

## APPENDIX 1

### Access to Information Procedure Rules

#### 1. SCOPE

These rules apply to all meetings of the Council, the Cabinet, Committees and Fora.

Each Chief Officer shall be responsible for securing compliance with the requirements of the Data Protection Act 1998, Freedom of Information Act 2000 and the Environmental Information Regulations 2004 in relation to the data and information within the purview of that legislation held in his or her Department and shall make all necessary arrangements within the Department for that purpose.

#### 2. OPENNESS POLICY

The Authority wishes to be as open as possible in terms of sharing access to information both with Councillors and with the public, as permitted within the law and with respect to the rights of others. These rules seek to complement and supplement and not detract from any statutory rights to information (for example within the Data Protection Acts and the Freedom of Information Act) which Councillors and the public are afforded from time to time. These rules do not reduce any more specific rights to information contained elsewhere in this Constitution. In the case of any omission or conflict between these rules or the Constitution and statutory rights, statutory rights will always prevail.

#### 3. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings subject only to the exceptions in the Local Government Act 1972 and other legislation. The right to attend meetings does not extend to taking photographs or the making of video or audio transmissions or recordings without consent. The use of social media, such as Twitter or Facebook, is governed by the Social Media Protocol included in Part 5 of the Constitution. The right to attend meetings is subject to the Council's right to exclude persons if their conduct is disorderly or if they misbehave at the meeting. The Press may attend that part of any meeting open to the public.

#### 4. NOTICES OF MEETING

- (a) The Authority will give at least three clear days notice of any meeting by posting details of the meeting on the public noticeboard at County Hall and on the Council's website.
- (b) Special Urgency – If a matter is considered by the Monitoring Officer to

**Deleted:** Co-ordinating Committee, Overview and Scrutiny Committees, Fora , the Standards Committee, Audit Committee, and the Planning and Development Committee and all other Committees of the Council.¶

**Comment:** Simplified and shortened wording.

**Deleted:** Each Chief Officer shall be the Proper Officer for the purposes of all statutory and regulatory provisions relating to the identification listing and availability of background papers for any report where such report is within the scope of these Rules and that Chief Officer is the responsible or contributing author.¶

**Comment:** More appropriate under the section dealing with background papers.

**Deleted:** and of the

**Deleted:** those Acts

**Deleted:** affect

**Comment:** clarification

**Deleted:** to the exceptions in these rules

**Comment:** The Council's rules can not change the provisions in legislation

**Comment:** Update

be so significantly urgent and unexpected, that a decision must be taken and that it is not possible to provide 3 clear days notice of the date of the meeting at which the decision must be taken, then with the agreement of the Chair of the body concerned, the Monitoring Officer is authorised to call such a meeting, subject to the agenda and reports being available to the public at the time at which the meeting is convened.

## 5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least three clear days before the meeting [or in accordance with 4 (b) above]. Where reports are prepared after the summons has been sent out, the Democracy and Governance Manager shall make each such report available to the public as soon as the report is completed and sent to Councillors. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda.

## 6. SUPPLY OF COPIES

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Democracy and Governance Manager thinks fit, copies of any other documents supplied to Councillors in connection with an item:-

to any person on payment of a charge for postage and any other costs.

## 7. ACCESS TO MINUTES ETC AFTER THE MEETING

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or record of decisions taken by the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public because exempt or confidential information was being considered;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## 8. BACKGROUND PAPERS

### 8.1 List of background papers

The author of any report to Council, Cabinet or Committee will list any documents (called background papers) which:-

(a) disclose any facts or matters on which the report or an important part of the report is based; and

(b) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

**Deleted:** Proper Officer

**Deleted:** will set out in every report a list of those documents

**Deleted:** relating to the subject matter of the report which in his/her opinion:¶

**Comment:** To reflect current practice and avoid use of legal jargon.

### 8.2 Public inspection of background papers

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## 9. SUMMARY OF PUBLIC'S RIGHTS

These Rules are a written summary of the rights of the public to attend meetings and the rights of the public and Members of the Council to inspect and copy documents. A copy of these Rules will be kept at County Hall and the public shall have the right to inspect them at any reasonable time and free of charge.

