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Dear Councillor

SOUTH HAMS AUDIT COMMITTEE - THURSDAY, 22ND MARCH, 2018

I refer to the agenda for the above meeting and attach papers in connection with the following item(s).

Agenda No	Item
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- | | |
|-----|---|
| 16. | <u>Annual Review of the Council Constitution</u> (Pages 1 - 120) |
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Yours sincerely

Darryl White
Senior Specialist – Democratic Services

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Report to: **Audit Committee**
Date: **22 March 2018**
Title: **Annual Review of the Council's Constitution**
Portfolio Area: **Support Services**
Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: **The Committee recommendations will be presented to the Annual Council meeting on 17 May 2018**

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RECOMMENDATION

That the Audit Committee RECOMMEND to Council that the amendments to Parts 1, 2 and 3 of the South Hams District Council Constitution (as summarised in paragraph 2.7 of the report and fully outlined on the website) be approved and formally adopted at the Annual Council Meeting on 17 May 2018.

1. Executive summary

1.1 The Council is required to formally adopt its Constitution at the Annual Meeting in May for the forthcoming Municipal Year.

1.2 The Audit Committee is responsible for '*maintaining an overview of the Council's Constitution*' and for making any necessary recommendations to the Council. This report seeks to ensure that the Constitution is amended to reflect the changes that have either occurred in the Council over the previous year, or to implement any necessary changes to ensure that it is up to date, lawful and reflects the Council's current practices and priorities.

2. Background

2.1 In order that the Audit Committee can make informed recommendations to the Council on the adoption of the Constitution at the Annual Meeting, the Committee is required to review the Council's Constitution;

2.2 Changes to the Constitution are made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes, and are effective from the date of approval (unless otherwise agreed by Council). Examples over the past year include:

- Changes to the Delegation Scheme as a result of the recent review of duties amongst the Senior Leadership Team (e.g. the Group Manager: Commercial Services being appointed to the role of Returning Officer); and
- Removal of some Member Bodies, including the Beach Management Working Group and the Joint Staff Consultative Forum.

2.3 In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. The changes that have been made under these powers this year mainly relate to officer job titles and evolving areas of responsibility following the recent review of duties amongst the Senior Leadership Team;

2.4 Members will note that the proposed changes are extensive and it is therefore suggested that the Review is divided into two parts. This part of the Review focuses on Part 1 (Summary and Explanation); Part 2 (Articles of the Constitution) and Part 3 (Delegation Scheme) and the recommended amendments are outlined in Appendix A;

2.5 It is then suggested that the second part of the Review be considered within the next six months and focuses on Part 4 (Rules of Procedure); Part 5 (Codes and Protocols) and Part 6 (Members' Allowances Scheme). This will ensure that the Rules of Procedure can be extensively reviewed before the May 2019 local elections and enable for the Members' Planning Code of Practice to be subject of a detailed review;

2.6 The key proposed amendments to this Part of the Review are as follows:-

- A drive to remove duplication and attempt to make the Constitution a more concise document;
- An additional requirement whereby a Chairman is required to have relevant experience (as determined by the Head of Paid Service) or undergo relevant Chairmanship training;
- Removal of reference to thematic areas in the Overview and Scrutiny Panel section of the Delegation Scheme;
- Removal of reference to Statute in the Delegation Scheme as it is no longer up to date.

2.7 The Committee will also be aware that the Political Structures Working Group is currently reviewing the merits of Public Questions at meetings of full Council and potential electronic voting solutions.

3. Outcomes/outputs

3.1 The Council is required to have an up to date Constitution which reflects the law, its working practices together with best practice to ensure that it delivers efficient services and lawful decisions. The Constitution is a living document and changes are made throughout the year when necessary.

4. Options available and consideration of risk

4.1 The options are limited as the Council has a statutory duty to adopt its Constitution annually and to review that document to ensure that it is fit for purpose and reflects both statutory requirements and the Council's working practices;

4.2 If the Council does not review the Constitution there is risk that the Council may make unlawful decisions with a consequent risk of challenge;

4.3 Senior Officers have been consulted on the Constitution and any necessary amendments incorporated.

5. Proposed Way Forward

5.1 The Audit Committee is asked to review the first part of the Constitution and make any necessary recommendations to Council in order that the Constitution can be adopted at the Annual Meeting in May for the forthcoming year.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Local Government Act 2000 requires the Council to have (and to maintain) a Constitution. The Monitoring Officer must review the Constitution annually and make recommendations to the Audit Committee, who in turn must recommend its adoption to full Council. Only the Council can approve and adopt the Council's Constitution.
Financial	N	There are no financial implications to this report
Risk	Y	There is a risk arising from a failure to review the Constitution and approve the necessary changes because it may lead to unlawful decisions being taken by the Council.

		By undertaking an annual review of the Constitution the Council mitigates this risk by ensuring that the Constitution is up to date and reflects current practice and law.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None arising from this report
Safeguarding		n/a
Community Safety, Crime and Disorder		n/a
Health, Safety and Wellbeing		n/a
Other implications		n/a

Supporting Information

Appendices:

A: Proposed revisions to Parts 1, 2 and 3 of the Council Constitution.

