

Committee Agenda



**Epping Forest
District Council**

CONSTITUTION WORKING GROUP Thursday, 28th September, 2017

Place: Committee Room 1, Civic Offices, High Street, Epping

Room: Council Chamber

Time: 7.00 pm

Democratic Services Officer V. Messenger Tel: (01992) 564243
Email: democraticservices@eppingforestdc.gov.uk

Members:

Councillors M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, L Hughes, S Kane, J Philip, C C Pond, C P Pond, D Stallan and J H Whitehouse

MEMBERS ARE REMINDED TO BRING THEIR COPIES OF THE EXISTING CONSTITUTION DOCUMENT WITH THEM TO THE MEETINGS – FURTHER COPIES CAN BE SUPPLIED ON REQUEST.

1. APOLOGIES FOR ABSENCE

2. SUBSTITUTE MEMBERS

(Director of Governance) To report the appointment of any substitute members for the meeting.

3. NOTES OF PREVIOUS MEETING (Pages 3 - 6)

To approve the notes of the meeting of the Working Group held on 20 September 2016 since the meeting of 3 April 2017 was cancelled.

4. TERMS OF REFERENCE & WORK PROGRAMME (Pages 7 - 10)

(Director of Governance):

(a) To consider the revised Terms of Reference attached with a recommendation to remove bullet point (1).

(b) To consider the Work Programme attached.

5. CONSTITUTION - REVISIONS & AMENDMENTS (Pages 11 - 14)

(Director of Governance) To consider the attached report.

6. NEW PLANNING CODE OF PRACTICE (Pages 15 - 26)

(Deputy Monitoring Officer) To consider the attached reports.

7. PLANNING PROCESS REVIEW 2017/18 - SCOPING AND COUNCIL REFERRAL (Pages 27 - 36)

(Deputy Monitoring Officer) To consider the attached report.

8. DATE OF NEXT MEETING

To note that the next meeting of the Constitution Working Group will be held at 7.00pm on Tuesday 20 February 2018.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee:	Constitution Working Group	Date:	Tuesday, 20 September 2016
Place:	Committee Room 1, Civic Offices, High Street, Epping	Time:	7.00 - 8.26 pm
Members Present:	Councillors M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, J Philip, C C Pond, C P Pond, D Stallan, H Whitbread and J H Whitehouse		
Other Councillors:	Councillors R Bassett and S Kane		
Apologies:	A Mitchell and G Waller		
Officers Present:	S G Hill (Assistant Director (Governance & Performance Management)), S Tautz (Democratic Services Manager) and M Jenkins (Democratic Services Officer)		

1. **Substitute Members (Minute Item 39 - 23.7.02)**

There were no substitute Members appointed.

2. **Notes of Previous Meeting**

RESOLVED:

That the notes of the last meeting of the Working Group held on 22 March 2016 be agreed.

3. **Terms of Reference and Work Programme**

(a) Terms of Reference

It was noted that Item (1) To complete a review of the Council's Constitution by 31 March 2016 needed deletion as this had been completed.

(b) Work Programme

There were 3 items on the Work Programme:

- (i) Review of Planning Protocol (for discussion at this meeting).
- (ii) Gifts and Hospitality Provisions – Review was scheduled for the 21 February 2017 meeting.
- (iii) Audit and Governance Committee – Review was scheduled for 2018.

4. **Review of Planning Protocol**

The Working Group received a report on the Planning Protocol from the Assistant Director Governance and Performance Management.

The Working Group were reminded that work on the new Constitution was substantially completed in March 2016. The Working Group did wish to come back and review two elements, firstly the guidance on gifts and hospitality and, secondly, the Planning Protocol. These documents were not included in the final version of the Constitution.

The Planning Protocol was last reviewed in 2007, since that time, the passing of the Localism Act meant that there had been some clarification on the role of Members, particularly interests in planning matters and the types of interests that were now required to be disclosed.

Counsel had been asked to provide a commentary on the current protocol. Mark Beard, therefore, had provided the Council with some exemplar codes and protocols from other authorities. It was suggested that the Council's document should be updated and as a minimum should cover the following:

- (a) The aim and application of the Planning Protocol.
- (b) The relationship with the Local Member's Code of Conduct.
- (c) Roles and responsibilities.
- (d) Declaration of Interests.
- (e) Predisposition, predetermination and bias.
- (f) Membership of their councils and bodies.
- (g) Pre-application discussions.
- (h) Contact with applicants, developers and interested persons.
- (i) Lobbying of and by Councillors.
- (j) Officers.
- (k) Attendance and participation at public meetings.
- (l) Site visits.
- (m) Officer reports and recommendations.
- (n) Conduct during public meetings.
- (o) Decision making.
- (p) Decisions contrary to the officer recommendation.
- (q) Training.
- (r) Review.

In the Member's discussion, it was felt that the protocol should take account of the "Way Forward" which Councillors suggest for the benefit of applicants where planning applications have been refused. The Assistant Director Governance and

Performance Management advised that he would speak with the Assistant Director Development Management about this.

Changes to pre-determination and dispositive meant it was important to acknowledge the difference in the new protocol. For example a Cabinet decision on a particular site would not necessarily mean that any Portfolio Holder involved had a Declarable Pecuniary Interest in a future planning application connected with that site. It was advised that members may have seen the same planning application more than once through different tiers. Any unsurety should be directed to the Monitoring Officer for clarification. However the Protocol would need to delve deeper into this.

The Working Group suggested that a Licensing Protocol was also needed, this should be discussed with the Licensing Committee. Councillor D Stallan proposed that a draft licensing Protocol should be added to the Working Group Work Programme and consultation take place with the Licensing Committee members, at the appropriate time. This was seconded by Councillor C C Pond, the Working Group agreed.

It was felt that the Standards Committee, Parish and Town Councils, Local Council's Liaison Committee and the Members of the Joint Meeting of Development Management Chair and Vice Chair needed to be consulted on the new Planning Protocol.

It was advised that an updated draft of the Planning Protocol should be circulated to Working Group members for comments. An extra-ordinary meeting would be scheduled if significant amendments were needed.