**Deleted:** to take a copy on payment of a reasonable fee.

**Comment:** More open and less bureaucratic

### 10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

#### 10.1 Public and private meetings of the Cabinet

The Cabinet may only make decisions in relation to its functions and conduct formal business in a properly constituted meeting that complies with the Cabinet Procedure Rules in Part 4. This does not prevent the Cabinet from holding informal deliberations in private, with or without officers present, but these meetings shall not take decisions.

#### 10.2 Confidential information – requirement to exclude public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

#### 10.3 Meaning of confidential information

Confidential information means information given to the Council by a Government Department (including the Welsh Assembly Government) on terms which forbid its public disclosure or information which cannot be

publicly disclosed by Court Order.

#### 10.4 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6. Due regard will be had to the wishes of the individual should they elect that the hearing be held in private where the law so permits.

#### 10.5 Meaning of exempt information

Exempt information is defined in the Local Government Act 1972 as information falling within the following 10 categories (subject to any qualification):

Category	Qualifications
1. Information relating to a particular individual	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information which is likely to reveal the identity of an individual	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information) <u>"financial or business affairs" includes contemplated as well as past or current activities".</u>	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information falling within paragraph 3 is not exempt if it is required to be registered under (a) the Companies Act 1985, (b) the Friendly Societies Act of 1974 and 1992, (c) the Industrial and Provident Societies Act 1965 to 1978, (d) the Building Societies Act 1986 or (e) the Charities Act 1993.
4. Information relating to any	Information is exempt if and so long, as

**Deleted:** means

**Comment:** To make clear that it is legislation rather than Flintshire that is requiring this.

consultations or negotiations, or contemplated consultations or negotiation, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	<p>in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>Note:</p> <p>A 'labour relations matter' means those matters specified in paragraphs (a) to (g) of Section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of the Act) or any dispute about those matters. Employee means any person employed under a contract of service and Office Holder means the holder of any paid office appointments to which are or may be made or confirmed by the authority, joint board or other officer holder or employee of the authority.</p>
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5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	None.
(a) give under any enactment a notice under or by virtue of which requirements are imposed upon a person, or (b) to make an order or direction under any enactment.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
In addition to the categories referred to above the following categories apply to the proceedings of the Standards Committee and its Sub-Committee only in connection with the investigation and consideration of an allegation(s) of a breach of the Council's Members Code of Conduct.	
8. Information which is subject to	Information is exempt only where a

**Deleted:** and Ethics

**Comment:** Our committee is known as the Standards Committee not the Standards & Ethics Committee

any obligations of confidentiality.	meeting of a Standards Committee is convened to consider a matter referred under the provisions of sections 70(4) or (5), or 71(2) of the Local Government Act 2000	<b>Deleted:</b> and Ethics  <b>Deleted:</b> 60(2) or (3), 64(2), <b>Comment:</b> The deleted provision does not apply in Wales only in England.
9. Information which relates in any way to matters concerning national security.	Information is exempt only where a meeting of a Standards Committee is convened to consider a matter referred under the provisions of sections 60(2) or (3), 64(2), 70(4) or (5), or 71(2) of the Local Government Act 2000	<b>Deleted:</b> and Ethics
10. The deliberations of the Standards and Ethics Committee or of a Sub-Committee of the Standards Committee in reaching any finding on a matter referred under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred to it.		<b>Deleted:</b> and Ethics

Information falling within 1-7 above is not exempt if it relates to proposed development for which the local planning authority may grant permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

## 10.6 Public Interest

Information within categories 1-4, 6 and 7 set out in Rule 10.5 may only be treated as exempt if an assessment of the public interest has been made.