Background Documents:

Constitution Review 2017



SOUTH HAMS DISTRICT COUNCIL

CONSTITUTION

CONTENTS

Part 1 - Summary and Explanation

Part 2 - Articles of the Constitution

- Article 1 - The Constitution
- Article 2 - Members of the Council
- Article 3 - Citizens and the Council
- Article 4 - The Full Council and Chairman of the Council
- Article 5 - Overview and Scrutiny ~~Panels~~
- Article 6 - The Executive
- Article 7 - Regulatory Bodies, Committees, Panels and Working Groups
- Article 8 - Salcombe Harbour Board
- Article 9 - Joint Arrangements
- Article 10 - Officers
- Article 11 - Decision Making
- Article 12 - Finance, Contracts and Legal Matters
- Article 13 - Review and Revision of the Constitution
- Article 14 - Suspension, Interpretation and Publication of the Constitution

Part 3 - Delegation Scheme

Part 4 – Rules of Procedure

- Access to Information Procedure Rules
- Budget and Policy Framework Procedure Rules
- Contracts Procedure Rules
- Council Procedure Rules
- Executive Procedure Rules
- Financial Procedure Rules
- Officer Employment Procedure Rules
- Rules for other Bodies of the Council
- Scrutiny Procedure Rules

CONTENTS

Part 5 - Codes and Protocols

Members' Code of Conduct

Members' Planning Code of Practice

Protocol on Councillor/Officer Relations

~~Staff Code of Conduct~~

Part 6 - Members' Allowances Scheme

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Definitions used in the Constitution

- (1) Any reference to an officer of the Council authorising an officer to do any act or thing shall, except where the law says otherwise, include the Head of Paid Service;
- (2) References to the masculine gender shall include the feminine, and the singular shall include the plural and vice versa, unless the context otherwise demands;
- (3) Reference to a statute or regulation includes any subsequent amendment(s) made to it; and
- (4) Unless the context otherwise demands, the following terms mean:

‘Article(s)’ – the article(s) set out in part 2 of the Constitution;

‘District’ – the area for which the Council is responsible;

‘Chairman’ – the Chairman of the Executive, a committee / sub-committee / council body or the person presiding at a committee or sub-committee meeting. Where a matter has been delegated in consultation with a Chairman of a Committee / Panel that no longer exists then the consultation shall be with the Chairman of the body which has replaced it;

‘Chairman of the Council’ – the person currently appointed to this position by the Council and who presides at Council meetings when present;

‘Chief Executive’ – means the Council’s ~~Executive Director of Strategy & Commissioning and Head of Paid Service~~ (being designated as such under section 4 of the 1989 Act) or, in his absence, an officer nominated by him or designated as such by the Council due to his incapacity (see article 10 of the Constitution);

‘Chief Finance Officer’ – ~~the Community of Practice Finance Lead (and includes all references to the Head of Finance & Audit)~~ being the person designated under section 151 of the 1972 Act (together with the 1988 Act and the 1989 Act), (see article 11 of the Constitution). Sometimes called the Section 151 Officer;

‘Chief Officer’ – the Executive Directors;

‘Clear Working Day’ – a day which is neither a Saturday, Sunday nor a bank holiday;

‘Code of Conduct’ – the South Hams District Council Code of Members’ Conduct set out in part 5(a) of the Constitution;

‘Committee’ – a committee of the Council, being one of the following:

- Audit Committee;

- Development Management Committee;
- Licensing Committee;
Overview & Scrutiny Panel; and
Salcombe Harbour Board.

or such other committee as the Council may from time to time appoint for the discharge of its duties;

‘Constitution’ – the document adopted for the time being by the Council which sets out how the Council operates, how decisions are made and the procedures which the Council follows;

‘Contract Procedure Rules’ – the rules governing contracts entered into by the Council (see part 4 of the Constitution);

‘Corporate Property Officer’ – Community of Practice Lead Specialist (Assets) (which for the time being includes reference in this Constitution to the former **Head of Assets**) who is responsible for the Council’s Capital Strategy and Asset Management Plan (see the Financial Procedure Rules in part 4 of the Constitution);

‘Council’ – South Hams District Council;

‘The Councils’ - South Hams District Council and West Devon Borough Council

‘Council Procedure Rules’ – the rules set out in part 4 of the Constitution;

‘Councillors’ – see Members;

‘Delegation Scheme’ – the powers and duties of the Council which have been delegated to committees or to officers in accordance with the Scheme (see Part 3 of the Constitution);

‘Senior Specialist Democratic Services Manager’ – shall also mean a relevant officer from Democratic or Committee Services;

‘Deputy Chairman of the Council’ - the person currently appointed to this position by the Council;

‘Deputy Leader of the Council’ - the person currently appointed to this position by the Council (as set out in Article 6);

‘Executive’ – the body appointed by the Council as set out in Article 6;

‘Executive Directors’ – ~~the Executive Director of Strategy & Commissioning (Head of Paid Service) and~~ the Executive Director of Service Delivery & Commercial Development and Head of Paid Service;

'Extended Leadership Team (ELT)' – Executive Directors, Group Managers, Communities of Practice Leads and Level 3 Managers (or as otherwise determined by SLT from time to time)

'Extraordinary meeting' – an extra meeting of the Council which is not an ordinary scheduled meeting (sometimes referred to as special meetings);

'Financial Procedure Rules' – the financial rules of the Council for the time being adopted by it as set out in Part 4 of the Constitution;

'Group Managers' – the Business Development Group Manager, Commercial Services Group Manager and Support Services and Customer First Group Manager responsible for the Council's service areas as set out in the Delegation Scheme;

'Head of Paid Service' – means the Council's **Executive Director of Service Delivery and Commercial Development - Strategy & Commissioning and Head of Paid Service (HoPS)** (being designated as such under section 4 of the 1989 Act) or, in his absence, an officer nominated by him or designated as such by the Council due to his incapacity (see article 10 of the Constitution);

'Leader of the Council' – the person currently appointed to this position by the Council (as set out in Article 6);

'Leader of a political group' – the leader of a political group as defined in the Local Government (Committees, etc) Regulations 1989;

'Majority' – in respect of appointments, occurs when one candidate receives more votes than the sum of the votes cast for all of the other candidates;

'Meeting' – a meeting of the Council. Executive, Committee or other Council body;

'Member' – in relation to the Council, a Member of the Council and in relation to any Executive/ committee / council body, a person appointed as a Member of that executive / committee / body ~~whether or not entitled to vote~~. Members are sometimes referred to as Councillors;

