

PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

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The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and **applies to members of the Strategic Planning Board and Northern and Southern Planning Committees when they are involved in the planning process.**

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The Council was required under section 27 of the Localism Act 2011 to adopt a new code of conduct from July 2012 based on the core principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. The new code of conduct is entitled 'Cheshire East Council Code of Conduct for Members – 2012' and this Planning Protocol (and the Public Speaking Protocol mentioned in it) has been reviewed and amended in light of it. It is referred to as the Code of Conduct for Members throughout this Planning Protocol.

The Code of Conduct for Members should be applied throughout the decision making process and this Planning Protocol seeks to explain and supplement the Code of Conduct for Members in relation to planning control. If you do not follow this Planning Protocol you may put the Council and yourself at risk of proceedings on the legality or maladministration of the related decision. Furthermore section 34 of the Localism Act 2011 introduced new criminal

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offences of failing to declare or register certain interests and debating or voting whilst having such an interest.

The Code of Conduct for Members requires Disclosable Pecuniary Interests (which are specified and defined in it) to be notified to the Monitoring Officer. Non Pecuniary Interests may be required to be notified but none have yet been specified.

If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any planning meeting takes place.

In this Planning Protocol "planning meeting" covers all meetings of the Strategic Planning Board and the Northern and Southern Planning Committees.

SUMMARY

Important things to remember –

1. apply the rules in the Code of Conduct for Members first, and continue to comply with them throughout the decision making process, and disclose the existence and nature of any interest set out in the Code at the relevant planning meeting unless you have already registered it.
2. understand what Disclosable Pecuniary Interests as referred to in the Code of Conduct for Members are, and the implications of such interests arising. If you have a Disclosable Pecuniary Interest in a matter you must not speak or vote on it.
3. If you have a non-pecuniary private interest in a planning matter, declare it and leave the room, although you may exercise public speaking rights before you go.
4. don't make your mind up on how you will vote on a matter before the formal consideration of the matter at the planning meeting
5. be aware that if you do lobby or campaign on a particular issue it may mean you can't take part in the decision making process
6. if you are a cabinet member, don't take part in a planning meeting in a matter where you appear to be the advocate of a proposal
7. if you are approached for technical planning advice or receive any materials relating to an application (other than those circulated by an Officer), refer the person who approached you or the material to Officers

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8. if you attend meetings individually with developers or lobby groups be careful not to put yourself in a position where you appear to favour a person or a group over another
9. if you do attend a meeting with a developer or lobby group make sure it is clear that you do not bind the authority to a particular course of action, or views, and that the meeting is noted in your diary
10. you can ask that Officers attend and/or organise meetings
11. avoid accepting gifts, benefits or hospitality from anyone involved in a planning proposal
12. it is not advisable to become a member of a group or organisation whose primary purpose is to promote or oppose specific planning proposals in your area
13. a site inspection is the opportunity to seek information and observe the site, not to start the debate into the merits of the application.
14. you can call-in an application to be determined by Committee that would otherwise be delegated to Officers, and can seek advice from Officers over the wording. Take care that the wording of your call-in does not give the impression of bias for or against an application
15. you can discuss applications with Officers but the Officer must be able to reach their own conclusion
16. make sure you are present at the planning meeting for the entire item, including the Officers introduction and update, otherwise you cannot take part in the debate or vote on that item
17. do not allow members of the public to communicate with you during planning meetings
18. you must not exercise your public speaking rights on a matter at a planning meeting if you have a Disclosable Pecuniary Interest in that matter
19. make sure your decisions at a planning meeting take into account the development plan and other relevant material planning considerations
20. put your and your local community concerns forward at the planning meeting, and consider whether planning gain requirements under s106 could help make acceptable development that would otherwise be unacceptable in planning terms

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21. include the content of s106 agreements in the debate at a planning meeting

21. if you are proposing or seconding a decision that is contrary to Officer recommendation, you need to identify the planning reasons for doing so, if necessary with the assistance of the the Officers at the planning meeting

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22. you must attend mandatory training and should try to attend all training sessions arranged by the Council

This summary provides a list of the main points to remember while the body of the Protocol provides more detailed information, explanation and assistance.

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1 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE CODE OF CONDUCT FOR MEMBERS

1.1 DISCLOSABLE PECUNIARY INTERESTS

It is your responsibility to register Disclosable Pecuniary Interests and where such an interest has not been registered to declare its existence at the relevant planning meeting, and any informal meetings or discussions with Officers and other Councillors. Preferably, disclose any Disclosable Pecuniary Interest that you have not already registered, at the beginning of the planning (or other) meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any Disclosable Pecuniary Interest that you have not already registered apply whenever you are in attendance at a planning (or other) meeting, regardless of whether you are a member of the Committee.