The public interest will be assessed on a case by case basis having regard to all relevant factors including, but not limited to the following, to ensure a proper balance is achieved between the right to know, the right to personal privacy and the delivery of effective government.

In making such an assessment the Proper Officer shall have regard to any relevant prejudice which may be caused to the Council or any other party if the information were disclosed, having regard to the full context of any disclosure. Account may be taken of whether disclosure would breach any obligation of confidence not within Rule 10.4 or the rights of any individual under the Data Protection Act 1998 or the Human Rights Act 1998.

Account will be taken of the fact that the public interest test may be served by allowing access to information which would:

- (a) further the understanding of and participation in debating issues of the day;

- (b) facilitate transparency and accountability in and enhance scrutiny of decisions taken by the Council.
- (c) facilitate transparency and accountability in the spending of public money;
- (d) help individuals understand the decisions made by the Council affecting their lives;
- (e) bring to light information affecting public safety or danger to the environment;
- (f) contribute to the administration of justice and enforcement of the law or the prevention or detection of crime or the apprehension or prosecution of offenders;
- (g) protect the public from unsafe products or rogue traders or practices.

In making such an assessment the following factors shall be regarded as irrelevant;

- (a) possible embarrassment to the Council or its Officers;
- (b) possible loss of confidence in the Council or another public body;
- (c) the seniority of persons involved in the subject matter;
- (d) the risk of the public misinterpreting the information.

**Deleted: INTERPRETATION: WALES¶**

2.—**<#>** In Parts 4 and 5 and this Part of this Schedule —¶ “employee” means a person employed under a contract of service;¶ “financial or business affairs” includes contemplated, as well as past or current, activities;¶ “labour relations matter” means —¶ **<#>**any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or¶ **<#>**any dispute about a matter falling within paragraph (a) above;¶ and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;¶ “office-holder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;¶ “registered” in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).¶ **<#>**Any reference in Parts 4 and 5 and this Part of this Schedule to “the authority” is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined and includes a reference —¶ **<#>**in the case of a principal council, to any committee or sub-committee of the council; and¶ **<#>**in the case of a committee, to —¶

**Comment:** This was an extract from the relevant legislation and the appropriate parts of it have been included in the table under paragraph 10.5

## **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Head of Legal & Democratic Services thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

## **12. THE FORWARD WORK PROGRAMME**

### **12.1 Period of forward work programme**

The forward work programme will be prepared by the Democracy and Governance Manager to cover a rolling period of six months. It will be regularly updated to record changes to maximise the opportunity for consultation and dialogue.

Each Chief Officer in partnership with the relevant Cabinet Member is responsible for identifying future decision-making needs and for informing the Democracy and Governance Manager.

### **12.2 Contents of forward work programme**

The forward work programme will contain matters which the Cabinet, Overview and Scrutiny Committees, Audit Committee and full Council are likely to consider. It will contain information on:

- (a) the timetable for considering the budget and any plans forming part of the policy framework and requiring Council approval, and which body is to consider them;
- (b) the timetable for considering any plans which are the responsibility of the Cabinet;
- (c) any individual matters on which the Cabinet intends to consult in advance of taking a decision, and the timetable for consultation and decision;
- (d) the work programme of the Overview and Scrutiny Committees, to the extent that it is known.

The forward work programme will be published on the Council's website and paper copies made available from Committee Services at County Hall.

### **13. CONSULTATION ON PROPOSALS TO BE CONSIDERED BY THE CABINET**

At least 2 weeks should be permitted in the forward plan timetable for consultation with relevant Overview and Scrutiny Committees and ward members where a matter is to be considered by the Cabinet and is not urgent (as defined below) or confidential or exempt (as defined in paragraph 10) without prejudice to the rights of the Overview and Scrutiny Committee set out herein.

A matter may be considered urgent where the events to which it is addressed were unforeseen at the time that the last forward work programme was produced and a decision is required within (the minimum time provided for consultation as specified above).