'Monitoring Officer' – being the person designated under section 5 of the 1989 Act or, if that person is unable to act owing to absence or illness, the person nominated as her deputy;

'Notice(s) in writing' – includes notices sent by ~~fax or~~ e-mail;

~~**'Number of Members'** – in relation to the Council, the number of persons who may act at the time in question as Members of the Council, and in relation to the executive / committee / body, the number of persons who may act at the time in question as voting members of that body;~~

‘Officer’ – employee of the Council (and West Devon Borough Council) or the holder of a paid office under the Council (or West Devon Borough Council) other than one held by a Member. Sometimes referred to as employees;

‘Ordinary meeting’ – a Council meeting which is scheduled for the current Council year and appears in the Council’s Schedule of meetings;

‘Person presiding’ – the person entitled, or appointed to preside at any meeting;

‘Political group’ – a political group as defined in the Local Government (Committees etc) Regulations 1989 (as amended);

‘Proper Officer’ – the person designated as such by the Council or Head of Paid Service;

‘Register of Interests’ - the register of Members’ interests as required by the Code of Conduct (see part 5 of the Constitution);

‘Relevant officer’ – an officer appointed for a particular purpose;

‘Responsible Budget Holder’ – officers who are responsible for managing cost centres within a budget (see the Financial Procedure Rules in part 4 of the Constitution);

‘Senior Leadership Team (SLT)’ – the Executive Directors and Group Managers;

‘Senior Officers’ – for the time being includes, members of the Senior Leadership Team, the Monitoring Officer, S151 Officer, Community of Practice Specialist Leads, Lead/Senior Specialists and Managers (Level 3);

‘Solicitor’ – a Solicitor or Lawyer employed or appointed by the Council or West Devon Borough Council;

‘Sub-Committee’ – a sub-committee of one of the Council’s Committees;

‘Task and Finish Groups’ – as appointed by the Overview and Scrutiny Panel;

‘Terms of Reference’ – those functions delegated by the Council to its committees (see part 3 of the Constitution);

‘the 1972 Act’ - the Local Government Act 1972;

‘the 1988 Act’ - the Local Government Finance Act 1988;

‘the 1989 Act’ - the Local Government and Housing Act 1989;

‘the 2000 Act’ - the Local Government Act 2000;

“Vice Chairman” – the vice chairman of the Executive / committee / council body or the person presiding at a committee meeting where the chairman is absent or unable to act.

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Part 1

Summary and Explanation



The Council's Constitution

South Hams District Council has a Constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to decide.

Part 2 of the Constitution is divided into fourteen articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols in Parts 3 – [67](#).

~~The main features of the Constitution are as follows:~~

~~the **Council** meeting will set the overall budget and policy framework and enables motions and recommendations in respect of issues relating to the Council's areas of responsibility and questions to the Executive (See Part 3);~~

~~an **Executive** body consisting of a Leader and other Executive Members will make decisions within the policy and budget framework established by full Council. Decisions will be delegated to the Executive as a body.~~

~~an **Overview & Scrutiny Panel** will hold the Executive to account, can make recommendations to the Executive or Council (or both) arising from the outcome of the Scrutiny process and may review not only areas of Council activity but also matters of wider local concern. The Overview & Scrutiny Panel will also promote high standards of conduct and support Members' observance of their Code of Conduct;~~

~~an **Audit Committee** will provide independent assurance of the adequacy of the risk management framework and the associated control environment and independent scrutiny of the Council's performance in financial and non financial matters;~~

~~most "regulatory" decisions (this term is defined below) will continue to be made by bodies of the Council;~~

~~the functions of the Council as harbour authority under the Pier and Harbour Order (Salcombe) Confirmation Act 1954 stand referred to the **Salcombe Harbour Board** which is charged with operating, improving, maintaining and managing the whole of the Salcombe Harbour Estuary for the benefit of users.~~

What's in the Constitution?

Article 1 of the Constitution commits the Council to principles of good governance, community leadership, public involvement and efficient, effective, transparent and accountable decision making. Articles 2 – 14~~6~~ explain the rights of citizens and how the key parts of the Council operate. These are:

Members of the Council (Article 2);

Citizens and the Council (Article 3);

The Full Council and Chairman of the Council (Article 4);

Overview and Scrutiny (Article 5);

The Executive (Article 6);

Regulatory and Other Bodies of the Council (Article 7);

Salcombe Harbour Board (Article 8);

Joint Arrangements (Article 9);

Officers (Article 10);

Decision Making (Article 11);

Finance, Contracts and Legal Matters (Article 12);

Review and Revision of the Constitution (Article 13); and

Suspension, Interpretation and Publication of the Constitution (Article 14).

Part 3 of the Constitution contains the description of the functions of the Council and how they are carried out – whether by the Council itself, a committee, a Member of the Executive or officers.

Part 4 contains the Rules by which the Council and its committees work, and how information can be made available to the public.

Part 5 contains codes and protocols governing how Members of the Council and officers should behave.

Part 6 contains the Scheme for Members' Allowances.

~~Part 7 contains the managerial structure of the Council's staff.~~

How the Council operates

The Council is composed of **thirty-one** Councillors elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a Code of Conduct (set out in Part 5 below) to ensure high standards in the way they undertake their duties. The Overview & Scrutiny Panel is responsible for ensuring that Members are sufficiently trained on the Code of Conduct.

All Members meet together in Council. Meetings of the Council are normally open to the public. At Council meetings, Members decide the Council's overall policies, ~~particularly Statutory Plans~~ and they set the budget each year. ~~and policy framework for the Council's business overall.~~

The Council appoints the Leader of the Council who appoints a Deputy Leader of the Council at the first Council meeting after an election. The Leader and Deputy Leader hold office for the next four years. The Council appoints other Members of the Executive, chairmen, vice-chairmen and Members of all the other bodies of the Council and most representatives on Outside Bodies at the Annual Meeting of Council.