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- 1.2 Where you have a Disclosable Pecuniary Interest: You must register it in the register of interests held by the Monitoring Officer
- If a matter related to it is on the agenda of a planning meeting, you must not participate in, or give the appearance of trying to participate in, the making of any decision on the matter by the planning authority, including the processing of the application. You must withdraw from the planning meeting room when the matter is

announced and you must not exercise public speaking rights in respect of it.

- You shouldn't try to represent local, Ward or Area views, get another Member to do so instead.
- Be careful not to seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a Disclosable Pecuniary Interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not be able to do the same.
- Whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary Interest to an appropriate Officer, in person or in writing, be aware that the Code of Conduct for Members places greater limitations on you than would apply to a normal member of the public.

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1.3 You do need to notify the Monitoring Officer and Development Management and Building Control Manager ("DMBCM") in writing if you are submitting your own application, or if you are employed as an agent and:-

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- The notification to the Monitoring Officer and the DMBCM should be made no later than submission of the application;
- the proposal will always be reported to a planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the planning meeting (where appropriate) to avoid public criticism

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you can make written representations to Officers about the proposal but may not address the planning meeting pursuant to the Public Speaking Protocol.

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1.4 NON PECUNIARY INTERESTS

The Code of Conduct for Members has not specified any Disclosable Non Pecuniary Interests. However, the general obligation of honesty requires you to declare any non-pecuniary private interests relating to your public duties and to resolve any conflicts arising, in a way which protects the public interest. In practice this will mean declaring a non-pecuniary interest at the Planning Meeting and leaving the room for the duration of the item, although you may exercise public speaking rights before you go. So, if you attend a planning meeting at which a proposal is to be considered and you have some close association or connection with the site or applicant or objector by reason of, for example, a friendship or membership of a body or organisation then you should not take part in the debate or vote and should leave the planning meeting room prior to consideration of the proposal. In the interest of openness you should declare the nature of your interest.

If you have an association or connection with the site, applicant consultee or objector which is not close enough to affect your judgment but which it would be advisable to declare in the interests of openness, do this but then stay to take part in the debate and vote. This is likely to happen where you are a member of a consultee body which has expressed an opinion regarding an application

2 PRE-DETERMINATION (FETTERING DISCRETION) IN THE PLANNING PROCESS

2.1 Councillors making decisions in planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, so must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings. Not to do so puts the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination.

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2.2 S25 Localism Act 2011 provides that previous acts shall not be taken by themselves as proof of predetermination. However, predetermination is still unlawful: this intention of this provision is just to make it easier for members to form legitimate predispositions and to discuss planning matters in the community before they make up their minds and come to a final decision at the Planning Meeting. Prior involvement with an application could still justify a challenge on grounds other than predetermination, for example on grounds of bias or of taking an immaterial consideration into account and should be approached with caution. In the rest of this Protocol references to bias include these other grounds of challenge.

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2.2 In order to avoid allegations of bias, and therefore jeopardising your ability to participate in planning decision-making, wait until the formal planning meeting to hear the Officers' presentation, any public speakers and arguments on both sides before expressing your view on an application.

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2.3 Take care in the wording of your planning reasons on a call-in that you do not suggest that you have already formed a view on the application, if you have not done so, and that you are biased for or against it. Seek advice on this from Officers if necessary prior to completion of your form. Wording such as "I consider that this application may raise issues of ..." will help avoid claims of pre-determination if you have not done so.

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2.4 If the Council is the landowner, developer or applicant and you have acted as, or could be viewed as being, a chief advocate for the proposal then you may appear biased in its favour. This is more than a matter of dual membership: it arises where significant personal

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involvement in preparing or advocating the proposal means that you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)

- 2.5 You are always free to listen to a person's point of view about a planning proposal, give basic procedural advice and can agree to forward any comments, but beyond this you should refer the person to the appropriate planning Officer.
- 2.6 If there are other ward Councillors available that do not sit as a member of the same planning meeting then they will not be subject to the same restrictions regarding pre-determination and can therefore be an alternative contact for members of the public or lobby groups.
- 2.7 Political group meetings prior to the planning meeting should not determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning Officer's report and update and heard any further representations and the debate at the planning meeting.
- 2.8 You should not speak and vote on a proposal as a member of the planning meeting where you have pre-determined an application. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 2.9 If you have pre-determined an application you should explain that you have, or could reasonably be perceived as having already made up your mind on an application so that this can be recorded in the minutes. You may then exercise separate speaking rights, where you do wish to speak:
- advise the democratic services Officer or Chairman that you wish to speak in this capacity before the planning meeting;
 - remove yourself from the member seating area to the public gallery for all of that item and consider whether you need to leave the room; and
 - ensure that your actions are recorded in the minutes.