RESOLVED:

- (1) That officers submit an updated draft of the Planning Protocol to Working Group Members for comments;
- (2) That consultation be undertaken with Members and the following Committees and authorities;
 - (a) Standards Committee;
 - (b) Local Council's Liaison Committee; and
 - (c) Joint Meeting of Development Management Chair and Vice Chair.
- (3) That the Working Group, at its next meeting, approve the final draft document for recommendation.

5. Update on New Constitution

The Select Committee were advised by the Democratic Services Manager of recent updates made to the Constitution. There had been slight amendments to the document but no operational issues had developed in the preceding 6 months.

6. Dates of Future Meetings

The next meeting of the Working Group would be held on Tuesday 21 February 2017.

CHAIRMAN

CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group

Status: Working Group

Terms of Reference:

~~(1) To complete a review of the Council's Constitution by 31 March 2016 and to recommend new arrangements accordingly;~~

~~thereafter:~~

(1) To review any aspect of the authority's constitutional arrangements as requested by the Council;

(2) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and

(3) To consider any proposals of the Director of Governance for necessary revision to any element of the Constitution.

Reporting:

The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.

Chairman: Councillor M McEwen

S. Hill (September 2017).

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Constitution Working Group (Chairman – Cllr M McEwen)

Item	Starting Dates	Progress
(1) Constitution – proposed minor amendments	28 September 2017	<i>(See agenda item 5).</i>
(2) Planning Code of Practice	28 September 2017	<i>(See agenda item 6).</i>
(3) Planning Process Review 2017/18	28 September 2017	Scoping report to September 2017 meeting. <i>(See agenda item 7).</i>
(4) Review of Audit & Governance / standards	20 February 2018	Review required after two years at members' request.
(5) Procurement Rules	28 September 2017	Delayed until next meeting on 20 February 2018.
(6) Gifts and hospitality advice	20 February 2018	

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Report to Constitution Working Group

Date of meeting: 28 September 2017



**Epping Forest
District Council**

Subject: Constitution - Revisions & Amendments

Officer contact for further information: S. Tautz (01992) 564180

Democratic Services Officer: V. Messenger (01992) 564265

Recommendations/Decisions Required:

(1) That a report be made to the Council recommending that:

(a) the following revisions be made to the Procedure Rules of the Constitution with immediate effect:

Q3(1) (Revised) “Members of the public may ask questions of the Leader of the Council, any Portfolio Holder, or the Chairman of the Overview and Scrutiny Committee, at ordinary meetings of the Council”;

Q3(2) (New) “Members of the public may also ask questions of any Portfolio Holder at ordinary meetings of the Cabinet and of the Chairman of the Overview and Scrutiny Committee at ordinary meetings of the Committee”; and

(b) the following revision be made to Appendix 1 of Article 6 of the Constitution with immediate effect:

1(q) “to review the implications of consultation documents relating to matters affecting the Epping Forest District, where requested by members or considered appropriate by the relevant Service Director, and to respond to such matters on behalf of the Council”; and

(2) That recent changes to the Constitution implemented in accordance with the authority delegated to the Director of Governance for the maintenance of the Constitution, be noted.

Constitution – Proposed Revisions

1. (Director of Governance) The Working Group is asked to consider the following proposed revision to the Council’s Constitution, to ensure that the Constitution remains fit for purpose.

Overview and Scrutiny – Public Questions

2. A discrepancy in the provisions of Article 6 (Overview and Scrutiny) and Procedure Rule Q3 of the Constitution has recently been identified, as a result of the submission of a public question to the Overview and Scrutiny Committee.

3. Paragraph 22 of Article 6 currently provides that ‘Members of the public may ask questions of the Chairman of Overview and Scrutiny Committee at ordinary meetings of the Committee, in accordance with the procedure set out in the Council procedure rules set out in Part 4 of the Constitution’.

4. However, Procedure Rule Q3(1) provides that 'Members of the public may ask questions of the Leader, Chairman of Overview and Scrutiny Committee or any Portfolio Holder at ordinary meetings of the Council and of Cabinet members at Cabinet meetings'. This appears to suggest that questions may only be made to the Chairman of the Overview and Scrutiny Committee at meetings of the Council, rather than of the Committee itself.
5. In handling the public question recently made to the Overview and Scrutiny Committee, the view of the Monitoring Officer was taken that the provisions of the Overview and Scrutiny Article of the Constitution should take precedence over Rule Q3. However, it is considered that the opportunity should now be taken to ensure consistency between these two elements of the Constitution. It is therefore suggested that Rule Q3 be clarified by the addition of a new Rule Q3(2) as follows:

Q3(1) (Revised) "Members of the public may ask questions of the Leader of the Council, any Portfolio Holder, or the Chairman of the Overview and Scrutiny Committee, at ordinary meetings of the Council";

Q3(2) (New) "Members of the public may also ask questions of any Portfolio Holder at ordinary meetings of the Cabinet and of the Chairman of the Overview and Scrutiny Committee at ordinary meetings of the Committee".

6. The remaining existing elements of Procedure Rule Q3 are already appropriate in terms of the submission of public questions to the Council, the Cabinet and the Overview and Scrutiny Committee. These require no amendment, save for re-numbering arising from the proposed addition of the new rule Q3(2).

Overview and Scrutiny – Consultation Documents

7. Article 6 (Overview and Scrutiny) of the Constitution currently provides (Appendix 1 1(q)) for the Overview and Scrutiny Committee "to review the implications of Government consultation documents where requested by members". The Committee has delegated a similar form of authority to each of the existing Select Committees, through the annual adoption of appropriate terms of reference.
8. In practice however, it is clear that the Overview and Scrutiny Committee and certain of the Select Committees have previously undertaken consideration of the implications of non-Government consultation documents, particularly those issued by other local authorities or other statutory agencies, where considered appropriate by service directors. In one particular recent instance, the consideration of a consultation exercise by the Neighbourhoods Select Committee had to be subsequently regularised by a Portfolio Holder decision.
9. In order to achieve a practical way forward in terms of the consideration and response to appropriate consultation documents, it is therefore suggested that Paragraph 1(q) of Appendix 1 of Article 6 of the Constitution, be revised as follows:

1(q) "to review the implications of consultation documents relating to matters affecting the Epping Forest District, where requested by members or considered appropriate by the relevant Service Director, and to respond to such matters on behalf of the Council".
10. Subject to the agreement of this proposed revision to the Constitution, the existing delegation made by the Overview and Scrutiny Committee for the select committees to consider consultation documents on its behalf, will also need to be revised. This will be addressed through a revision to the terms of reference for each select committee.