~~The Council may question the performance and decisions of the Executive and of other bodies of the Council. It receives annual and other reports from the Leader of the Council, Executive portfolio holders, chairmen of other bodies and individual Councillors.~~

There is a list of functions that are reserved to the Council (in Article 4). Many other functions are delegated to bodies of the Council or officers (see below), but the Council may determine those matters not within the remit of any of its reporting bodies.

Council meetings may include formal decision making, wider debates and presentations. The Council may also meet informally in workshops and seminars.

How decisions are made

Meetings of the Council's Committees are, by law, publicised well in advance and are open to the public except where personal or confidential matters are being discussed. The Access to Information Procedure Rules in Part 4 of the Constitution contain details of when the public may be excluded from meetings.

Executive

The Executive is the part of the Council which is responsible for most day-to-day decisions. The Executive is made up of the Leader of the Council, the Deputy Leader of the Council and ~~between three and eight other Members~~ all appointed by the Council. The Members of the Executive are each individually responsible for a particular service area, or portfolio, of Council functions, namely:

Head of Paid Service and ~~Executive Director (Strategy and Commissioning);~~
Executive Director (Service Delivery and Commercial Development);
Business Development;

When major decisions are to be discussed or made, these are published in the Executive's Forward Plan in so far as they can be anticipated. If these major decisions are to be discussed at a meeting of the Executive, the meeting will generally be open for the public to attend except where exempt or confidential matters are being discussed.

The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

Scrutiny and Audit

An Overview & Scrutiny Panel supports and reviews the work of the Executive and the Council as a whole. They allow citizens to have a greater say in Council matters by holding public enquiries into matters of local concern. These lead to reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery.

The Overview & Scrutiny Panel also monitors the decisions of the Executive. It can 'call-in' a decision which has been made by the Executive but not yet implemented in order to consider whether the decision is appropriate. The Scrutiny Panel may recommend that the Executive or the Council reconsider the decision.

The Overview & Scrutiny Panel may also be consulted by the Executive or the Council on forthcoming decisions and the development of policy.

The Audit Committee has a more specific role in relation to the Council's financial affairs including the internal and external audit functions and monitors the internal workings of the Council (known broadly as "governance"). It is responsible for making sure that the Council operates in accordance with the law and laid-down procedures, and is accountable to the community for the spending of public money.

Regulatory Committees

A 'Regulatory Committee' is a term often used by councils to describe committees which deal with Local Authority business which the Executive ~~is~~ not allowed to deal with, such as licensing and planning. Regulatory Committees also normally deal with applying legislation and statutory regulations which have a degree of public or environmental protection.

In this Constitution, they include:

- the Development Management Committee (which deals with planning matters);
and
- the Licensing Committee (which licenses ~~pubs and taxis for example~~s, ~~taxis and a host of other things~~).

Meetings of the Council's Regulatory Committees are open to the public except where exempt or confidential matters are being discussed.

The Council's Staff

The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A protocol governs the relationships between officers and Members of the Council (Part 5 refers).

Citizen's Rights

Citizens have a number of rights in connections with their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes.

Part 2

Articles of the Constitution



Article 1: The Constitution

1.1 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

1.2 Purpose of the Constitution

The purpose of the Constitution is to ensure the good governance of the Council in the public interest by:

- (a) describing the structures and operating systems by means of which the Council will secure that it can deliver its services efficiently and effectively;
- (b) providing the means of internal scrutiny and oversight of the delivery of Council policies and services; and
- (c) improving transparency of delivery and being accountable to the local community.

1.3 Aims of the Constitution

The provisions of this Constitution will

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) support the active involvement of citizens in the process of local authority decision-making;
- (c) help Councillors represent their constituents and the district area more effectively;
- (d) enable decisions to be taken efficiently and effectively, with due regard to equity and probity;
- (e) create a powerful and effective means of holding decision-makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;

- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of services to the community.

1.4 **Interpretation of~~Guidance on~~ the Constitution**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

1.5 **Review of the Constitution**

The Council will monitor and evaluate the operation of the Constitution as set out in Article 13 annually.

Part 2

Articles of the Constitution

Article 2: Members of the Council

CONTENTS OF THE ARTICLE

~~This Article sets out the composition of the Council, eligibility to stand for election as a Member of the Council and the form of election to be used.~~

~~The Article also contains a statement of the roles and functions of Members of the Council. This reinforces the fact that all Councillors, whatever their formal position in the Council and party political system, share common roles and responsibilities.~~

~~The Article also deals with the rights and duties of Councillors, especially as they affect access to land, buildings, documents and information and any confidentiality requirements surrounding the latter.~~

2.1 Composition and eligibility

- (a) **Composition:** The Council comprises 31 Members, otherwise called Councillors. All Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility:** Only people who live or work in the district, or are registered voters in the South Hams, will be eligible to hold the office of Councillor.

2.2 Election and terms of Councillors

- (a) **Election:** The regular election of Councillors will be held once every four years on the first Thursday in May.
- (b) **Term:** The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

2.3 Roles and functions of all Councillors

(a) **Key roles.** All Councillors will:

- (i) collectively be the ultimate budget and policy-makers and carry out a number of strategic and corporate management functions, taking a District wide view;
- (ii) represent their communities and bring their views into the Council's decision-making process, ~~ie become the advocate of and for their communities~~;
- (iii) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- (iv) balance different interests within their ward and represent the ward as a whole; ~~and balance the interests of other wards against their own to represent the interests of the District as a whole~~;
- (v) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making – OR make residents aware of the reasons for Council decisions, and make the Council aware of the particular concerns and grievances of residents;
- (vi) be involved in decision-making;
- (vii) be available to represent the Council on other bodies; and
- (viii) maintain the highest standards of conduct and ethics, and show respect for fellow Members, staff and the community.