If you foresee that prior involvement in a planning matter could give you an appearance of bias (to a fair-minded and informed observer), make it plain beforehand and again at the Planning Meeting that you

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will retain and have retained an open mind throughout. If the appearance of bias is so strong, in the circumstances, that an assurance will not be sufficient to rebut it, then you should declare an appearance of bias or predetermination and, unless you want to exercise public speaking rights, you should take no part in the item and, ideally, leave the room.

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3 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

3.1 The Code of Conduct for Members that you are bound by because you are a member of Cheshire East Council may be the same as or different from the one you are bound by because you are also a member of a town or parish council. Nonetheless, all Member Codes are based on the same principles including selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. If you are bound by different Codes, you need to be aware of this, and if necessary you may want to seek advice on any issues you are not clear about.

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3.2 You need to exercise discretion in deciding whether or not to participate where you have been significantly involved in the preparation, submission or advancement of a planning proposal on behalf of :

- (a) another local or public authority of which you are a member; or
- (b) a body to which you have been appointed or nominated by the Council as its representative; or
- (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

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In such cases, whilst no Disclosable Pecuniary Interest arises, an issue of lack of impartiality arises, and you should withdraw from the planning meeting.

3.3 You can take part in the debate on a proposal when acting as part of a consultee body for a planning application (where you are a member of the Parish Council, for example), provided:

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- the proposal does not relate to any Disclosable Pecuniary Interest you may have

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- you make it clear to the consultee body at the time they consider the matter that:

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- (a) your views are expressed on the limited information before you only;

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- (b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and

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- (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting.

It is also advisable in the interests of openness to mention your membership or role when the planning meeting ultimately comes to consider the proposal.

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4 CABINET MEMBERS

- 4.1 There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

- 4.2 You should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have declared in both meetings that you will approach the planning decision afresh, taking material planning considerations into account at the Planning Meeting. Again, if the assurance will not rebut appearances, declare an appearance of bias and, unless you want to exercise public speaking rights, take no part in the matter: ideally, leave the room.

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- 4.3 Where you do wish to speak :

- advise the democratic services Officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
- ensure that your actions are recorded in the minutes

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5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If you are approached for technical planning advice you should refer the person to Officers, and can always refer a person to Officers if you are uncomfortable giving procedural or other advice.

- 5.2 Where you feel that a formal meeting would be useful in clarifying issues, you should request the DMBCM to organise this. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the planning meeting.

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- 5.3 If you are invited to attend a meeting with applicants, developers or groups of objectors you should exercise care particularly between the submission of an application and the planning meeting where it is to be

determined. You can attend meetings but, **to avoid complaints of bias,** you need to be careful not to express views or opinions on the application if you are intending to take part in the planning meeting.

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5.4 In addition you should consider:

- the advice on lobbying;
- whether or not it would be prudent in the circumstances to make notes when contacted;
- notifying the **DMBCM** of any significant contact with the applicant and other interested parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
- asking relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.

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5.5 Don't attend a planning presentation unless an Officer is present and/or it has been organised by Officers, as it is a form of lobbying and you need to be careful not to express any views on the application or give the impression you have made up your mind.

5.6 Remember that a presentation is not part of the formal process of debate and determination of any application, this will be carried out by the appropriate planning meeting of the planning authority, but you are able to ask relevant questions for the purposes of clarifying your understanding of the proposals.

6 PRE-APPLICATION DISCUSSIONS

6.1 It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with Officers present and a written record of the discussions made and kept.

6.2 If you are involved by an Officer in pre-application discussions ensure that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation will have taken place.

6.3 Officers should deal with any queries or give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. This ensures a consistent and co-ordinated approach from the Council.

6.4 Where there is a legitimate reason justifying non-disclosure respect a request for confidentiality. Seek advice from the Officers present if you are unsure.

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6.5 Make sure you provide information on matters of fact, local knowledge and geography to any pre-application meeting rather than dealing with the merits of any proposed application.