Constitution – Update

11. A revised edition of the Constitution was published on 20 June 2017 in accordance with the authority delegated to the Director of Governance for the maintenance of the Constitution This update to the Constitution included the following:
 - (a) a revised schedule of Portfolio Holder Responsibilities (Part 3) (Scheme of Delegation - Appendix 4);
 - (b) a revised schedule of Officer Delegation Arrangements (Part 3) (Scheme of Delegation - Appendix 5); and
 - (c) the adopted Members' Allowances Scheme and schedule of implementation for 2017/18 (Part 6 - Scheme of Allowances).
12. Appropriate revisions were also made throughout the Constitution, to reflect changes to Portfolio Holder Responsibilities from the current municipal year. Members were advised of the revisions to the Constitution on its publication and through the Council Bulletin of 23 June 2017.

Resource Implications:

The recommendations of this report seek to ensure that the Councils Constitution remains fit for purpose.

Legal and Governance Implications:

The Council's Constitution sets out procedures and rules for the management of its services and functions.

Safer, Cleaner, Greener Implications:

There are no implications arising from the recommendations of this report in respect of the Council's commitment to the Climate Local Agreement, the corporate Safer, Cleaner, Greener initiative, or any crime and disorder issues within the district.

Consultation Undertaken:

The recommendations of this report have been subject to prior consultation with the Monitoring Officer and Deputy Monitoring Officer.

Background Papers:

None

Impact Assessments:

Risk Management

The Council's Constitution sets out procedures and rules for the management of its services and functions.

Equality:

There are no equality implications arising from the recommendations of this report.

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Report to the Constitution Working Group

Date of meeting: 28 September 2017



**Epping Forest
District Council**

Subject: New Planning Code of Practice
Responsible Officer: Simon Hill (01992 564249)
Democratic Services: Vivienne Messenger (01992 564265)

Recommendations/Decisions Required:

- (1) That the Working considers a Planning Code of Practice and make suggested amendments and additions; and**
- (2) That, subject to the views of the Working Group, the full Council be asked to approve the Planning Code of Practice as part of the New Constitution at its meeting on 2 November 2017; and**

Report:

1. (Deputy Monitoring Officer) As the Working Group will know, work on the new Constitution was substantially completed in March 2016. The Working Group did however require officers to come back and review two elements: firstly, the Guidance on Gifts and Hospitality; and, secondly, the Planning Protocol. These documents were not included in the final version of the Constitution.

2. The Planning Protocol was last reviewed in 2007. Since that time the passing of the localism act means that there has been some clarification on the role of members, particularly interests in planning matters and the types of interests that are now required to be disclosed.

3. When Counsel Opinion was sought on the main constitution earlier this year, we asked that Counsel provide us with some commentary on our current protocol. As part of his advice, Mark Beard has provided us with some exemplar codes and protocols from other authorities as a starting point.

4. Although the Council's Protocol needed review, some sections only required updating. Counsel suggested that the Council's document should cover (as a minimum) the following:

- (i) The aim and application of the Planning Protocol;
- (ii) The relationship with the Local Members' Code of Conduct;
- (iii) Roles and responsibilities;
- (iv) Declaration of interests;
- (v) Predisposition, predetermination and bias;
- (vi) Membership of other councils and bodies;
- (vii) Pre-application discussions;
- (viii) Contact with applicants, developers and interested persons;
- (ix) Lobbying of and by councillors;
- (x) Officers;
- (xi) Attendance and participation at public meetings;
- (xii) Site visits;
- (xiii) Officer reports and recommendations;
- (xiv) Conduct during public meetings;

- (xv) Decision-making;
- (xvi) Decisions contrary to the officer recommendation;
- (xvii) Training; and
- (xviii) Review.

5. A new draft Code of Planning is attached for consideration which will replace the old Planning Protocol. As the remit of the Standards Committee includes oversight of matters that give advice on Standards related issues, that committee's view was being sought on the document. That Committee endorsed the document subject to a couple of minor amendments to deal with:

- (1) A paragraph numbering regime;
- (2) Clarification of the documents relationship to advice on gifts and hospitality; and
- (3) Best practice advice to contact planning officers in cases where a member is contemplating pre-application discussion with an applicant.

6. These matters have now been added.

7. The Working Group may know that complaints related to planning are, by far, the most popular topic for complainants. It is therefore particularly important that clear advice is given to members. The new Code was trialled at members training, open to Parish and Town Councillors on 30 June 2017 and was well received.

8. Members are asked to consider the proposed document to make suggested amendments and additions and recommend the document for adoption by the Council in November 2017.

Planning Code of Practice

(i) The Aim And Application Of The Planning Code

1. This Code is intended to provide Councillors, staff and the Public advice and guidance on the planning process.
2. This Code has the status of advice and should be used to shape Councillors conduct and consideration of all planning matters they are asked to determine. It also deals with the involvement of Councillors and officers of the Council in the operation of the planning system outside the formal decision-making process.
3. In this Planning Code the term “Planning Meeting” means any formal meeting where a planning matter is being determined up to and including the Full Council meeting to determine such an application referred to it by the District Development Management Committee (DDMC).
4. It cannot, however attempt to cover every eventuality or situation.

Further advice on specific circumstances is available from the Council’s Monitoring Officer and Deputy Monitoring Officer.

5. Councillors and staff should bear in mind that Planning matters are the source of most complaints from the public and early advice is key to ensuring that such complaints do not occur.

(ii) The relationship with the Local Members' Code of Conduct;

6. This Code is complementary to the provisions of the Council’s Code of Conduct for Councillors and Officers but does not repeat its provisions which can be found in Part 5 of the Constitution. It should also be read in conjunction with guidance on gifts and hospitality.