(b) **Rights and duties**

- (i) Councillors will have such rights of access to such documents, information, land and buildings and resources of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is "confidential" or "exempt" from disclosure without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it. A description of information which is "confidential" and "exempt" is given in the Access to Information Rules in Part 4 of this Constitution.
- (iii) For the purposes of their role as community representatives, councillors will be registered as data controllers under the provisions of the Data Protection Act 1998 and will conform to its requirements in respect of the handling of personal data.
- (iv) Councillors will develop and maintain a working knowledge of the authority's services and policies and take advantage of

2.4 Conduct

- (a) Councillors will at all times observe the Members' Code of Conduct and the Protocol on Councillor / Officer Relations set out in Part 5 of this Constitution.
- (b) Councillors (and any co-opted members) will register, and keep up to date, their disclosable pecuniary and personal interests in the Register of Interests kept by the Monitoring Officer in accordance with the Code of Conduct set out in Part 5 of this Constitution
- (c) ~~Details of the Register are set out in Part 2 of the Code of Conduct.~~ The Register is available for public inspection at the Council's offices and on the Council's website.

2.5 Allowances

Councillors are entitled to receive allowances in accordance with the Scheme of Members' Allowances set out in Part 6 of this Constitution.

2.6 Annual Attendance at Public Meetings

Member's annual attendance at public meetings of the Council will be published on the Council's website

If a Member fails to comply with the performance target whereby they should attend at least 65% of all meetings of the bodies to which they have been appointed, then the matter will be considered by the Monitoring Officer who will consult with the Chairman of the Council. Where there are no justified reasons for the performance target being missed, the Monitoring Officer will write to the Member and request that s/he return a clearly defined proportion of his/her Basic Allowance.

2.7 Chairmen

Chairmen of Committees will be required to have relevant experience (as determined by the Head of Paid Service) or undergo relevant Chairmanship training.

2.86 Use of Email

Where any written communication is to be made, or a summons or notice given to Councillors, it will be made or given by electronic mail whenever possible.

2.97 Application to Co-opted Members of Council Bodies

The following provisions of this Article apply to people who are co-opted into membership of Council Committees and other bodies as they apply to Councillors:

Article 2.3 (a) (v), (vii) and (viii);

Article 2.3 (b) (ii) and (iv);

Article 2.4;

Article 2.5; and

Article 2.6.

~~2.8 Annual Attendance at Public Meetings~~

~~Member's annual attendance at public meetings of the Council will be published on the Council's website~~

~~If a Member fails to comply with the performance target whereby they should attend at least 65% of all meetings of the bodies to which they have been appointed, then the matter will be considered by the Monitoring Officer who will consult with the Chairman of the Council. Where there are no justified reasons for the performance target being missed, the Monitoring Officer will write to the Member and request that s/he return a clearly defined proportion of his/her Basic Allowance.~~

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Part 2

Articles of the Constitution



Article 3: Citizens and the Council

3.1 Citizens' rights

Citizens have the following rights. ~~Rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:~~

- (a) **Voting:** Citizens on the electoral roll for the area have the right to vote.
- (b) **Petitions:** Citizens on the electoral roll for the area have the right to sign and submit to the Council:
 - (i) a petition to request a referendum for an elected mayor form of Constitution
 - (ii) a petition on any subject.

The Council will deal with petitions in accordance with the statutory rules that apply to them and with the Council's own petitions scheme.

- (c) **Information:** Citizens have the right to:
 - (i) attend those formal meetings of the Council, the Executive and other bodies of the Council ~~(as identified in the Summary and introduction above)~~ except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) find out from the Forward Plan what key decisions will be taken by the Executive and when;
 - (iii) see reports and background papers, and any records of decisions made by the Council, the Executive or any of the other bodies; and
 - (iv) inspect the Council's accounts within 15 working days of the publications of notice in the local newspaper and

make their views known to the external auditor. (Citizens' rights to information are explained in more detail in the Access to Information Procedure Rules in Part 4 of this Constitution)

(v) access information held by the Council under the Freedom of Information Act.

- (d) **Participation:** Citizens-
- (i) have the right to participate in the public question time sessions at Executive and the public forum sessions at meetings of the Salcombe Harbour Board and the Overview & Scrutiny Panel;
 - (ii) may be invited to contribute to a formal meeting of the Overview & Scrutiny Panel or to any of its Task and Finish Groups;
 - (iii) may participate in the respective public participation schemes of the Development Management and Licensing Committees.
- (e) **Complaints:** Citizens have the right to complain to:
- (i) the Council itself under its complaints scheme;
 - (ii) the Local Government Ombudsman, (after using the Council's own complaints scheme);
 - (iii) the Council's Monitoring Officer about a breach by a councillor of the Members' Code of Conduct (see Part 5 of this Constitution).

3.2 **Citizens' responsibilities**

Citizens must not be violent, abusing or threatening to Councillors or officers and must not wilfully damage or harm things owned by the Council, Councillors or officers.

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Part 2

Articles of the Constitution



Article 4: The Full Council and Chairman of the Council

4.1 Composition

The Full Council consists of all 31 Members who represent the 20 Wards of the District of the South Hams.

4.2 Meanings

(a) **Policy Framework.** The Policy Framework means the following plans and strategies adopted by the Council:

- Our Plan –South Hams (including the Local Plan)
- Licensing Authority Policy Statements;
- The Financial Strategy; and
- Other plans and strategies which the Council may decide should be adopted by the Council meeting as a matter of local choice.

(b) **Budget.** The Budget includes:

- the allocation of financial resources to different services and projects;
- proposed contingency funds;
- the Council Tax base;
- setting the Council Tax;
- decisions relating to the control of the Council's borrowing requirement,
- the control of its capital expenditure and
- the setting of virement limits.