6.6 Make sure you do not use your position to improperly influence decisions in pre-application meetings.

6.7 You can ask an Officer for a briefing or update on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

7 LOBBYING OF PLANNING COMMITTEE MEMBERS

7.1 While you can listen to those lobbying or attempting to lobby you, you should explain that it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to form an intention to vote one way or another or express such a firm point of view that you could appear biased.

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7.2 As a member of the planning meeting your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

7.3 You should not accept any gifts, benefits or hospitality from a person involved in or affected by a planning proposal. Where a degree of hospitality is entirely unavoidable, you must ensure it is of a minimum level, its acceptance is declared as soon as possible and remember the Code of Conduct for Members requires that you register any gift, benefit or hospitality which you have accepted where its value is over £100.

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7.4 Remember you can copy or pass on lobbying correspondence you receive to the DMBCM, if relevant or raising new issues, or declare the receipt of lobbying information at the planning meeting.

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7.5 If you receive any offer of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise, refer the offer to the DMBCM.

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7.6 If you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or

hospitality), notify the Monitoring Officer who will in turn advise the appropriate Officers to follow the matter up.

- 7.7 Unless you have a Disclosable Pecuniary Interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening to or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

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8 MEMBERSHIP OF LOBBY OR GENERAL INTEREST GROUPS

- 8.1 Avoid becoming a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals or those within a limited geographical area, as if you do, you are likely to have fettered your discretion and have to withdraw from the planning meeting.

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- 8.2 Depending on your degree of involvement with a group and its purpose, you can sometimes continue to participate but note that if it could realistically lead to allegations of bias, you should withdraw from the meeting.

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- 8.3 If a matter relates directly to the lobby group of which you are a member rather than to the views it holds, or is submitted by the group you should ordinarily withdraw from considering the matter.

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- 8.4 Where your lobby group has expressed a public view on a matter you need to consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors you should consider are:

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- the nature of the matter to be discussed
- the nature of your involvement with the lobby group
- the publicly expressed views of the lobby group
- what you have said or done in relation to the particular issue

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- 8.5 If the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the

management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.

- 8.6 Remember that if you publicly support a particular outcome on a proposal within your Ward or actively campaign for it, you will not be able to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge, particularly where the campaign included factors or expressed viewpoints which were not material planning considerations. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining any application in accordance with the law.

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- 8.7 You are able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but it is sensible at a planning meeting to refer to your membership where that organisation has made representations on a particular proposal; you should also make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.

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- 8.8 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest.

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- 8.9 You should not ever decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

9 SITE INSPECTIONS

The Council has a separate protocol that deals with Site Inspections in more detail.

- 9.1 Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact

finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to both Councillors requests for a Site Inspection and those the ~~DMBCM~~ may arrange without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.

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- 9.2 It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors at site visits will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all planning meeting members will attend all formal site inspections and a record of attendance will be maintained and monitored.
- 9.3 You should try to attend site inspections organised by the Council.
- 9.4 You can request a site inspection if you feel it is strictly necessary because:
- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 9.5 The site inspection is an opportunity for you to seek information and to observe the site, and therefore you can ask the Officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection. Officers may seek clarification from the applicant or an objector on your question, but you should not do this directly.
- 9.6 Be careful not to be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind while on a site inspection by expressing opinions or views to anyone. The decision can only be made at the planning meeting and you should make this clear to any applicant or other party who approaches you and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the Officer present.

11.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst Officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to Officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.

11.2 You can submit views on current applications to the DMBCM, which can be incorporated into any committee report.

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11.3 Officers are part of a management structure and you can discuss a proposal, outside of any arranged meeting, with those Officers who are authorised by the DMBCM to deal with the proposal at a Member level or the DMBCM. However, you should not seek to do anything that would compromise, or is likely to compromise, the impartiality of Officers who must be free to reach their own conclusion.

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11.4 Officers who are involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors.

11.5 Remember the Council's Member/Officer Relations Protocol.

12 DECISION MAKING

The Council has adopted a separate protocol that deals with the Call in of planning applications in more detail.

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12.1 Ensure that the planning reasons in your request for a proposal to go before the planning meeting rather than be determined through Officer delegation are recorded and repeated correctly in the report to the planning meeting.

12.2 Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless other material considerations indicate otherwise.

12.3 It is important that you reach your decision only after due consideration of all of the information reasonably required upon which to base a decision. You should come to meetings with an open mind and if you feel there is insufficient time to digest new information or

that there is simply insufficient information before you, request that further information, and if necessary, defer or refuse the application.

