

## **5 (a) (ii) Members' Planning Code of Good Practice**

**Background**

~~This Planning Code of Good Practice is based on the model code prepared by the Association of Council Secretaries and Solicitors. It has been prepared in the light of changes to the ethical framework and replaces the Council's former Code of good practice on planning matters.~~

**Introduction**

**The aim of this Code of Good Practice:** to help Members maintain high standards of conduct and 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.

**The key purpose of Planning:** to control development in the public interest and in accordance with national and local planning policies unless material considerations indicate otherwise.

**Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes where applicable, when they attend as an observer, participant or when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public, consultative meetings, as well as formal and informal site visits). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications and pre-application discussions.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from either the Monitoring Officer ~~(Robert Burnor the Development Control Manager,)~~ or one of ~~his or her~~ their staff, and preferably well before any meeting takes place.**

**1. Relationship to the Members' Code of Conduct**

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. Failure to comply with that Code could put you at risk of a complaint being made against you to the Monitoring Officer
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
  - the Council at risk of proceedings-a challenge on the legality of the related decision or maladministration; and
  - **yourself at risk of ~~either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct,~~ a complaint being made to ~~the Standards Committee the Monitoring Officer and an Independent investigation having to be carried out.~~**

**2. Development Proposals and Interests under the Members' Code**

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- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. You should disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. ~~(If you become aware of an interest during the meeting you must declare it as soon as practicable)~~

- ~~Remember your interest may relate to the effect of a proposal, which may be either beneficial or adverse, on you, your employer or employee, or a friend or relative~~

- **Do** then act accordingly:

**Where your interest is ~~a personal and prejudicial~~ Disclosable Pecuniary Interest:-**

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority (Under the Members' Code of Conduct you can no longer speak on a matter even if it is a public speaking item):-
- **Don't** seek improperly to influence any such decision
- **Don't** try to represent ward views, or call-in an application - get another Member, if appropriate, from the same or a neighbouring ward to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** 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 member. This would include ~~where you have a personal and prejudicial disclosable pecuniary interest in a proposal,~~ using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a ~~disclosable pecuniary personal and prejudicial~~ interest to an appropriate officer, in person or in writing, the Members' Code of Conduct places greater limitations on you in representing that proposal than would apply to a member of the public. In particular, you should have regard to paragraph 5(3) of the Code ~~You may address the Committee where the matter is a public speaking item but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery).~~

- Do notify the Monitoring Officer in writing within 28 days of any interest you declare if such interest is not already registered

- **Do** note that:

- any application submitted by you will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; 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 Committee.

Do ensure that when contacting an officer about your own proposals, or those of a person closely connected with you, you must make it clear that you are doing so in a private capacity and not in your capacity or role as a councillor

**Where your interest is non-pecuniary only (not a disclosable pecuniary interest)**

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**personal only:-**

\_\_\_\_\_ having declared it you may speak and vote (unless you consider yourself to be predetermined or biased).

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**Where you wish to make representations in connection with a planning appeal:**

~~– Do make it clear to the Inspector in what capacity you are making the representations, i.e. as a ward member, as a member representing the views of other residents or in a personal capacity.~~

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**3. Fettering Discretion in the Planning Process**

• ~~Planning matters must be determined on their own individual merits against the formal planning policy background. These considerations will be set out in the officers’ reports, supplemented, as appropriate, at the meeting. Accordingly, Members should not decide how they will vote on a particular matter before it is considered at the meeting, but must base their decision on the officers’ reports, any additional information presented to the meeting and the debate.~~

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• ~~Predetermination: Section 25 of the Localism Act 2011 gives greater flexibility for a decision-maker to indicate, directly or indirectly, a view on a matter prior to a meeting and provides greater scope for Members to represent the views of residents and to vote on certain issues. However, the decision-maker must still be seen to have an open mind.~~

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• **Don’t** fetter your discretion and therefore your ability to participate in planning decision making at the Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and ~~of your before hearing the officer’s presentation and evidence and arguments on both sides~~ other relevant evidence.

**Fettering your discretion** in this way and then taking part in the decision will put 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 or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

• **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. ~~This would apply, for example, to an Executive Member in relation to schemes within their area or responsibility.~~ (This is more than a matter of membership of both the proposing and planning determination committees; ~~but that~~ through your significant personal involvement in preparing or advocating the proposal 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.)

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• ~~Do be aware that whilst the Members’ Code of Conduct provides a presumption that you may regard yourself as not having a disclosable pecuniary interest in matters which relate to organisations such as another local authority of which you are a member, or a body to which you have been appointed or nominated by the Council, you must exercise your discretion in deciding whether or not to participate in a case where:~~

- ~~you have been involved significantly with the preparation, submission, promotion, or opposition of a planning proposal; or~~
- ~~you are a trustee or company director of the body submitting the proposal.~~

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- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where ~~for example,~~ you are also a member of the parish council, ~~for example,~~ or both a district and county member), provided that:
  - the proposal does not substantially affect the well being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - 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 Committee and you hear all of the relevant information; ~~and~~
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
    - you disclose the ~~personal non-pecuniary~~ interest regarding your membership or role on the consultee body when the Committee comes to consider the proposal.

