for the introduction and adoption of any proposed amendments to a recommendation.

## **Site Visits**

15. Paragraph 14.1 has been updated to clarify when decisions of the Officers for a site visit will take place.
16. Paragraph 14.2 provides that Members will be encouraged to attend site visits (rather than expected to attend as previously).
17. Removal of provision in previous draft for recording of non-attendance and reference to Group Leader for consistent non-attendance at site visits.
18. Paragraph 14.3 expressly incorporates the Public Sector Equality Duty in the context of the Officers making arrangements for Members attendance at Site Visits.
19. Paragraph 14.6 clarification that prohibition of District, Borough or Parish Councillors does not apply if they are also Members of the Committee.
20. Paragraph 14.8 of the Protocol clarifies the limited role of landowners at site visits to allow admission and for any health and safety guidance required during the visit.

## **Further Updates**

21. Paragraph 2.1 (that transfers paragraph 1.3 from current Protocol) provides that reference to Members includes reference to Substitute Members. Therefore express reference to Substitute Members removed from elsewhere in Protocol
22. Paragraph 1.8 now incorporates reference to the relevant parts of the County Council's Standing Orders.
23. Paragraph 1.9 summarises general principle that only Offices and Members who observe the Protocol should take part in Regulatory Committee.
24. Paragraph 2.12 removes the request for Members who need advice on Interests to raise them three working days before the Committee Meeting
25. Paragraph 2.20 clarification on need to declare 'dual hat' interest as a Personal Interest at Committee.
26. Paragraph 4.10 removal of any reference to an expectation of Members to attend the periodic tours.
27. Paragraph 7 clarification on basis of Member appointment to Committee in accordance with Constitution and link to Member details.
28. Paragraph 8.1 – 8.3 express reference and links to schemes of authorisation and delegation for Planning and Rights of Way and further description of Committee remit.

29. Paragraph 9.2 express reference to legislative timeframe for publication of reports.
30. Paragraph 9.5 reference and link to tests for conditions attached to planning permission.
31. Paragraph 9.6 – 9.7 detail on process for publication of update reports.
32. Paragraph 9.8 additional detail on the content of reports for Rights of Way, Common and Town or Village Green matters.
33. Paragraph 10.4 removal of reference to withdrawn circular.
34. Part 11 on Committee Process now separates guidance on decision making between planning matters (paragraphs 11.1 – 11.4) and Rights of Way, Common and Town or Village Green matters (paragraphs 11.5 – 11.6).
35. Paragraph 11.4 provides more detail on process for departing from recommendation or deferring a decision.
36. Paragraph 11.8.2 to allow for Members to declare any declaration of interest after the introduction of the item.
37. Paragraph 12.1 regarding deputations includes reference to rules in County Council Standing Orders
38. Paragraph 12.4 allows for Members of adjacent authorities or authorities within the administrative area of the County Council to make a deputation to Committee.
39. Paragraph 12.7 provides link to Standing Order 40 as the basis for Members of the County Council who are not Members of the Committee to speak, removal of reference to 'local.'
40. Paragraph 13.13 and 13.14 provide for grant of delegated authority for Officers to finalise wording in consultation with the Chair and Vice Chair of reasons for a decision of Committee not to adopt a recommendation or to defer a decision.
41. Removal in Annex B on Guidelines for determining planning applications of reference to withdrawn planning circulars
42. Link to Countryside Scheme of Authorisation at new Annex D

### **Future direction**

43. During the preparation of the updated Protocol there has been discussion around the possibility of providing to Members a film of an application site, and Officers are looking into the possibility of recording site visits.

39. In order to effect the proposed changes to the Protocol, the updated Protocol must be approved by full Council as an amendment to the Constitution. Subject to Regulatory Committee recommending adoption of the Protocol a Part I report will be presented to full Council on the 24th of November 2022 to seek approval of the updated Protocol and its subsequent incorporation into the Constitution.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

|   |    |
|---|----|
| <b>Hampshire maintains strong and sustainable economic growth and prosperity:</b> | No |
| <b>People in Hampshire live safe, healthy and independent lives:</b>              | No |
| <b>People in Hampshire enjoy a rich and diverse environment:</b>                  | No |
| <b>People in Hampshire enjoy being part of strong, inclusive communities:</b>     | No |

**OR**

**This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:**

The report outlines changes to the Protocol which governs the Regulatory Committee and so the report is required to inform members and promote transparency.

