

To: P & R Cabinet Committee – 8 September 2016

Subject: Consultation Protocol (Responses to consultations received)

Classification: Unrestricted

Past Pathway of Paper: DMT 26 April 2016, CMT 16 May 2016

Future Pathway of Paper: Executive decision

Electoral Division: No particular division is affected.

Summary: This report contains proposed amendments to the Consultation Protocol for KCC, which sets out how Officers and Members should deal with the drafting and submission of responses to consultations received from other bodies.

Recommendation:

The Cabinet Committee is asked to consider and endorse or make recommendations on the proposed decision of Cabinet to adopt the Consultation Protocol as set out at appendix 1.

1. Introduction

1.1 This report is intended to provide a background to and justifications for the amendments to the Consultation Protocol and seek agreement to the draft attached at **Appendix 1** for approval and adoption by Cabinet.

2. Background

2.1 The Protocol has been in existence in various forms for some time. It was originally produced as a guidance note relating to consultations from central Government only and was not regularly relied upon.

2.2 The first consultation on the Lower Thames Crossing in July 2013 brought the Protocol prominently to the attention of Members and officers. It was relied upon to bring a report on the proposed response, to the Cabinet meeting as an information item as opposed to a formal decision. This approach was welcomed by officers and the Executive as pragmatic and efficient and was considered to be appropriate from a governance perspective as KCC was not making any decision.

2.3 Following this meeting, the reliance on the Protocol to justify the procedural route undertaken, and the first appearances of consultations on District Council Local Plans for some time, it was noted by officers that it created an odd and arbitrary distinction between consultations received from central government and those received from local government.

- 2.4 The situation as it was then would have required that a consultation from a district council on, say, sustainable drainage policy would have required a formal decision to respond (although this was not always happening) but a consultation from central government regarding a new motorway in Kent would have been the responsibility of officers with only informal input and endorsement from the Executive required.
- 2.5 This is particularly important when the opportunity to call-in a decision to scrutiny is factored in. Those responses most likely to be controversial would not be available to call-in, having not been subject to a decision, but those less controversial responses would be.
- 2.6 As a result it was agreed with the Leader that the Protocol would be amended to include consultations received from any government body.
- 2.7 Having significantly widened the remit of the Protocol and more explicitly identified in the minds of Members and officers the delegation of responsibility to officers for drafting and submitting responses to consultations, it was thought timely to properly adopt the amendments and formalise the delegation inherent in the Protocol.
- 2.8 In addition, a number of high profile consultations are currently being conducted or are due to be conducted and it is wise to have the procedure properly constituted in order that the most robust defence to enquiries about it from the public or other bodies can be put.
- 2.9 On deciding that this work was necessary and determining that an Executive decision was appropriate, amendments were made to the Protocol to reflect the governance elements inherent in it, such as the delegation of responsibility to officers and the rights and responsibilities attached to such delegations, including references to the Executive Scheme of Officer Delegation and Code of Member Conduct, in order to help Members and officers understand their particular roles within the process.
- 2.10 The Protocol was sent for comment to officers most likely to be affected by it. The additional material relating to governance and behaviours was not an issue and no comments were received on these matters, but comments were made about the existing content and its fitness for purpose. Having been created some time ago, some of the references were no longer helpful or relevant and further changes needed to be made.
- 2.11 These changes have now been included in the revised Protocol. In particular they reflect the involvement of the Information Point in gathering and distributing information on government consultations. There are also included some new responsibilities for Democratic Services (DS) to bring the fortnightly list to the attention of Cabinet Members' Meetings (CMM) and this has been included as DS attend CMM fortnightly to discuss Forthcoming Executive Decisions and therefore can conveniently add this list to the papers submitted.

2.12 In addition the matter was considered by SCS DMT where, except for one minor addition which is now included, it was agreed that the protocol should continue to cabinet member decision as proposed.

3. Financial Implications

3.1 None

4. Equality Implications

4.1 None

5. Legal Implications

5.1 The formal adoption of the Protocol, and adherence to it, is only one element of a strong position on a submission to a consultation, but adopting it in the way set out and as amended would strengthen the Council's position in any challenge received.

6. Conclusions

6.1 The amendment and formal adoption of the Protocol are necessary to formalise the delegation to officers who prepare consultation responses, to ensure that the Council has a consistent approach to producing responses, to protect officers' professional integrity and to allow Members, both executive and non-executive, to influence responses as appropriate.

6.2 It will also help to protect the Council from criticism levelled against it when responses are unpopular and provide clear pathways for escalation or sub-delegation of response writing, where appropriate, via the Executive Scheme of Officer Delegation.

9. Recommendation:

9.1 The Cabinet Committee is asked to consider and endorse or make recommendations on the proposed decision of Cabinet to adopt the Consultation Protocol as set out at appendix 1.

10. Contact details

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