

DRAFT - KCC PROCEDURE FOR DEALING WITH CONSULTATIONS

1. Introduction

- a) For the purpose of this protocol 'consultation' shall include:
- (i) any correspondence received from any body seeking a response to proposals they are considering implementing or policy or strategy they are considering adopting
 - (ii) those occasions where KCC is being asked to contribute to a joint response from one body (e.g. KMEP, LEP, JTB) to another
 - (iii) consultations where KCC is a statutory consultee and has a duty to respond, such as in planning applications and local plan development and those where it is a non-statutory consultee.
 - (iv) those consultations to which a Cabinet Member requests that a response be made.
- b) This Procedure is designed to sit alongside any detailed guidance Directorates may have to cover their own requirements and internal processes. Its aim is to ensure that:
- (i) responsibility for the drafting and submission of consultation responses is clear and properly delegated to officers
 - (ii) general principles for dealing with consultations are applied consistently across the Council
 - (iii) all consultations are given the appropriate level of consideration by the relevant Cabinet Member, Corporate Director or senior staff and non-executive Members, and each has an opportunity to influence the response where appropriate
 - (iv) any Member can view on KNet consultations received and responses made on behalf of the Council
- c) The Government's Code of Practice on written consultation¹ lays down a standard period of 12 weeks for government consultations, although increasingly they are becoming shorter, other consultations normally run for between 4-12 weeks and the urgency of the response required will also influence the approach taken.

2. The Process

- a) There are a number of routes through which consultations can be received by the Council. The Information Point maintains a database of Government consultation exercises to identify relevant and forthcoming consultations.
- b) When a Consultation is identified by the Information Point or received by another officer, Cabinet Staff Officers or Executive Assistants must be notified and they in turn must notify their Cabinet Member and relevant Director who together will determine:

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2695/code-practice-consultations.pdf

* relevant officer will be the

- (i) whether or not a response should be made:
 1. No response - some consultations may be regarded as relatively unimportant, un-contentious or technical in nature and the relevant officer, in consultation with the Cabinet Member can determine that a formal response is not required.
 2. Level 1 response - others will be important but relatively uncontentious, related to the work of only one Directorate and within the remit of only one Cabinet Member portfolio. In these cases, a response will be drafted by the relevant officer in consultation with the Cabinet Member.
 3. Level 2 response - for particularly important or contentious consultations or where more than one Directorate or Cabinet Member portfolio is affected, Directors should take responsibility for ensuring that, all appropriate parties are consulted on developing a response.

- (ii) If a response is to be made, the relevant officers in consultation with the relevant Cabinet Members must decide whether (and, if so, how) additional Members (for instance, political Group Leaders or relevant Local Members) and committees (e.g. Cabinet or the relevant Cabinet Committee) should be involved in an advisory capacity. In practice most level 2 and some level 1 consultations will be considered by the relevant Cabinet Committee.

- (iii) It may be appropriate for advice to be sought from more than one body as a draft response is prepared, relevant Members may be consulted by email if a meeting is not to be held within the required timeframe.

- d) Once the preferred approach has been agreed, and in any event not less than five working days after the consultation has been received, Directorates should “star” rate the consultation in terms of its perceived importance and pass this detail to the Information Point along with the proposed sign off route. Star ratings are assigned as follows:
 - 3 star – High Importance
 - 2 star – Medium Importance
 - 1 star – Low Importance
 - 0 Star – No further action

The Information Point in conjunction with Democratic Services will arrange for a list of all the consultations which the Council has received to be reported to Cabinet Members collectively on a fortnightly basis. This list will include the following information:

- (i) Consultation title

- (ii) The date the consultation was received

- (iii) Who the consultation has been issued by and details of how to respond as an individual

- (iv) A description of the subject, whether it is proposed that a response will be made and, if so, the date by which it must be submitted

- (v) The proposed course of action/star rating

- (vi) Details of the relevant officer and Member to whom representations can be made to influence the KCC response
- e) The list will be published on line fortnightly by the Information Point
- f) A draft response will be published to the KNet page and an email alert sent to all Members. At this point comments may be received and can be reflected in the response.
- g) If comments are received but are not reflected within the draft response. Members will be advised to submit a response to the consultation directly.
- h) Directorates must send a copy of the final response to the Information Point for publication on KNet and in the next appropriate edition of the Members Information Bulletin.
- i) Any Member not satisfied with the final KCC response, or lack of response, may submit an individual response to any consultation. Information on how to do so will be included at stage (iii) of the process above.

3. Other relevant Information

- a) The Code of Conduct applies to Members acting in their official capacity on behalf of the authority, either alone as part of a meeting, and therefore applies to the undertaking of steps within this Protocol. Members should be mindful of any interest that they may have in the subject matter of any particular consultation. Where a Member believes that they have an interest in the matter they must not seek to influence the response nor take part in any of the drafting of that response.

The Council's Constitution states that:

Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:

- (i) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent
 - (ii) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you
 - (iii) not seek improperly to influence a decision about the matter
- b) Members are reminded that non-declaration of a disclosable pecuniary interest is a criminal offence. Members may, of course, respond to the Constitution as an individual, not representing the Council.
 - c) Officers must also be mindful of any interest that they may have in any matter on which a consultation response is requested. A register of financial and non-financial interests is maintained by each Directorate. HR maintains a register for senior managers, who should ensure appropriate entries are made and the nature of any potential or perceived conflict of interest is recorded in the register. Officers are advised in the event that they have an interest and could be perceived to be conflicted, that another officer undertakes the necessary actions related to the drafting of the response. If the response is very technical in nature and only one

officer may be qualified or able to draft the response, a dispensation should be sought from the Monitoring Officer.

- d) The Convention on Member:Officer relations contained in the Council's Constitution seeks to reflect the principles underlying the respective Codes of Conduct that apply to Members and officers and is a useful guide when officers are acting under delegated authority.
- e) This Protocol constitutes a delegation of authority to respond to consultations to the appropriate officers. While these powers are exercised after consultation with Cabinet Members, it must be recognised that while ultimate accountability rests with the Leader, it is the officer who takes the decision and who is accountable. Therefore, they must at all times be true to their professional judgment. As such, it is important that any dealings between Members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- f) Under the Executive Scheme of Officer Delegation, any officer may escalate the delegation to a more senior officer or to the Cabinet Member. Likewise any Cabinet Member may at any time require officers to refer a matter that would otherwise be taken under existing delegations to either themselves or Cabinet for decision.

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