4.3 Functions of the Full Council

The full list of functions, which are reserved to Council, are contained in the Delegation Scheme (Part 3 refers).

4.4 Council Meetings

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

4.5 Role and Function of the Chairman of the Council

4.5.1 The Council will appoint a Chairman and Vice-Chairman at its Annual Meeting.

4.5.2 The Chairman of the Council, and in his or her absence, the Vice Chairman of the Council will have the following roles and functions:

(a) Ceremonial Role

The Chairman of the Council represents the Council on ceremonial occasions, and as such, the Chairman of the Council is a symbol of authority, of an open society and an expression of social cohesion. The Chairman or Vice-Chairman and, if appropriate, their respective consorts will attend such civic and ceremonial functions as the Council and he/she determines appropriate.

(b) Chairing the Council Meeting

The Chairman of the Council will have the following responsibilities:

- (i) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (ii) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (iii) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community (which relate to services the Council provides, commissions, or formally contribute to) and the place at which Councillors who are not on the Executive are able to hold the Executive to account; and
- (iv) to promote public involvement in the Council's activities.

5. ensure that matters of conscience (where appropriate in his/her opinion) are brought to the attention of the Council;

6. represent the District and community at such civic and ceremonial functions as the Council and s/he determines are appropriate.

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Part 2

Articles of the Constitution



Article 5: Overview & Scrutiny Panel

5.0 Principles of Scrutiny

South Hams District Council aims to have a scrutiny function which adheres to the Centre for Public Scrutiny's four principles of good public scrutiny, as set out below:

- Provides critical challenge to Executive policy makers and decision makers;
- Enables the voice and concerns of the public to be heard;
- Is carried out by 'independent minded governors' who lead and own the scrutiny role; and
- Drives improvement in public services.

5.1 Terms of reference

The Council will appoint an Overview & Scrutiny Panel. The functions of the Panel are outlined in Part 3 (Delegations Scheme).

5.2 Officers

The Overview & Scrutiny Panel will have administrative support and be able to call on other relevant officer support and external expertise where necessary.

5.3 Annual Report

The Overview & Scrutiny Panel must report annually to full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.

5.4 **Public Forum**

(a) General

Members of the public may raise issues and ask questions at meetings of the Overview & Scrutiny Panel in relation to agenda items (and in accordance with the O&S rules in Part 4). This session will last for up to fifteen minutes at the beginning of each meeting.

(b) Notice of Questions

An issue or question may only be raised by a member of the public provided that they have given written notice (which may be by electronic mail) to the Democratic Services Lead Specialist by 5.00 pm on the Monday prior to the relevant meeting.

(c) Scope of Questions

An issue may be rejected by the Monitoring Officer if:

- it relates to a matter within the functions of the Development Management Committee;
- it is not about a matter for which the local authority has a responsibility or which affects the district;
- it is offensive, frivolous or defamatory;
- it is substantially the same as a question which has previously been put in the past six months; or
- it requires the disclosure of confidential or exempt information.

5.5 **Proceedings of Scrutiny**

The Overview & Scrutiny Panel will conduct its proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Part 2

Articles of the Constitution



Article 6: The Executive

THE ROLE OF THE EXECUTIVE

6.1 Role

The Executive will exercise all of the local authority's functions which are not the responsibility of any other part of the local authority, by law or under this Constitution. The Executive will provide leadership to the overall activities of the Council.

6.2 Form and composition

The Executive will consist of the Leader of the Council, the Deputy Leader of the Council and up to four other Executive Members to be appointed by the Council.

6.3 Leader of the Council

The Leader will be a Councillor elected to the position by the Council. The Leader will be elected for a four year term from the first annual meeting of Council following a local election until the annual general meeting of the Council following the next election.

During this four year term, the Leader will continue to hold office unless:

- (a) s/he resigns from the office; or
- (b) s/he is suspended from being a Councillor under Part III of the Local Government Act 2000 (although s/he may resume office at the end of the period of suspension); or
- (c) s/he is no longer a Councillor; or
- (d) s/he is removed from office by resolution of the Council

6.4 Deputy Leader of the Council

The Leader will appoint a Deputy Leader of the Council for the same four year term of office, with powers to act in the Leader's absence.

During this four year term, the Deputy Leader will continue to hold office unless:-

- (a) s/he resigns from the office; or
- (b) s/he is suspended from being a Councillor under Part III of the Local Government Act 2000 (although s/he may resume office at the end of the period of suspension); or
- (c) s/he is no longer a Councillor; or
- (d) s/he is removed from office by resolution of the Council.

6.5 Other Executive Councillors

Other Executive Councillors shall hold office until:

- (a) the next annual meeting of the Council (unless re-elected thereat); or
- (b) they resign from office; or
- (c) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (d) they are no longer Councillors; or
- (e) they are removed from office, either individually or collectively, by resolution of the Council.

6.6 Portfolio Holders

6.6.1 The functions of the Executive shall be divided into portfolios determined by the Leader of the Council. The Leader will settle Portfolios in his or her absolute discretion from time to time.

6.6.2 The Leader will allocate portfolios of functions to individual Members of the Executive ('Portfolio Holders'). Within the scope of their allocated portfolio of functions, Portfolio Holders will:

- (a) exercise regular monitoring of the budget and other resources;
- (b) monitor performance;

- (c) strive to deliver corporate objectives;
- (d) seek to achieve best value in the services for which are they are responsible;
- (e) have regard to the Council's policies and strategic objectives.

6.7 Delegation of Executive Functions/Key Decisions

6.7.1 The Leader, after consultation with Portfolio Holders and the Head of Paid Service, will table at every meeting of the Executive a list of what s/he considers are key decisions (via the published Executive Forward Plan) and once this list has been approved such decisions shall not be taken other than by the full Executive.

6.7.2 A key decision is an Executive decision which is either:

- (a) likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates.