(iii) Roles and responsibilities

7. Councillors are elected members of the Council (see Article 2 for their roles and functions). At Epping Forest District Council, every Councillor will be a member of the relevant Area Plans Subcommittee unless they give notice to the Proper Officer (in this instance the Chief Executive) of their wish not to be a member. Additionally, for Area Plans Subcommittee South, under Article 10 of the constitution they are required to give notice that they wish to be a member of that Subcommittee for the relevant year.
8. These memberships are only reviewed at each Annual Council meeting. Councillors cannot opt in and out of membership during the year unless a review is triggered under the provisions of the Local Government Act 1972 (as amended)
9. It is Councillors responsibility to represent the views of all the people in their wards. However, in planning matters, there is often a polarisation of views between different sections of the community. It is the role of Councillors to balance these views against planning policy and the wider needs of the district.

Decisions on Planning Applications should always be made on their planning merits.

10. Some types of planning decision have been delegated by the Council to officers to determine. The extent of this delegation is set out in the Constitution (Part 3, Appendix 3).

(iv) Registration and Declaration of interests

11. Upon being elected Councillors are required to complete a form to register their disclosable pecuniary and other interests. They are required to keep this document under review and maintain that declaration and amend it as necessary within 28 days of any change in circumstances.

12. This form also contains the interests of the Councillors spouse, civil partner or person living with the Councillor as a spouse or civil partner (called the 'relevant person')

13. The form is part of the Register of Councillors interests and is maintained by the Council's Monitoring Officer. The register is available for public inspection and reproduced on individual Councillors webpages for public inspection.

14. Rule 11 of the Council Rules requires Councillors to withdraw from meetings if they have a disclosable pecuniary interest firstly having declared the existence and nature of the interest. This also applies to interests of the relevant person. Such a declaration is also required by Councillors exercising executive functions. (see Part 5 of the Constitution).

15. Any Councillor being the applicant (with or without representation or by their relevant person) for an application is required to identify themselves as the applicant on the planning application form, advise the Monitoring Officer, take no part in the planning process or attend that part of the meeting. Such an instance will always create a DPI for the Councillor. All Councillor applications will be heard by the relevant Councillor committee and not otherwise dealt with under delegation.

16. Declaring such an interest at a planning meeting may give rise to a need to alter the Councillors declaration of interests form. Advice on such matters is available from the Monitoring Officer or Deputy.

17. Members are also subject to the 'Public Perception' test, introduced by Council in 2016, which asks Councillors to consider whether they are predetermined in any matter before participating.

18. If a Councillor has an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to affect their judgement in the public interest and they are present at a meeting of the Authority at which such business is to be considered or is being considered they must:

- (i) Disclose the existence and nature of the interest; and
- (ii) Withdraw from the room or chamber where the meeting considering the business is being held"

(v) Predisposition, Predetermination and Bias

19. Councillors must ensure that they do not fetter¹ their ability to participate in the decision making process on an application by making their mind (or clearly indicating that they have made up their mind) on how they will vote prior to the consideration of the application by the planning committee.

¹ 'Fetter' – confine or restrain themselves by a previous act which makes them appear to have prejudged the issue

20. The planning committee should, when considering an application, take into account all views expressed (in writing, orally, evidence from the planning officer and the views of other Councillors) in such a way that they are fairly considered in a balanced way before the planning committee reaches a decision.

21. Councillors can be predisposed to a particular point of view but must have an open mind at the point they are required to consider and determine the matter.

22. Section 25(2) of the Localism Act 2011 provides that a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because:

(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and

(b) the matter was relevant to the decision.

23. However, there are some actions which would undermine the Councillors position. For example by making declarations of opposition or support in a public forum. This includes press statements, residents meetings and using social media. As meetings are webcast Councillors should not appear to have predetermined applications by coming to meeting with pre-prepared written speeches. Councillors must guard against being, or giving the appearance of being predetermined in this way.

(vi) Membership of other councils and bodies

Parish and Town Council's

24. Applications are routinely referred to Parish and Town Council's for statutory consultation. The Parish/Town Council's do not determine planning applications but submit (if agreed) comments as part of the planning application process.

25. District Councillors do not need to make general declarations of interest at those meetings if it is based solely on the dual hatted nature of their role. (Other interests must be declared)

26. Where District Councillors are asked to express their views as part of their role of a Parish or Town Councillor they are able to do so. It may be appropriate at the meeting to make it clear that they may take a different view once they have heard all relevant policy and representations at a subsequent planning meeting when they are determining the application.

27. Applications made to the District Council by a Parish or Town Council is likely to create a conflict of interest for the Councillor if they have been party to decisions made by the Council concerned. It would normally create a non-pecuniary interest under section 8.1 of the Code of Conduct. The public perception test would then apply.

28. Referrals from Planning Subcommittees to DDMC or Council do not create an interest that is declarable.

29. Cabinet members who have sponsored any planning application made after a report or portfolio holder decision will normally have created a non-pecuniary interest in that application. Participating in any subsequent determination of that application would be subject to the public perception test.

(vii) Pre-application discussions

30. Enabling a Developer to brief and seek the views of elected Members and Planning Officers about planning proposals at an early stage (usually pre-application or where this is not possible, very early in the formal application period) is important in ensuring that new development is responsive to and reflects local interests/concerns where possible. Early Councillor engagement in the planning process is encouraged and supported by the National Planning Policy Framework and is particularly important to allow Councillors to help shape future strategic developments in the Local Plan.

31. Discussions between a potential applicant and the council (officers or Members), prior to the submission of an application can be of considerable benefit to both parties and is encouraged. However, it would be easy for such discussions to become, or to be seen, particularly by objectors, to become, part of a lobbying process on the part of the applicant.

32. The purpose of member briefings should be:

- To enable Councillors to provide feedback that supports the ultimate submission of high quality development through the pre-application process, and avoid potential delays at later stages;
- To ensure Councillors are aware of significant applications prior to them being formally considered by the planning committee;
- To make subsequent planning committee consideration more informed and effective;
- To ensure issues are identified early in the application process, and improve the quality of applications; and
- To ensure Councillors are aware when applications raise issues of corporate or strategic importance.