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- **Don’t** speak and vote on a proposal where you ~~have appear to have~~ fettered your discretion. ~~You do not also have to withdraw, but~~ You should leave the meeting you may prefer to do so for the sake of appearances.
- ~~Do leave the meeting if there is a risk of an appearance to a member of the public of bias by you - do not remain or take part in the meeting.~~
- **Do** explain, in either of the above cases, that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

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**Call-in Process**

~~Do ensure that you comply with the rules for asking for an application to be considered by the Committee~~

~~Do not ask for an item to be referred to the Committee if you have a disclosable pecuniary interest in the matter or there is a risk of your being seen as biased~~

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- ~~Do take the opportunity to exercise your separate speaking rights as a Ward Member (granted by the Council’s standing orders) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:~~
  - ~~advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;~~
  - ~~remove yourself from the member seating area for the duration of that item; and~~
  - ~~ensure that your actions are recorded;~~
  - ~~you must not vote.~~

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#### 4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants or developers (e.g. a meeting requested by applicants or developers to explain their proposals) where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never hold that meeting without a planning officer being present. (The officer(s) 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, 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 Committee).
- If you meet with objectors make sure that you advise the objectors at the beginning of the meeting that you are there to listen to their views but you cannot express a firm point of view otherwise you will prejudice your ability to take part in the decision making process. Inform the Development Control Manager about the meeting, if possible, before it takes place. It is good practice to take notes and to supply the Development Control Manager with a copy of the notes if an officer was not present.
- **Do** otherwise:
  - follow the rules on lobbying;
  - ~~consider whether or not it would be prudent in the circumstances to make notes when contacted;~~ and
  - report to the Development Control Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

#### In addition in respect of presentations by applicants/developers:

- ~~Don't be aware that it is in order to attend a planning presentations held in public but do not do so if it is not held in public and unless an officer is not present unless this cannot be avoided in the circumstances and/or it has been organised by officers.~~
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

#### 5. Pre-Application Discussions

Members have an important role to play in pre-application discussions. The Localism Act 2011 has given Members more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that Members might have fettered their discretion, Members should adhere to the guidelines given above and as follows:

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- Do ensure that officers are present with you in pre-application meetings. If you do speak to applicants make it clear that the discussion will not bind the Council to making a particular decision.
- Do avoid giving separate advice on the development plan or material considerations without officers in attendance. In any case, a written note should be made of all meetings.
- Do note that the Council has other mechanisms to involve you in pre-application discussions, such as developer presentations to the Committee (e.g. technical briefings) which have the advantage of being held in public for transparency.

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### **56. Lobbying of Members**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, doing so may lead to the perception that you are unable to act impartially and that therefore it may affect your ability to participate in the Committee's decision making. To express an intention to vote one way or another or to express such a firm point of view that it amounts to the same thing.
- **Do** remember that 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, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimal nature, its acceptance is declared as soon as possible and remember to register it with the Monitoring Officer where its value is over £25 (in accordance with the Members' Code of Conduct).
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity (unless the correspondence has been circulated to all Members), so that it may be placed on file for consideration by other Members or the public.
- **Do** promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development, either through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a personal and prejudicial disclosable pecuniary interest, you will not normally be considered to have fettered your discretion or breached this Planning Code of Good Practice through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members 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 e.g. 'my initial view is .....
  - 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 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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## 67. Lobbying by Members

- **Don't** become a member of, or lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and ~~are likely to have a personal and prejudicial interest placed yourself in a position where you have perceived bias and have to withdraw.~~ Involvement in such activity before you were elected as a Member could also be perceived by the public as relevant and you need to consider this possibility before taking part in a planning determination.
- **Do feel free 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 **do** disclose a non-pecuniary personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal. Simple membership of such organisations is less likely to give rise to a non-pecuniary interest than if you were actively involved in drafting or making representations.
- **Don't** lobby fellow members 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
- **Don't lobby,** discuss or decide how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Members' group meetings should never dictate how Members should vote on a planning issue.

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## 78. Formal Site Visits

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless 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.
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe and familiarise yourself with the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s), who must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make

representations in writing to the authority and direct them to or inform the officer present.

- **Don't** express opinions or views to anyone.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you notify the Development Control Manager of your visit afterwards (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.
- **Do take the opportunity to view a property or site from the roadside or public footpath.**

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### **89. Public Speaking at Meetings**

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

### **109. Officers**

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Control Manager, which may be incorporated into any committee report).
- **Do involve yourself in pre-application discussions with the relevant officer but** recognise that officers are part of a management structure and **you should** only discuss a proposal, outside of any arranged meeting, with a Corporate Head of Service or those officers who are authorised by their Corporate Head of Service to deal with the proposal at a Member level. **(Should you be in any doubt about who to contact to discuss a proposal with, outside of an arranged meeting, please contact the Development Control Manager who will be able to advise you).**
- **Do** recognise and respect that officers 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 differ from the views, opinions or decisions of the Committee or its Members.