For this purpose "significant expenditure or savings" shall mean:

Revenue – Any contract or proposal with an annual payment of more than £50,000; and

Capital – Any project with a value in excess of £100,000); or

- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority, in the opinion of the Monitoring Officer (or the Democratic Services Lead Specialist in his/her absence), in consultation with the respective local Ward Member(s).

6.7.3 Where a decision relates to an Executive Member's local ward, that Member may take part in the discussion, but will abstain from any vote on the item.

6.8 Delegation to Portfolio Holders

6.8.1 Each Portfolio Holder may take any decision other than a key decision which is both within his/her remit and does not contravene the Policy and Budget Framework in Part 4 of the Constitution.

- 6.8.2 Before taking a decision under this delegation a Portfolio Holder shall, so far as is reasonable practicable, consult any Member whose ward is particularly affected by that decision and shall arrange for a copy of any report which he/she intends to take into account in coming to a decision to be made available to the Chairman of the Overview & Scrutiny Panel and to the local Ward Member(s) if it relates to a local issue.
- 6.8.3 No portfolio holder may sanction expenditure within their own ward without the co-signature of the Leader or Deputy Leader.
- 6.8.4 A form summarising any such decision and signed by the Portfolio Holder, together with a record of any report or other information which was taken into account by the decision-maker, shall be sent to the Monitoring Officer immediately.
- 6.8.5 The Monitoring Officer will notify all Members of the Council of all decisions made by portfolio holders within two working days of their having been made.
- 6.8.6 All forms sent to the Monitoring Officer in accordance with (d) above shall be kept in a register which shall be tabled at all meetings of the Executive and be available for public inspection.
- 6.8.7 If any decision relates to a local issue a Member whose ward is particularly affected may, within five working days of such notification being given, ask that the decision be referred to the full Executive for consideration. If the decision is of general application to the whole District any Member may require the decision to come before the Executive for determination.
- 6.8.8 Until the Executive has considered a decision which is the subject of a requisition under 6.8.7 above it shall not be implemented.
- 6.9 Call-in**
- 6.9.1 A decision made by the Executive, one of its Committees or a Portfolio Holder, may be 'called in' for consideration by the Overview & Scrutiny Panel. Such a call in will take precedence over a request by an individual Member for reconsideration by the Executive under paragraph 6.8.7 above.
- 6.9.2 Notice of all such decisions will be sent by email to all Members within two working days of being made. The notice will bear the date on which it is published and will specify that the decision(s) which it records will come into force five working days after that date unless it is called in.
- 6.9.3 Within that period, the Chairman of the Overview & Scrutiny Panel or any four non-Executive Members may call in such a decision by requesting the Democratic Services Lead Specialist to convene a meeting of the Overview & Scrutiny Panel to consider it.

6.10 Proceedings of the Executive

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.

6.11 Responsibility for Functions

The Leader of the Council will maintain a list in Part 3 of this Constitution setting out which individual Members of the Executive, committees of the Executive, officers or joint arrangements are responsible for the exercise of particular Executive functions.

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Part 2

Articles of the Constitution



Article 7: Regulatory Bodies, Committees, Panels and Working Groups

7.1 Regulatory Bodies

The Council will appoint the following bodies:

Development Management Committee

Number of councillors: 12

Licensing Committee

Number of councillors: 12

These bodies will discharge the functions described in the Delegation Scheme (Part 3).

7.2 Standing Committees

The Council will appoint the following standing Committees and Panels:

Audit Committee

Number of councillors: 5

Council Tax Setting Panel

Number of councillors: 4

Overview & Scrutiny Panel

Number of councillors: 13

Salcombe Harbour Board

Number of members: Up to 10 (made up of four district councillors and six co-opted members).

These bodies will discharge the functions described in the Delegation Scheme (Part 3).

7.3 Other Bodies

The Council will appoint Members to the following bodies:

~~**Beach Management Working Group**~~

~~Number of councillors: 4~~

~~**Design Review Panel**~~

~~Number of councillors: 3. Number of officer representatives: 6. Architects: 3~~

~~Local town and parish councils: 2~~

Devon Building Control Partnership

Number of Councillors: 2 from South Hams DC, 2 from Teignbridge DC and 2 from West Devon BC

Discretionary Business Rate Relief Decision Panel

Number of Councillors: 3

~~**Joint SH/WD Economic Development Working Group**~~

~~Number of SH councillors: 3~~

~~**Joint SH/WD Leisure Board**~~

~~Number of SH councillors: 3 from South Hams DC (and 3 from West Devon BC).~~

Joint SH/WD/Plymouth Local Plan Steering Group

Number of SH councillors: 2

~~**Joint Staff Consultative Forum**~~

~~Appointments and composition to be delegated to the Group Leaders.~~

Invest to Earn Member Working Group

Number of Members: 5

Political Structures Working Group

Number of councillors: 8

Public Spaces Working Group

Number of councillors: 4

Slapton Line Steering Group

Number of councillors: 2

SH/WD Joint Steering Group

Number of SH Members: 4

Homeless Strategy Monitoring Group

Number of Members: ?

Rate Relief Panel

Number of Members: 2

~~Strategic Planning Working Group~~

~~Number of councillors: 6~~

~~Youth Engagement Working Group~~

~~Number of councillors: 4~~

These bodies will discharge the functions described in the Delegation Scheme (Part 3).

The setting up of Working Groups is only permitted with the approval of Council.

Part 2

Articles of the Constitution



Article 8: Salcombe Harbour Board

8.1 Salcombe Harbour Board

General Function:

To improve, maintain and manage the whole of the Salcombe-Kingsbridge Estuary for the benefit of users who include local fishermen, local residents and many visitors and to balance the commercial outlook by conserving and protecting the estuarine environment.