33. In order to avoid such perceptions, pre-application discussions will take place within the following guidelines. (Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken):

- The decision making process applicable should be explained to the potential applicant.
- It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Advice should be consistent and based upon the development plan and other material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers.
- A written note should be made of important meetings.
- If possible, at least one officer should attend any such meeting involving a Member, or notify the officer in advance of the meeting.

- In the case of advice given by planning officers it should always be made clear that any views which they express are subject to review at a more senior level with whom the final recommendation to committee lies or the officer properly exercising a delegation.

(viii) Contact with applicants, developers and interested persons

34. Approaches from applicants, potential developers and applicants or objectors is a normal and proper aspect of the political process. However, unless the parties concerned exercise care and common sense, this can lead to the impartiality and integrity of Members being called into question. A planning committee decision may be susceptible to judicial review where there is a real danger of bias.

35. To avoid such problems, discussions should take place within the following guidelines:-

- Members should only attend pre-application meetings organised in accordance with section (vii) above
- Members must take care not to indicate they have made up their mind on any planning application or issue before they have heard and/or read all the evidence, and should make clear that any views expressed are personal and provisional.
- Members should make it clear that they will not be in a position to make a decision until they have heard and/or read all the relevant evidence and arguments at the Committee meeting. The Committee report may contain issues previously unknown to Members and other aspects, not previously evident, may arise during the Committee's deliberations.

(ix) Lobbying

36. It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications.

37. It is, however, important that Members protect their impartiality and integrity in planning matters. Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However, expressing an intention to vote one way or another before a planning committee meeting would prejudice impartiality.

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

39. Councillors should not organise support for or against a planning application and should not lobby other Councillors as this would 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.

(x) Officers

40. Officers are the paid employees of the Council. For planning, the Council employs appropriately qualified staff to make recommendations on planning applications to Councillors to be determined at meetings.

41. The function of officers is to support and facilitate the Councillors in their work and to ensure that robust, lawful decisions are made and the planning decisions are made in accordance with the local plan and material planning considerations.

42. Officers are required to act with impartiality at all times in determining or making recommendations upon planning applications. In considering applications and in advising members of the public and Councillors on planning policy, enforcement and other planning related matters, Officers are bound by the Officer Code of Conduct.

43. This process must be transparent and respect the sometimes contrary views, maintaining respect between the parties. Failure to maintain professional respect at any part of the planning process is a breach of the relevant code of conduct for either party.

44. In certain circumstances, where officers within development control or economic development submit a planning application, applications will be heard formally at the relevant member committee. (Part 3 – Scheme of Delegation – Appendix 3).

(xi) Attendance and participation at public meetings

45. All planning decisions are taken in public session at meetings except if they are delegated to officers. Planning issues usually attract high levels of public interest and attendances reflect this.

46. With high levels of public interest and sometimes contentious decisions to be made, confidence in the planning system is important. Issues such as conflicts of interest, lobbying, officer advice, the conduct of meetings and focus on planning considerations will colour the public perception positively or negatively. All participants need to keep this in mind. This will include your attendance at other public meetings convened locally. See section (v) on predisposition.

47. The Council has a policy of allowing public speaking by applicants, objectors, other statutory authorities and Parish/Town Councils. The rules are set out in Article 10 which may be varied by the Chairman at their discretion.

(xii) Site visits

48. Formal Site visits may be undertaken of any potential development site subject to application where there is a substantial benefit to the decision-making process. Further detail on the procedures that apply to site visits and the circumstances where a formal site visit is appropriate can be found in Article 10 – Development Control.

49. Councillors may wish to view sites themselves prior to meetings but should stick to the public highway, observe practical 'lone working' principles and bear in mind the advice given at section (v) about predetermination.

(xiii) Officer reports and recommendations;

50. Officers will provide professional advice to members with a recommendation whether or not planning permission should be granted, based on the officer's assessment.

51. Each officer's report to the committee will provide:

- Details of the site, a site plan, its ward and description of the proposal and an internet link for viewing the plans
- The proposed decision recommended by the officers

- Details of either conditions (for approval) or reasons for refusal
- Relevant site history and policies applicable
- Consultations carried out and representations
- A narrative on the issues and considerations of the application and a conclusion.

52. If, having read the reports prior to the meeting, Councillors have questions relating to the applications, they should contact the case officer without delay. This enables the officer to answer queries of a factual nature that could delay determination should they be asked at the meeting.

53. Reading the reports may help Councillors form an initial view of the proposals

(xiv) Conduct during public meetings

54. At the Planning meeting, applications will be heard in the order they appear of the agenda except where the chairman decides otherwise and seeks the assent of the meeting to the change of order. An example of where this could be agreed is when the meeting is being attended by a large number of people only interested in one contentious item. Chairmen should not delay items to allow Councillors, applicants or objectors to be present. (see rule V1 – Voting – Voting on quasi-judicial matters)

55. Each development control item will be dealt with as follows:

- (a) the planning officer present will their report including planning considerations, relevant local and national planning policies and a summary of any late representations received
- (b) evidence will be taken from registered public speakers (see Article 10, Appendix 1 for the rules of debate that apply);
- (c) Councillors will then debate the matter seeking information from the planning officer that arises from the debate. Councillor's commentary should be based on the material planning considerations of the matter. It is the convention that the Chairman will allow both the ward councillor and non committee members to speak as part of the debate.

(xv) Decision-making;

Delegated Decision making

56. The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers (see Part 3 of the Constitution – Scheme of Delegation – Appendix 3).. This scheme may be reconsidered from time to time by the Council.

57. Where officers are determining applications under their delegated powers, an officer report will be completed which must record the material planning considerations that have been taken into account in the decision making process and the decision made by an officer with the relevant delegated power from the Council.

58. Councillors may call-in an application proposed to be determined by officers to the relevant committee for determination in accordance with the rules set out in Part 3 of this constitution but must consider their reasons for so doing.

Decision making by Councillors

59. At the conclusion of the debate (subject to no contrary motion being moved and seconded) the recommendation of officers will be put to the committee by the chairman. This does not require a seconder.