A decision can only be treated as urgent if the decision taker (if an individual) or the Chair of the body making the decision obtains the agreement of the Chair of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred.

If there is no Chair of a relevant Overview and Scrutiny Committee, or if the Chair of each relevant Overview and Scrutiny Committee including the Scrutiny co-ordinating Committee is unable to act, then the agreement of the Chair of the Council, or in his/her absence the Vice Chair will suffice.

Any decisions taken under this urgency procedure will be recorded as having been taken in the absence of consultation in the decision record save as to the urgency of the need to make the decision and that it cannot reasonably be deferred.

### **14. RECORD OF DECISIONS OF THE CABINET**

#### **14.1 The decision record**

- (a) A written record will be made of every Cabinet decision by the Cabinet and its Committees (if any) and individual members, and joint Committees and joint Sub-Committees whose members are all members of a local Authority Cabinet.
- (b) This decision record will include a statement, for each decision, of:
  1. the decision made
  2. the date the decision was made
  3. the reasons for that decision;
  4. any personal interest declared;
  5. any dispensation to speak granted by the Authority's Standards

- Committee;
6. the consultation required to be undertaken prior to the decision and, if such consultation has not taken place, the reason why;
  7. any reason for urgency (where applicable).

#### **14.2 Preparing the decision record**

- (a) The Democracy and Governance Manager or his or her representative shall attend any meeting of the Cabinet, a Committee of the Cabinet or a joint Committee or joint Sub-Committee where all its members are members of a local Authority Cabinet, and shall as soon as reasonably practicable after the meeting produce a decision record.
- (b) Where an individual Member has made any Cabinet decision,
  - i. that Member shall as soon as reasonably practicable instruct the Democracy and Governance Manager to produce a decision record; and
  - ii. the decision shall not be implemented until that decision record has been produced, subject to (c) below.
- (c) Where the date by which an Cabinet decision made by an individual Member must be implemented makes compliance with (b) ii above impracticable, the decision may be implemented if the decision maker has the agreement of
  - i. the Chair of the relevant Scrutiny Committee, or
  - ii. if there is no such person or that person is unable to act, the Chair of the local Authority, or
  - iii. if there is no Chair of the relevant Scrutiny Committee or the local Authority, the Vice-Chairperson of the local Authority
  - iv. that the making of the decision is urgent and cannot reasonably be deferred.

### **15. DECISIONS BY AN INDIVIDUAL MEMBER OF THE CABINET**

#### **15.1 Reports intended to be taken into account**

Where an individual Member of the Cabinet receives a report which he/she intends to take into account in making any decision, then he/she will not make the decision until at least 3 clear days after receipt of that report.

## **15.2 Provision of copies of reports to Overview and Scrutiny Committees**

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chair of every relevant Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

## **15.3 Record of individual decision**

The decision recording rules in paragraph 14 will apply.

## **16. OVERVIEW AND SCRUTINY COMMITTEE MEMBERS' ACCESS TO DOCUMENTS**

### **16.1 Rights of access**

Subject to Rule 16.2 below, an Overview and Scrutiny Committee (including its Sub-Committees) will be entitled to access any document which is in the possession or control of the Cabinet or its Committees and which contains material relating to

Deleted: to

- (a) any business transacted at a meeting of the Cabinet or its Committees; or
- (b) any decision taken by an individual Member of the Cabinet.

### **16.2 Limit on rights**

An Overview and Scrutiny Committee or Sub-Committee will not be entitled to any part of a document that contains:

- (a) confidential or exempt information, or
- (b) advice provided by a political advisor or assistant unless that information is relevant to an action or decision that is being reviewed or scrutinised or any review contained in a programme of work of that Committee or Sub-Committee.

## **17. RECORD OF INDIVIDUAL DECISION BY EMPLOYEE**

Where a decision is taken by an employee under delegated powers, that employee is responsible for retaining a record of such decision and the reason for such decision sufficient for audit and evidential purposes and for ensuring that all those that need to know are informed promptly of the decision and that the decision and the record of it accords with the requirements of the relevant scheme of delegations under which it is made, and any guidance on decision making issued by the Monitoring Officer.