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

None



## Equality Impact Assessment

### What is an Equality Impact Assessment (EIA) and why does the County Council do them?

The [Public Sector Equality Duty](#) (PSED) is an obligation within the [Equality Act 2010](#) (“the Act”), which asks public authorities, like Hampshire County Council, to give ‘due regard’ to equality considerations, in particular to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

This includes assessing the impact of policies and practices on individuals and communities with a protected characteristic, as defined in the Act and some other specific groups. The County Council uses EIAs to ensure it has paid ‘due regard’ to equalities considerations when there are changes to a service or policy, a new project or certain decisions.

| EIA Author    | Position & Department                             | Contact   |
|---------------|---|---|
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|----------------------------|--|
| Title:                     | Updated Protocol for Regulatory Committee  |
| Related EIAs:              | None   |
| EIA for Savings Programme: | No   |
| Description of the policy: | <p>Under legislation (the Local Authorities (Functions and Responsibilities)(England) Regulations 2000) specific functions and decisions of the County Council are reserved to the Regulatory Committee.</p> <p>To assist in the discharge of the Regulatory Committee's duty Part 4 Appendix B of the County Council's Constitution includes a Local Protocol. The aim of the Protocol is to set out procedure and provide guidance to the Regulatory Committee and its Members and Officers to help with decision making.</p>                      |
| New/changed policy         | <p>The current Protocol was last reviewed in February 2014. An updated draft Protocol has been prepared that seeks to update the current Protocol in respect of changes in the law and guidance and to provide a clearer and more modern format to assist with navigating the Protocol.</p> <p>The proposed updates to the Protocol are summarised in the report to Committee at paragraphs 10 to 42.</p> <p>The draft Protocol includes updated provision in respect of the arrangements for site visits at paragraph 14 of the draft Protocol.</p> |
| Engagement                 | <p>The proposal to update the Protocol has been brought as a report to the Regulatory Committee, to seek the approval of the Members of the draft Protocol so that it may be recommended for adoption at full Council in due course.</p> <p>The draft Protocol and associated report was published and presented to Regulatory Committee and the comments and feedback of the Members have been incorporated into</p>  |



|  |   |
|--|---|
|  | <p>the draft Protocol and the updated report.</p> <p>The draft Protocol will be presented again to the Regulatory Committee on the 19<sup>th</sup> of October 2022.</p> |
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## Equalities Considerations – Impact Assessment

### Age

|                   |  |
|-------------------|--|
| Impact on public  | Neutral  |
| Impact on Members | Neutral  |
| Rationale         | None of the proposed changes to the Protocol of Conduct negatively impact on this protected characteristic |

### Disability

|                   |  |
|-------------------|--|
| Impact on public  | Neutral  |
| Impact on Members | Neutral  |
| Rationale         | <p>The draft Protocol provides examples of where a site visit to an application site may be arranged and would be of assistance to the discharge of the Members decision making responsibility.</p> <p>Where Officers consider a site visit to be appropriate paragraph 14.2 of the draft Protocol now states that Members will be ‘encouraged’ to attend the site visit.</p> <p>The intention of the updated Protocol in respect of site visits is to reflect the value of site visits to some applications before Regulatory Committee to appreciate the</p> |

|            |   |
|------------|---|
|            | <p>impact of a decision.</p> <p>Members had raised concerns that previously stating that there was an ‘expectation’ for members to attend site visits as well as including provision to refer Members to the Group Leader where a Member consistently failed to attend would negatively impact Members who maybe prohibited from attending a site because of a disability.</p>  |
| Mitigation | <p>The updated Protocol addresses the potential negative impact on Members with a disability by;</p> <ul style="list-style-type: none"> <li>- removing the reference of any ‘expectation’ of attendance, and refers to ‘encouragement’ of attendance only</li> <li>- removing the reference to referral to Group Leaders where a Member consistently does not attend at site visits.</li> <li>- expressly referring (at paragraph 14.3) to the need for Officers to have due regard to a Members Protected Characteristic for a site visit with a view to enabling Members with Protected Characteristics to attend the site visit where possible.</li> </ul> |

### Gender Reassignment

|                         |         |
|-------------------------|---------|
| Impact on public        | Neutral |
| Impact on staff/Members | Neutral |
|                         |         |

|           |  |
|-----------|--|
| Rationale | None of the proposed changes to the Code of Conduct negatively impact on this protected characteristic |
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### Pregnancy and Maternity

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this protected characteristic |

### Race

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this protected characteristic |

### Religion or Belief

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this protected characteristic |

## Sex

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this protected characteristic |

## Sexual Orientation

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this protected characteristic |

## Marriage and Civil Partnership

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this protected characteristic |

## Poverty

|                  |         |
|------------------|---------|
| Impact on public | Neutral |
|                  |         |

|                         |   |
|-------------------------|---|
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this characteristic |

## Rurality

|                         |   |
|-------------------------|---|
| Impact on public        | Neutral   |
| Impact on staff/Members | Neutral   |
| Rationale               | None of the proposed changes to the Protocol negatively impact on this characteristic |

## Additional information

The proposal to update the Protocol is expected to have a neutral impact on protected characteristics of;

- age
- disability
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Following engagement with Members, measures to mitigate and address any negative impact on Members who are unable to attend at site visits has been introduced. The impact of the change to policy is considered to be neutral in view of both the removal of any reference to 'expectation' on members to attend site visits and its replacement with 'encouragement' to do so as well as the express requirement on Officers to take into account a Member's Protected Characteristic when organising a site visit to promote attendance where possible.