12.4 It is vital that you have been present to hear the entire item, including the Officers' introduction to the matter before you vote or take part in the planning meeting's discussion on a proposal.

12.5 Check that the minutes of the meeting record correctly the reasons for the planning meeting's decision to grant, refuse or defer any proposal.

12.6 The planning meeting can delegate to the DMBCM in conjunction with the Chairman, if necessary, the specific wording of conditions that the planning meeting may wish to add or amend when they are considering an application for approval. An explanation of why the change or addition is required should be given to the planning meeting.

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12.7 Be aware that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you need to clearly identify and explain the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and will be recorded and Officers will be able to assist with formal wording. Be aware that you may have to assist in defending a resulting decision by giving evidence in the event of any challenge.

12.8 Where necessary, you can consider deferring the determination of sensitive applications that the planning meeting wish to approve against Officer recommendation to the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.

12.9 Where necessary, you can consider deferring the determination of an application to another meeting if there is a very strong objection from Officers on the validity of reasons for refusal against Officer recommendation, to allow the proposed reasons to be further investigated and form the basis of an updated report to a future meeting.

12.10 You should ensure that you are aware of, and comply with the Protocols adopted by the Council.

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13 TRAINING

13.1 You must attend the mandatory planning training prescribed by the Council before you participate in decision-making at planning meetings.

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- 13.2 ~~You should try~~ to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and assist you in carrying out your role properly and effectively.

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14 INVOLVEMENT IN SECTION 106 AGREEMENTS

- 14.1 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by such benefits offered.
- 14.2 Remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.
- 14.3 Requirements of Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the ~~DMBCM~~ as soon as you become aware of them.
- 14.4 The content of Section 106 Agreements needs to be discussed at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 14.5 If you feel that a meeting would be useful to clarify issues of content of potential Section 106 agreements, you should ask the ~~DMBCM~~ to arrange a meeting with relevant Officers. Participants can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 14.6 Do remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that the Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors can contact Officers for any information required on completed Section 106 Agreements.

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15 MONITORING AND REVIEW

- | 15.1 The DMBCM will report annually to the Portfolio Holder regarding compliance with the arrangements set out in this Planning Protocol and will identify any proposals for amendment in light of issues that have arisen, although any amendments would be required to go through the Council's formal process.

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- | 15.2 In particular, the DMBCM shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

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PROTOCOL ON PUBLIC SPEAKING RIGHTS AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

- a) The Strategic Planning Board and Planning Committees have to make decisions on the merits of each individual application, upon the basis of what is in the Development Plan and other material considerations. All written representations made to the Council will be taken into account in the Officers' written report to Committee, but this procedure allows members of the public and Councillors who are not members of the Strategic Planning Board or Committees to attend a Strategic Planning Board or Planning Committee meeting and speak for or against an application prior to the Strategic Planning Board or Planning Committees making a decision about a planning application or other item on their public agenda.

- b) The Strategic Planning Board usually meets at Macclesfield at 10.30 am every 3 weeks.

- c) The Planning Committees usually meet at the Crewe Municipal Buildings, Earle Street, Crewe, CW1 2BJ (Southern) and at the Macclesfield Town Hall, Market Place, Macclesfield, SK10 1DX (Northern) every 3 weeks.

NB. As both venues and start times of meetings are subject to change, it is important that members of the public check details on the relevant agenda (available a week before the meeting) or contact Democratic Services for confirmation.

- d) The agenda for each Strategic Planning Board or Planning Committee meeting is available five clear working days before the meeting and is available via the Council's website. Interested groups and individuals should keep themselves informed about when a planning application will come to the Strategic Planning Board or Planning Committees. A list of meetings can be obtained from the Council Offices and officers will be able to advise on the progress of applications.

- e) This protocol has been amended in light of the Code of Conduct for Members – 2012

PROCEDURE:

1. WHO CAN SPEAK AND FOR HOW LONG

1.1 The following individuals/groups are eligible to speak

- Objectors
- Applicants or their agents
- Supporters
- The relevant Parish or Town Council

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- Local representative groups/Civic Society (where not covered by any of the above categories)
NB. In order to be treated separately to individual objectors and entitled to a separate speaking slot, local groups are expected to have a formal Constitution.
- Ward Members if they are not on the Board/Committee provided that they do not have a Disclosable Pecuniary Interest
- Members who are not on the Board/Committee and are not Ward Members provided that they do not have a Disclosable Pecuniary Interest

1.2 Each person or group identified shall be entitled to speak for a period of up to three minutes. If there is more than one person wishing to speak from a particular group e.g. objectors, people are encouraged to consult each other and agree how to share their 3 minute slot. The Chairman has a general discretion which may be exercised to extend time limits, but this will normally only be exercised in exceptional cases. Where a listed building or conservation area application is involved, no extra time will normally be provided.