Decisions made by the Chief Executive or Chief Officers will be reported to

the next available Cabinet meeting.

## 18. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

### 18.1 Material relating to Council and Cabinet Business

All Councillors will be entitled to inspect any document which is in the possession or under the control of:

- (i) the Council relating to business transacted or to be transacted at a meeting of the Council, or a committee or a sub-committee.
- (ii) the Cabinet (or its committees) relating to any business transacted at a decision making meeting following the conclusion of that meeting or relating to any decision made by an individual member of the Cabinet where allowed by the Scheme of Delegation immediately after the decision has been made.

Unless either (a) or (b) below applies:-

- (a) it contains exempt information falling within paragraphs 1 to 7 of the categories of exempt information in Rule 10; or
- (b) in respect of Cabinet material it contains the advice of a political adviser.

**Deleted:** , 2, 4, 5 or 7

**Comment:** To simplify and reference to para 6 did not make sense.

**Deleted:** or it contains exempt information falling within paragraph 6 of those categories relating to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract

### 18.2 Nature of Rights

The rights of a Member under Rule 18 are additional to any other right he/she may have, including:

- (a) the common law right to inspect documents where this is necessary for a Member to perform his or her duties. Any Member asserting a 'need to know' in relation to documents not otherwise available under the rules should make application to the Monitoring Officer.
- (b) the statutory rights available to any person under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- (c) Members' right, under Section 228 of the Local Government Act 1972, to inspect the accounts of the Council and of any Proper Officer of the Council.

**Deleted:** 5

In exercising rights of access to information Members shall have regard to any guidance issued by the Monitoring Officer and the Member/Officer and Member Access to Information Protocols.

### 18.3 Access to Information

The normal practice of the Council is that all Members receive agendas, reports and minutes of those Council, Cabinet and Committee meetings that they wish to receive with the exception of the Appeals and Appointments Committees where Members will only receive the minutes of those Committees. In addition, they will not receive the reports of the Audit Committee or the Standards Committee where those reports contain those classes of exempt information referred to in paragraph 18.1(a) above.

Deleted: all

Deleted: ,

Deleted: and Fora

Comment: To reflect current practice

Deleted: below

#### 18.4 Access to Meetings

The Cabinet has the discretion to invite non Cabinet-Members to remain to observe the discussion on any item in circumstances where the press and public have been excluded.

Members attendance at Council, the Cabinet or at the Committees or Fora of which they are Members (or, where this is permitted, they attend as substitutes for others) is subject to the application of the rules relating to the declaration of personal interests.

Members without seats on a Committee will be able to attend a Committee or Fora meeting if they have given appropriate notice to do so and speak, but not vote, on such agenda item or minutes specifically relating to any projects, development or other matters which significantly affect that Member's ward as specified in the notice. This paragraph does not apply to the proceedings of the Appeals, Appointments or Licensing Committees.

Where the paragraph immediately above does not apply, Members will nevertheless be able to attend Committees of which they are not Members to observe, and speak at the discretion of the Chair except where certain confidential information or exempt information falling within categories referred to in 18(1)(a) above is to be discussed unless the Member is able to demonstrate a "need to know". This paragraph does not apply to the proceedings of the Appeals, Appointments or Licensing Committees.

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Comment: 18 (1) (b) contains no reference to exempt information.

The "need to know" principle is similar in its application to access to meetings as it is to access to information.

One important difference is that a Member's "need to know" may be satisfied more satisfactorily or readily by other available means e.g. by written information or a briefing by officers. Each situation will need to be considered on its own merits.

The underlying factor for consideration in any such request to attend a meeting is whether attendance would be likely to seriously impair or prevent the proper functioning of the Committee.