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### **11. Call-in Process**

- **Do ensure that you comply with the rules for asking for an application to be considered by the Committee, your reasons are recorded and declared at the meeting if not already noted in the officer's report.**
- **Do not ask for an item to be referred to the Committee if you have a disclosable pecuniary interest in the matter or there is a risk of your being seen as biased.**

**11. Pre-Application Discussions**

~~Do be aware that Members have an important role to play in pre-application discussions. The Localism Act 2011 has given Members more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that Members might have fettered their discretion, such discussions should take place within clear prescribed guidelines.~~

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~~Do ensure that officers are present with you in pre-application meetings. If you do speak to applicants make it clear that the discussion will not bind the Council to making a particular decision.~~

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~~Do avoid giving separate advice on the development plan or material considerations without officers in attendance. In any case, a written note should be made of all meetings.~~

~~Do note that the Council has other mechanisms to involve you in pre application discussions, such as developer presentations to the Committee (e.g. e.g. technical briefings) which have the advantage of being held in public for transparency.~~

**12. Decision Making**

~~Do ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.~~

Do come to meetings with an open mind and demonstrate that you are open-minded.

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~~Do come to each meeting and participate only if you are familiar with the written report on each site.~~

Do comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 i.e. make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, a motionask for deferral can be made and voted upon. Such motion must be based on clear grounds which should be recorded at the meeting. Remember that planning law requires a determination to be based on planning considerations and not political, personal or Council interests or priorities.

Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

~~Do have recorded the reasons for the Committee's decision to defer any proposal.~~

Do make sure that if you are proposing, seconding or supporting a decision motion contrary to officer recommendations or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision, seeking the advice of the Development Control Manager in framing the wording in advance if you are unsure. These reasons must be given prior to the vote and be recorded. These reasons must be given immediately after proposing the motion and will be recorded by the officers. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge. The Development Control Manager will be given an opportunity to explain the implications of any contrary decision immediately before the decision is taken.

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### **13. Representations on Appeals**

Where you wish to make representations in connection with a planning appeal:

- Do make it clear to the Inspector in what capacity you are making the representations, i.e. as a ward member, as a member representing the views of other residents or in a personal capacity.

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### **14. Training**

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since 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 thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

### **15. Review**

This Code of Good Practice will be reviewed by the Council ~~on an annual basis~~ periodically.

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**DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF**

What matter is being discussed at the meeting?

Disclosable Pecuniary Interests	Non-Pecuniary or other Interests
<p><b>Does the business relate to or is it likely to affect any of your (or your partner's) disclosable pecuniary interests?</b></p> <p>These relate to:</p> <ul style="list-style-type: none"> <li>• Employment, office, trade, profession or vocation</li> <li>• Sponsorship, including payment towards carrying out duties or towards election expenses (other than from the Council)</li> <li>• Contracts with the Council</li> <li>• Land (any interest in land within the Council's area)</li> <li>• Licence to occupy land in the Council's area</li> <li>• Corporate tenancy where the Council is landlord.</li> <li>• Securities in a body having a place of business or land within the Council's area.</li> </ul>	<p><b>Does the business relate to or is it likely to affect any of your non-pecuniary interests?</b></p> <p>These may relate to:</p> <ul style="list-style-type: none"> <li>• Bodies to which you have been appointed or nominated by the Council</li> <li>• Bodies exercising functions of a public nature</li> <li>• Bodies directed to charitable purposes</li> <li>• Bodies one of whose principal purposes is to influence public opinion or policy</li> <li>• Any other interest you think is relevant or wish to declare</li> </ul>

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<p><b>You must disclose the existence and nature of the interest, leave the meeting and take no further part in that business.</b> (You cannot remain in the public gallery to observe any debate or vote on the matter and you must not seek improperly to influence the decision.)</p>	<p><b>You must disclose the existence and nature of your interest, but you can remain in the meeting and take part in the business (*subject to note below).</b></p>
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<p><b>What if I am not a member of the Committee but wish to speak or have been invited by the Chairman to speak?</b></p>	<p><b>What if I am not a member of the Committee but wish to speak or have been invited by the Chairman to speak?</b></p>
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<p><b>If you or your partner have a disclosable pecuniary interest in the business you cannot take part in the business.</b> (As above, you should leave the meeting and not seek to improperly influence the decision.)</p>	<p><b>As above</b></p>
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**\*What if I think I am biased or predetermined (either for or against the business to be considered)?**

**As with a disclosable pecuniary interest, you should disclose the nature of the interest and then leave the meeting and take no further part.** You should not remain in the public gallery or seek improperly to influence the decision.