1.3 The site plan will be shown and may be referred to throughout the consideration of the application. In order to be fair to all parties, no other presentation aids will be permitted. Similarly, the circulation of information, photographs and/or plans at the meeting will not be allowed.

2 HOW TO SPEAK AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

2.1 It is necessary to inform, in writing (email, fax or letter), the Democratic Services Section of an intention to speak at a Strategic Planning Board or Planning Committee meeting no later than 12.00 noon the day before the day of the planning meeting. Any emails should be sent to Speakingatplanning@cheshireeast.gov.uk Members should note that they still need to register their intention to speak even if they have called in an application.

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2.2 Speakers are advised to arrive for meetings approximately 10-15 minutes prior to the start of the meeting in order to register with the Democratic Services Officer.

2.3 A statement to the Strategic Planning Board or Planning Committee should only refer to planning issues, for example:

- exterior design, size, appearance, layout, etc
- residential amenity
- highway safety
- character of the area
- trees and historic buildings

- planning policy (Local Plan/Structure Plan)
- Government guidance

2.4 The Strategic Planning Board or Planning Committee cannot take into account non-planning issues, for example:

- boundary disputes/property rights
- personal comments about any individual
- loss of property value or loss of view
- matters covered in other laws

2.5 Speakers are reminded of the law relating to slander. If, at the meeting, they say something which is not true about another person, they could be at risk of legal action. Further, Race Relations and Human Rights legislation will not allow any discriminatory comments, for example race, religious beliefs or disability.

2.6 The order of speaking at the meetings of the Strategic Planning Board and Planning Committees is as follows -

- Announcement of the item by the Chairman
- Introduction and description of the application by the Planning Officer, including any update of the Committee report and an oral report of any site visit and highlighting of the key issues
- Ward Councillor(s) (3 mins) (NB. In single Member Wards, the Ward Member may at his or her discretion delegate the right to speak to an alternative Member.)
- Members who are not on the Board/Committee and are also non-Ward Members (3 mins)
- Parish/Town Council representations (3 mins)
- Civic Society/Local Representative Groups (3 mins)
- Objectors' representations (3 mins)
- Supporters' representations (3 mins)
- Applicants' representations (3 mins)
- Further comments by Planning Officer
- Ward Councillor if a Member of the Board/Committee
- Board/Committee Members debate and decision taken

2.7 At the Chairman's discretion, members of the Strategic Planning Board or Planning Committee may ask, through the Chairman, any of the speakers listed above to clarify an issue of fact after their statement is concluded. The Chairman may also ask that questions of fact are answered by any speakers during the Members' discussion to clarify matters. Speakers will not be permitted to ask questions of the Strategic Planning Board or Planning Committee or other speakers or to interrupt the Members' discussion on an individual planning application. The Constitution (Paragraph 58 of the General Procedure Rules) provides Chairmen with powers to ensure good order during meetings.

- 2.8 In exceptional circumstances, the Chairman may (with the approval of the Board or Committee) extend the speaking period for some or all speakers or allow more speakers if appropriate. This power will be treated with caution for controversial or complex schemes and if additional time is granted to objectors, a similar allowance will be given to supporters and/or the applicant.

2.9 Members who have a Disclosable Pecuniary Interest in an application must not speak on it and must leave the planning meeting room as soon as the application is introduced. If a member has a non pecuniary private interest they should declare it and leave the planning meeting room but may exercise public speaking rights before doing so. If a member of the committee has pre determined an application they may exercise public speaking rights and then, ideally, leave the planning meeting room.

3 AFTER THE DECISION

- 3.1 Speakers are asked to respect the decision made by the Strategic Planning Board or Planning Committee during the course of the meeting. The Strategic Planning Board's or Planning Committee's decision is final, but the applicants do have the right to appeal to the Secretary of State if their application is refused or if conditions are attached which they do not like. Objectors do not have the right to appeal a decision to the Secretary of State but they can seek to have a decision quashed by an application to the High Court by way of judicial review.

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- 3.2 If an application is deferred to a future meeting for consideration, speakers will be required to register to speak for that meeting in accordance with this protocol.

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- 3.3 This scheme will be monitored and reviewed by the Strategic Planning Board annually.