Members wishing to attend meetings on the basis of a "need to know" should give an explanation of their need to know in relation to attendance at the meeting in writing to the Monitoring Officer prior to the meeting in question. A

decision in each case will be made by the Committee concerned, or the Cabinet where applicable, after consideration of any advice given by the legal adviser to the Committee. Reasons should be given for any refusal. Any dispute may be referred to the Monitoring Officer for consideration.

## APPENDIX 2

# Protocol for Members in their Dealings with Contractors/Developers and Other Third Parties

## 1. INTRODUCTION

- 1.1 This Protocol has been developed to assist Members by identifying some of the existing provisions in Codes of Conduct, Guidance and Procedure Rules most relevant to dealings with contractors/developers for easy access when advice on individual circumstances is needed. It also extends to include advice on meetings or discussions with external bodies, and in particular private companies, which might at some stage be seeking to benefit from an association with the Council and/or its partner organisations.
- 1.2 It is recognised that Members may be contacted by a range of public, private and voluntary organisations for various reasons and in various ways. Occasionally this will be to acquaint a Member with an event that is planned for the Member's particular ward. However, more often than not the contact will be in the hope that the Member will support a proposal in one way or another.
- 1.3 The Code of Conduct for Members sets out general principles which Members must have regard to in the roles they fulfil. The Planning Code of Conduct builds upon the Members' Code of Conduct and in relation to planning applications requires Members to declare circumstances where there has been significant contact and indicates that this is where a Member has been contacted on more than 3 occasions by the same person whether that was an applicant or an objector.

## 2. CODE OF CONDUCT

- 2.1 The Members' Code of Conduct includes the following provisions which are particularly relevant in relation to Members in their dealings with contractors/developers and other third parties.
- 2.2 Paragraph 4 of the Members' Code requires that Members must carry out their duties and responsibilities with due regard to the principle of equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.

**Comment:** The protocol goes beyond contractors and developers and includes other third parties.

**Comment:** To clarify this confined to planning applications.

**Deleted:** 1.4 . In the light of the recently published WAG document Member Role Descriptions and Person Specifications, and a request from the Council's External Auditors, PriceWaterhouseCoopers, this Protocol extends previous advice to include meetings or discussions with external bodies, and in particular private companies which might at some stage be seeking to benefit from an association with the Council and/or its partner organisations.¶

**Comment:** The first part out of date. Second part now incorporated into paragraph 1.1

**Deleted:** 2.1 . Members must observe the Code of Conduct whenever they conduct the business of the Authority, undertake the role of Member to which they were elected or appointed or act as representatives of the Authority.¶

**Comment:** 2.1 deleted as it is an inaccurate summary of the complex provision in paragraph 2 of the Members' Code

**Deleted:** need to promote

**Deleted:** and must not do anything which compromises or is likely to compromise the impartiality of the Authority's employees. They must not use their position improperly to confer on or secure for any person an advantage or disadvantage or to secure an advantage for themselves.

**Deleted:** 2.3 . Members are reminded of the requirement to disclose personal interests and reference should be made to the Code of Conduct on this issue.¶

- 2.3 Paragraph 7 of the Members' Code provides that Members must not use their position improperly to confer on or secure for themselves or any other person an advantage or create or avoid for themselves or any other person a disadvantage.
- 2.4 Part 3 of the Members' Code contains detailed provisions concerning the disclosure of personal interests and where Members believe these provisions may be relevant they should seek advice from the Monitoring Officer, Deputy Monitoring Officer or other senior officer in Legal & Democratic Services. These provisions are particularly important in dealings with contractors/developers or third parties with whom the Member has a close personal association.
- 2.5 Paragraph 8 of the Members' Code required that when reaching decisions Members must do so on the basis of the merits of the circumstances involved and in the public interest having regard to relevant advice provided by officers.
- 2.6 Paragraphs 9, 17 and 18 of the Members' Code contain provisions concerning accepting from anyone gifts or hospitality. Where a Member is in any doubt as to the application of these provisions, advice should be obtained from the Monitoring Officer, Deputy Monitoring Officer or other senior officer within Legal & Democratic Services.
- 2.7 The above provisions are merely a summary of some of the contents of the Members' Code of Conduct, the full details of which appear elsewhere in this Constitution.