60. Decision making at meetings shall be by way of a majority of Councillors present at a meeting voting positively for either approval or refusal. This is subject to the preservation of the required quorum at the time the vote is taken and shall be subject to Rule V1 (voting) and Rule M2 (minority references)

61. Voting down the recommendation of officers at the meeting does not mean that a decision has been taken on the application. A motion from a Councillor, seconded by another Councillor with reasons that are planning based is required.

(xvi) Decisions contrary to the officer recommendation;

62. Decisions on planning proposals must be taken in accordance with the local plan unless material considerations indicate otherwise. In determining planning and other applications the committee is entitled to decide the weight to be attached to the various planning considerations which are relevant to the application. This can lead to a decision which is contrary to the recommendation of the Officers. The Committee can for example decide:

- to refuse planning permission where officers have recommended approval;
- agree with officers that permission should be refused but for different or additional reasons; or
- grant permission subject to different conditions or legal requirements than those recommended.

63. Where any Councillor is proposing to put forward a motion contrary to the officer recommendation, the committee Chairman will ensure that the planning reasons are apparent **before** a vote is taken and will ensure that the planning officer is given an opportunity to explain to the committee the implications of their decision.

64 Applications proposed to be granted which are substantial departures from the policy framework, local plan, have financial implications or require the referral to the Secretary of State for approval must be referred to the District Development Management Committee (see Article 10, Area Plans Sub-Committees for more detail)

(xvii) Training;

65. It is fundamental that Councillors (including Parish and Town Council members) involved in planning matter should receive appropriate training, **before** being involved in making planning decisions. The Council will facilitate such training, which should be regarded as obligatory for all Councillors. The Standards Committee have also determined that Councillors should attend Code of Conduct training at least once per Council term. Councillors should also attend sessions designed to keep them abreast of new developments, as specified by the Authority.

(xviii) Review.

66. This Code will be reviewed from time to time as necessary by the Council's Constitution Working Group having taken input on standards matters from the Standards Committee.

Draft V3
Simon Hill
August 2017

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Report to Constitution Working Group

Date of meeting: 28 September 2017

Subject: Planning Process Review 2017/18 – Scoping and Council Referral

Officer contact for further information: S Hill (01992) 564249

Democratic Services Officer: V. Messenger (01992) 564265

Recommendations:

- (1) To consider and report to Council on the referral made in relation to membership requirements of Area Plans Sub-Committee South (minute 24(a) - Council 27 July 2017).
- (2) To consider how the wider review of the planning process should be phased and whether additional meetings will be required to complete such a review.

Background to proposals

1. The Council has referred a specific matter to the Constitution Working Group in relation to requests made outside of the annual meeting to join Area Plans Sub-Committee South. This is discussed more fully below and maybe something that the Working Group may wish to address at this meeting.

2. An officer group has been established to look at the implications for the Council in delivering the growth identified in the Draft Local Plan. This will result in an increased number of planning proposals to be considered and will lead to an increase in pre-application requests for advice and planning applications. This will have implications for both officers and members given the Council's agreed approach to masterplanning and implementation agreed at the 15 June 2017 Cabinet meeting. Members will need to be involved in masterplanning and engagement will be required at various stages in bringing forward planning proposals on the strategic and other large sites. The emerging Local Plan must:

- (i) Meet the objectively assessed housing and employment need identified (as set out in the Draft Local Plan, this is currently 11,400 homes and 10,000 jobs) over the plan period (2011-2033); and
- (ii) Provide a five-year supply of deliverable housing sites against the Plan's housing requirement with an appropriate additional buffer, ensuring that historic under-delivery since 2011, the start of the plan period, is addressed as quickly as practicably possible.

3. It is therefore timely that the current arrangements for delegation to officers, how the planning committees operate and how Councillors can operate in the pre-application environment without being seen as being predetermined with the aim of facilitating the delivery of housing and other development envisaged by the emerging local plan.

Purpose of Review

4. The purpose of the review would be:

- (1) To consider and report to Council on the referral made in relation to membership requirements of Area Plans South (minute 24(a) - Council 27 July 2017).
- (2) To review the councillors' arrangements for considering planning proposals through masterplanning, pre-application and planning application stages and to plan for the expected increase in volume of proposals to implement the local plan.
- (3) To bring forward suggested changes to arrangements to improve the rate at which local plan sites could be assessed and determined including delegation to officers, the establishment of a Quality Review Panel (being proposed for the Garden Town); and whether to establish a Development Management Forum (to ensure community engagement) on the larger sites.
- (4) To consider planning development management issues for strategic sites including those requiring master planning or pre-application discussions to accord with statutory requirements on interests by councillors and differences in arrangements in adjoining authorities.

Scope

5. It is proposed that the review would cover (not exhaustively):
 - (i) Delegations for different types of application;
 - (ii) Whether the Council should have distinct arrangements for strategic sites and other sites that have a local plan allocation (e.g. Quality Review Panel arrangements, Development Management Forum and masterplanning);
 - (iii) What arrangements are needed to ensure that the authority can catch-up the plan period housing site allocations and then maintain a five year land supply during the remainder of the plan period;
 - (iv) How objections can be resolved without the requirement to submit the application to a subcommittee;
 - (iv) The nature and the number (or quality) of objections that would mean a referral to subcommittee and the other existing criteria for referral to councillors;
 - (v) Whether there is another potential system for councillors considering applications that meets statutory requirements, maintains the performance in determining applications whilst ensuring that councillors are able to give sufficient time at meetings to more strategic applications including:
 - (a) Geographical/ non geographical committees;
 - (b) Pro rata and single party committees – statutory position;
 - (c) Size of committees;
 - (d) Reports by officers;
 - (e) Operation by adjoining authorities;
 - (vi) The role of the District Development Management Committee and councillors in pre-application and master planning activities;
 - (vii) How applications for council owned sites are considered and determined;

Relevant Documents

6. In dealing with the review, the following documents will be relevant for review:

- Council Constitution, Article 10 – Development Control
- Council's Code of Conduct
- Council scheme of delegation, Part 3, Annex E and Appendix A
- Local Government Act 1972 (as amended)
- Adjoining Council's arrangements

7. The Committee are asked to give some direction on how they would like to begin such a review, what documents they wish to see and other information they wish officers to collate.