### 3. **PROCEDURE RULES**

- 3.1 The Council's Financial Procedure Rules make reference to the Council's responsibility to achieve the most favourable terms possible from suppliers and requires central procurement arrangements to be set up for that purpose.
- 3.2 The Contract Procedure Rules have been adopted by the Council based upon a number of basic principles and emphasise that purchasing and disposal procedures must:
- achieve best value for public money
  - be consistent with the highest standards of integrity
  - ensure fairness in allocating public contracts
  - ensure that non-commercial considerations do not influence any contracting decision

**Deleted: ¶**

**Deleted: 2.4 . Merits¶**

In summary, when reaching decisions, Members must do so on the basis of the merits of the circumstances involved and in the public interest. They must reach decisions having regard to any relevant advice provided by the Authority's Officers. They must avoid accepting from anyone gifts, hospitality, material benefits or services for themselves or any other person with whom they are living. Members will appreciate this is merely a summary of the contents of the Code of Conduct and are invited to consider the whole document in context when individual specific matters need consideration.¶

**Comment:** 3.2 may need updating when the Contract Procedure Rules have been updated.

- support the Council's corporate and departmental aims and policies
- comply with the Council's best value methodology and competition strategy under the Wales Programme for Improvement.

3.3. One of the overriding principles that must be complied with is that officers should show no undue favour to any contractor. This principle applies equally to Members.

**Comment:** 3.3 may need updating when Contract Procedure Rules have been updated

#### **4. PLANNING CODE OF CONDUCT**

4.1 The Planning Code of Conduct provides a set of principles which apply primarily to the manner in which individual planning applications should be dealt with and to the decision-making process relating to the Unitary Development Plan, Supplementary Planning Guidance and associated documentation.

**Deleted:** These principles apply equally to Members accordingly, except for where the contract value is below £5,000 or in very exceptional cases where the justification is clear and the statutory requirements permit the Council can not enter into negotiations with one potential supplier or contractor. Such action could amount to a breach of the Public Contract Regulations 2006 and The European Procurement Directive.

4.2 The Code makes it clear that whilst lobbying is a part of the political process, and it is quite common for applicants or other interested parties to wish to discuss a proposed development with Members before a planning application is determined, Members are under an obligation to determine matters on their merits. Accordingly the Code provides advice that Members should amongst other things:-

**Comment:** The words that have been deleted were confusing the principle of no undue favour to any contractor with the legitimate ability in exceptional cases to deal with one potential supplier.

- Refer applicants/developers who approach them for planning or procedural advice to the appropriate Planning Officer.
- Not put pressure on Officers to make a particular recommendation in their report.

**Formatted:** Bullets and Numbering

- Direct lobbyists or objectors to the appropriate Planning Officer who will include reference to their opinions where relevant in their report.

**Deleted:** <#>Avoid making it known in advance whether they support or oppose the proposal.  
 ¶  
 <#>Avoid campaigning actively in support of a particular outcome.  
 ¶

- Those Members who sit on the Planning Committee are also advised :-
- Not to openly declare which way they intend to vote in advance of the committee meeting.
  - Avoid campaigning actively in support of a particular outcome on a planning application.
  - Where a member of the committee has made it clear which way they intend to vote prior to the committee meeting they should not participate in the committee's debate or vote on the matter.

**Deleted:** <#>Not put pressure on Officers to make a particular recommendation in their report.  
 ¶

**Deleted:** Again Members are invited to refer to the Code and particularly to paragraph 2.3.2 where other issues they need to take into account are set out.  
 ¶

4.3 The above is a summary of some of the points in the Flintshire Planning Code and full details of the code are contained in the

Council's Constitution.

## **5. ROLES AND RESPONSIBILITIES OF MEMBERS**

5.1 The Council has adopted role descriptions for the various roles that Members undertake such as Leader of the Council, Cabinet Member, Committee Chair and ordinary Member. These are all available on the Council's Infonet.

5.2 The roles and responsibilities envisage Members, particularly at Cabinet level, having significant input into the development of policy in relation to the Authority's functions.

5.3 In the formulation of policy, Members will often rely on developmental work undertaken by Officers and in such circumstances there will often be a necessary overlap in this area. However, care should be taken to ensure that the management/operational role of Officers is not compromised.

5.4 In fulfilling their respective roles, Cabinet Members and Officers will frequently find it convenient to be present in discussions with private companies and other external bodies in the development of options for service provision. There may be occasions when non Cabinet Members are present at such meetings and this Protocol also covers such situations.

5.5 Such discussions with private companies and other external bodies will often be held for explanatory reasons to assist in undertaking an options appraisal exercise or in an attempt to understand and gain knowledge of the market ahead of a procurement exercise. Accordingly great caution is needed in all such discussions to ensure that there can be no perception that an expectation is created that the discussions were anything more than exploratory in nature.

5.6 Accordingly a few simple precautions should always be put in place to avoid any ambiguity on the part of the private company or any perception by others who get to hear of the discussions that they were for irregular purposes. Such precautions will include:-

- First of all, serious consideration should be given to the appropriateness of Members attending the meeting of that company or its representatives in the first place: the risks involved should be assessed and the potential benefits/disadvantages identified, eg. where there is a major contract to be awarded or a major planning application to be determined it may not be appropriate to meet. The Council must comply both with statutory requirements in relation to procurement as well as its Contract Procedure Rules and it is important that no discussions or meetings prejudice the ability of the Council to demonstrate equal treatment and transparency. Officers should always provide objective advice to Members in such

**Deleted:** The document referred to in 1.4 above was published on the 31 July, 2006 and suggests that local authorities adopt Job Descriptions and Person Specifications for Members whether it be for Members acting in their roles as ordinary Members of the Authority, or in other roles such as Chairman of Regulatory (Planning, Licensing or Audit) Committee, Chairman of a Scrutiny Committee, Cabinet Member or Leader of the Council.

**Comment:** Updated and simplified.

circumstances. If there are any doubts, advice should be sought from the Council's Statutory Officers.

| **5.7** If it is considered appropriate for the discussions to proceed with Members, further precautions should be put in place:-

- A written invitation to the company in question setting out the purpose of the proposed discussions.
- Where the invitation is from a private company, the purpose of the discussions should be ascertained and contained in a letter accepting the invitation.
- Appropriate Officers should always be present to advise Members.
- Notes should be taken of the discussion and where possible agreed by the attendees. These should set out any conclusions arrived at. It should always be borne in mind that such notes could be the subject of a Freedom of Information Act request and the extent to which any commercially sensitive information needs to be discussed should be assessed and agreed in advance with the contractor.
- It should be made clear to the company that similar discussions may be held with any other interested party.
- Where the matter to be discussed is likely to lead to a procurement exercise, either because of the Procurement Rules, Contract Procedure Rules or best practice, it should be made clear that all interested tenderers will need to be financially vetted and comply with all other pre-tender requirements. This will probably be required even in circumstances where procurement is not at issue if it is likely to lead to a contractual arrangement if discussions are successful.
- Care should be taken to ensure that no company is given any advantage over others as a consequence of the discussions.
- Unless there is a good reason for doing so, which can be objectively justified, discussions should take place in the Council's offices.
- The Council should meet all costs associated with a visit to a contractor or to a development site or developer.

| **5.8** If Members are in any doubt about the provisions of this Protocol they should seek advice from either the Monitoring Officer or the Deputy Monitoring Officer as the impact of their actions could potentially have serious consequences for themselves and the Council.