Specific Referral from Council relating to Area Plans Sub-Committee South membership.

8. At the meeting on 27 July 2017 the Council considered the following motion

(a) Area Plans Sub-Committee South – Membership 2017/18

Proposed by: Councillor S. Murray and Seconded by Councillor R. Brookes

“(1) That the following arrangements for the appointment of members to Area Plans Sub-Committee South set out in Article 10 (District Development Management Committee and Area Plans Sub-Committees) of the Council's Constitution be waived for the current municipal year, as a result of the decision of both members representing the Loughton Roding ward of the district at the recent Annual Council meeting, not to serve on the Sub-Committee for the year:

‘(3) Area Plans Sub-Committee (South) shall comprise a maximum of 25 Councillors, being the total number representing wards in the area for which the Sub Committee is responsible. At the Annual Council meeting, the Council shall determine the membership of that Sub-Committee on the basis of the number of Councillors who sign a written notice stating that they wish to serve on the Sub-Committee for the ensuing year. Any Councillor who does not sign a notice shall be deemed not to be a member of the Sub-Committee for the year in question. Councillors may not retract a signed notice or seek to join the Sub-Committee by signing a notice until the next Annual Council meeting’;

(2) That, subject to (1) above, Councillor S. Murray be appointed to membership of Area Plans Sub-Committee South for the remainder of the 2017/18 municipal year”.

9. The Council did not agree to the motion and referred the arrangements for the appointment of members to Area Plans Sub-Committee South set out in Article 10 (District Development Management Committee and Area Plans Sub-Committees) of the Council's Constitution to this Working Group.

10 The current wording of the Article is attached at Appendix 1 for consideration and review. Members are asked to suggest whether any changes to the article in relation to membership and if they wish to make any further recommendations to Council.

Appendix 1
ARTICLE 10

District Development Management Committee and Area Plans Sub-Committees

The Council will establish the following Committees which shall be appointed at its annual meeting.

Membership

- (1) The following shall be the non-executive committees of the Council, consisting of the number of members set out below:

Committee or Sub-Committee	Number of Councillors	Membership
District Development Management Committee	15	15 members of the Council appointed by the Council at its Annual meeting, subject to pro rata requirements and including those members appointed as Chairman of each Area Planning Sub-Committee. Members to be appointed on the basis of aptitude, interest and planning experience
Area Plans Sub-Committee South	25 members (Max)	All District Wards in the Parishes of Buckhurst Hill, Chigwell and Loughton, subject to (3) below and quorum requirements set out in the Council rules
Area Plans Sub-Committee East	19 members	District Wards of Chipping Ongar, Greensted and Marden Ash; Epping Hemnall; Epping Lindsey and Thornwood Common; Hastingwood, Matching and Sheering Village; High Ongar; Willingale and The Rodings; Lambourne; Lower Sheering; Moreton and Fyfield; North Weald Bassett; Passingford; Shelley and Theydon Bois.
Area Plans Sub-Committee West	14 members	All District Wards in the Parish of Waltham Abbey together with the District Wards of Lower Nazeing; Broadley Common, Epping Upland and Nazeing and Roydon.

- (2) Members of the Council appointed to each Area Plans Sub-Committee shall be drawn solely from those representing wards within the area for which the Sub-Committee is responsible shown in the 'Membership' column above. Seats on each Sub-Committee shall be allocated to all Councillors representing electoral wards in the areas concerned. The requirement for the appointment of Sub-Committees from all members of the Council shall not apply to the Area Plans Sub-Committees.

- (3) Area Plans Sub-Committee (South) shall comprise a maximum of 25 Councillors, being the total number representing wards in the area for which the Sub Committee is responsible. At the Annual Council meeting, the Council shall determine the membership of that Sub-Committee on the basis of the number of Councillors who

sign a written notice stating that they wish to serve on the Sub-Committee for the ensuing year. Any Councillor who does not sign a notice shall be deemed not to be a member of the Sub-Committee for the year in question. Councillors may not retract a signed notice or seek to join the Sub-Committee by signing a notice until the next Annual Council meeting.

- (4) A member of the executive may serve on an Area Plans Sub-Committee if otherwise eligible to do so as a Councillor.

Responsibility for functions:

The Committee and Sub-Committees the subject of this Article have responsibility for determining matters which have been delegated by the Council and the Executive shown in Part 3 of this Constitution, showing those which are the responsibility of the Executive and those which are not Executive functions and any limitations on delegation.

Terms of Reference:

District Development Management Committee

- (1) To determine:
- (a) Any development proposals which affect more than one Area Plans Sub-Committee;
 - (b) Any 'large scale' application¹ (as defined below);
 - (c) Any 'major' application² (as defined below) where the Council is the land owner;
 - (d) Any application referred by an Area Plans Sub-Committee by resolution, by a minority of members of an Area Plans Sub-Committee in accordance with the Council's Rules or where the Sub-Committee is unable to determine the application;
 - (e) To determine any recommendation of an Area Plans Sub-Committee which relates to potential decisions liable to give rise to claims for costs or compensation, including development management matters and enforcement of planning requirements (including recommendations of no action) but excluding works on preserved trees; and
 - (f) Any planning application or other planning matter submitted by, or on behalf of, a Councillor of the Authority (and/or a spouse or partner thereof).

Area Plans Sub-Committees

- (1) To consider all applications (except as may be delegated to the Assistant Director of Governance (Development Management)) or fall to the District Development

¹ 'Large-scale major development' means development involving any one or more of the following;

(a) The provision of dwellinghouses where (i) The number of dwellinghouses to be provided is 200 or more: or (ii) The development is to be carried out on a site having an area of 4 hectares or more where the number of dwellinghouses is not known (normally an Outline application) or

(b) The provision of a commercial building or buildings where the floor space to be created by the development is 10,000 square metres or more: or

(c) Commercial development carried out on a site having an area of 2 hectares or more.

² 'major development' means development involving any one or more of the following;

(a) The provision of dwellinghouses where (i) The number of dwellinghouses to be provided is 10 or more up to 199: or (ii) The development is to be carried out on a site having an area of 0.5 hectares or more but just less than 4 hectares where the number of dwellinghouses is not known (normally an Outline application)..

(b) The provision of a commercial building or buildings where the floor space to be created by the development is 1,000 square metres or more up to 9,999 square metres: or

(c) Commercial development carried out on a site having an area of one hectare but less than 2 hectares.

Management Committee to determine as set out above) received for development within the respective Sub-Committee area and, except as detailed below, to make decisions on behalf of the local planning authority thereon;

- (2) Subject to the prior approval of the Chairman of the Sub-Committee, to consider informal proposals for development and to give guidance to the Assistant Director of Governance (Development Management);
- (3) To consider planning applications made by other authorities which are considered by the Assistant Director of Governance (Development Management) to require member response;
- (4) To consider and make recommendations to the District Development Management Committee on applications for development where:
 - (a) the Sub-Committee's proposed decision is a substantial departure from:
 - (i) the Council's approved policy framework; or
 - (ii) the development or other approved plan for the area; or
 - (iii) it would be required to be referred to the Secretary of State for approval as required by current government circular or directive;
 - (b) the refusal of consent may involve the payment of compensation; or
 - (c) the District Development Management Committee have previously considered the application or type of development and has so requested; or
 - (d) the Sub-Committee wish, for any reason, to refer the application to the District Development Management Committee for decision by resolution.
- (5) Applications made by officers of the Council defined in Appendix A of the Planning Services Scheme of Delegation which are required to be determined by a Sub-Committee.
- (6) Where an application is objected to by a Councillor in a purely personal capacity.

Public Participation at District Development Management Committee and Area Plans Sub-Committees on Planning Matters

- (1) There shall be afforded to those classes of persons specified in the rules for participation at Appendix 1 to this Article an opportunity, on request, to make oral representations to any Area Plans Sub-Committee (or in appropriate circumstances, the District Development Management Committee) meeting concerning any planning application or related matter before that Sub-Committee for determination.
- (2) The procedure for dealing with requests to address an Area Plans Sub-Committee or the District Development Management Committee shall be as prescribed from time to time by the Council and as set out in Appendix 1 to this Article.

Site Visits

- (1) Formal Site visits may be undertaken of any potential development site subject to application where there is a substantial benefit to the decision-making process. Such a visit may be approved by the Sub-Committee at the meeting where they are being asked to determine the matter or in advance on the recommendation of the Assistant Director of Governance (Development Management in consultation with the Chairman of the Sub-Committee.
- (2) Formal Site visits will be undertaken following the guidance at Appendix 2 to this Article.

**RULES FOR PARTICIPATION ON PLANNING MATTERS AT COUNCIL,
AREA PLANS SUB AND DISTRICT DEVELOPMENT MANAGEMENT COMMITTEE
MEETINGS**

1. The following persons shall be able, on request, to address the appropriate Area Plans Sub-Committee and/or District Development Management Committee on any planning application or related matter within its terms of reference and included on any agenda, for a period of three minutes:
 - (a) one objector;
 - (b) one representative of any relevant Parish or Town Council for the purpose of explaining the views of that Council on the matter in question;
 - (c) one representative of any other authority consulted on the application or as a statutory consultee where they have so requested; and
 - (d) the applicant (or one nominated agent or representative);
2. In the case of planning applications which have a District-wide significance, it shall be permissible for the Chairman of an Area Plans Sub-Committee or the District Development Management Committee, to allow any Parish or Town Council to speak on such an application.
3. For the purposes of this Standing Order the definition of "planning application or any related matter" shall not include any existing or proposed enforcement action under the Planning Acts.
4. The Chairman of the Committee or Sub-Committee may allow additional speakers in exceptional circumstances.
5. Persons wishing to address the Committee or Sub-Committee are required to register with Democratic Services by 4.00 pm on the day before the meeting. The Chairman may make changes or additions to speakers after that time at their discretion.
6. Persons addressing an Area Plans Sub-Committee shall be allowed no more than three minutes to present their case. At the discretion of the Chairman, speakers may clarify matters relating to their presentation and answer questions from Sub-Committee members.
7. Written submissions and photographic or similar material will not be considered by an Area Plans Sub-Committee or District Development Management Committee. Any written submissions received after the agenda is produced will be verbally summarised and reported to the Committee.
8. The right to address the Committees is extended to both the Area Planning Sub-Committees and the District Development Management Committee (but not to Council). Having previously made representations at an Area Sub-Committee does not preclude any applicant, objector or parish/town council representative from speaking again when the matter is reconsidered.

ARTICLE 10 APPENDIX 2

Guidance for Members at Site Visits

Formal site visits may be requested by any planning committee. These can be requested either before a planning meeting or resolved at the meeting concerned. However, these consume resources and delay determination of an application. It is good practice to consider site visits only where there is a substantial benefit to the decision-making process, e.g. when the impact of the proposed development is difficult to visualise from prior inspection from a public place, or from the plans and the supporting material; or it is particularly contentious.

It is recognised that Councillors are subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and its members' integrity so as to protect the credibility of the planning process.

Councillors are asked to bear in mind the following guidance when undertaking planning site visits so as to avoid the perception of pre-determination.

- Site visits should be undertaken at an agreed predetermined time and conducted in a single group with a planning officer present at all times.
- Members of the committee concerned are encouraged to attend site visits.
- The site visit is managed by the Chairman, Vice-Chairman or planning officer present. The Chairman or Vice Chairman will remind Councillors of the guidance at the beginning of each visit. Members of the committee or Sub-Committee should not enter into discussions with interested parties, such as the applicant, the agent or neighbours during the visit.
- Councillors/Planning Officers should not allow interested parties to use the site visit as an opportunity of lobbying members of the committee. It is made clear to other parties at the outset that the purpose is to gather information and to view the site only.
- Any questions from Councillors should be limited to questions of fact and directed, in the first instance, to the planning officer present and not directly to interested parties present.
- In the interests of fairness to all parties, members as a single group should consider the desirability of viewing an application site from more than one property when the site visit is arranged.
- Councillors must ensure that the application is not determined at the site visit
- Councillors should avoid acceptance of any hospitality at a site visit which could be misinterpreted by third parties.

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