In accordance with the respective responsibilities of the Council and Harbour Board, to develop and maintain Salcombe Harbour (as defined in the Salcombe Harbour Order 1954) whilst protecting the interests of the community of Salcombe and the environment.

8.2 Respective Positions and Responsibilities

The Council determines the policy and budget framework for all Council bodies.

The Board, as a Committee of the Council, is established to advise the Council, Executive, and Harbour Master about issues relating to the Harbour in accordance with the requirements of the Port Marine Safety Code (the Code) and Health & Safety at Work legislation.

8.3 **Key Objectives:**

The objectives of the Board are summarised as follows:

- a) Financial self sufficiency;
- b) Maintenance and development of the harbour infrastructure;
- c) Support for the local economy;
- d) Contribution to the character and attraction of the area;
- e) Compliance with legal and regulatory requirements;
- f) Achievement of environmental considerations;
- g) Open and transparent governance;
- h) Development of staff; and
- i) Considering issues of risk management.

8.4 **Financial Surpluses:**

The Council anticipate that any financial surpluses from the operation of Salcombe Harbour will be accumulated year on year for the establishment of appropriate reserves to undertake future projects to benefit the Harbour. However, where such funds have risen to a level beyond that reasonably required for the proper operation of the Harbour, the Council may require those funds, or part of them, to be made available for general Council purposes.

Part 2

Articles of the Constitution



Article 9: Joint Arrangements

9.1 Arrangements to promote well being

The Council or the Executive, in order to promote the economic, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) cooperate with, or facilitate or coordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

9.2 Joint arrangements

- (a) The Council may establish joint arrangements with one or more local authorities or their Executives to exercise functions (which are not Executive functions) in any of the participating authorities or to advise the Council and may appoint Members to a joint committee with these other local authorities.
- (b) Details of any joint arrangements including any delegations to joint committees will be found in the Council's Delegation Scheme in Part 3 of this Constitution.

9.3 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the Members of a joint committee are also Members of the Executive in each of the participating authorities, then its access to information regime is the same as that applied to the Executive.
- (c) If the joint committee contains Members who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

9.4 **Delegation to and from other local authorities**

- (a) The Council may delegate non-executive functions to another local authority or, in circumstances defined in law, the executive of another local authority.
- (b) The Executive may delegate executive functions to another local authority or the executive of another local authority in circumstances defined in law.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council.

9.5 **Contracting out**

The Council, for functions which are not Executive functions, and the Executive for Executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

9.6 **Shared Services**

- (a) The Council currently shares its services with West Devon Borough Council and has a Collaboration Agreement governing this arrangement. This may include further authorities as approved by the Council from time to time.
- (b) The Council may, from time to time, appoint one or more Joint Steering Groups (JSG) comprising members from both South Hams District Council and West Devon Borough Council to consider cross-council issues. Any JSG will not be a formal committee arrangement and the JSG may only make recommendations to Council or other council bodies.

Part 2

Articles of the Constitution



Article 10: Officers

10.1. Management structure

- (a) The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions. All of these officers are shared appointments with West Devon Borough Council.
- ~~(b) The Council will engage persons for the posts as outlined in Part 7 (Management Structure). All of these officers are shared appointments with West Devon Borough Council.~~
- (c) For the purposes of the functions described in Article 10.2–10.4 below and the Officer Employment Procedure Rules (in Part 4), the Council designates the following posts as shown:

Post	Designation
Executive Director (Strategy & Commissioning)	Head of Paid Service
Executive Director (Service Delivery & Commercial Development)	Returning Officer Electoral Registration Officer <u>Head of Paid Service</u>
Community of Practice Lead Group Manager (Strategic Finance)	Section 151 Officer
Community of Practice Lead (Legal)	Monitoring Officer
Group Manager <u>Support Services and Customer First and Deputy</u>	Deputy Chief Officers

- ~~(d) The overall departmental structure of the Council, showing the management structure and deployment of officers, is also set out at Part 7 of this Constitution.~~

10.2 Functions of the Head of Paid Service

(a) **Discharge of functions by the Council:** The Head of Paid Service will report to Full Council on the manner in which the discharge of the

Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

- (b) **Restrictions on functions:** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Section 151 Officer if a qualified accountant.

10.3 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution:** The Monitoring Officer will maintain an up-to-date version of this Constitution and will ensure that it is widely available for consultation by Members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making:** After consulting with the Head of Paid Service and Section 151 Officer, the Monitoring Officer will report to the Full Council (or to the Executive in relation to an Executive function) if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration.

Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) **Proper officer for access to information:** The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (d) **Contributing to Corporate Management:** The Monitoring Officer will contribute to the corporate management of the authority in particular by acting as the Solicitor to the Council and providing professional legal advice to the Council.
- (e) **Supporting the Overview & Scrutiny Panel in respect of Code of Conduct matters:** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct of Members of the Council by providing support to the Panel when required, contributing to the training of Members and the provision of advice for them. The Monitoring Officer will make decisions on standards complaints in accordance with the 'Dealing with Complaints' procedure and Hearing procedure.
- (f) **Conducting investigations into alleged breaches of the Member Code of Conduct:** The Monitoring Officer will arrange for the conduct of investigations into, and take other action upon, matters referred by the Monitoring Officer and/or Overview & Scrutiny Panel and make reports or recommendations in respect of them to the Panel.

- ~~(g) **Advising whether Executive decisions are within the budget and policy framework and the principles of decision making (set out in Article 11):** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.~~

- (h) **Providing advice:** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration,

financial impropriety, probity, and budget and policy framework issues to all Members.

- (i) **Restrictions on posts:** The Monitoring Officer cannot be the Section 151 Officer or the Head of Paid Service.

10.4 Functions of the Section 151 Officer

- (a) **Ensuring lawfulness and financial prudence of decision-making:** After consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the full Council or to the Executive in relation to an Executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will –
- involve incurring unlawful expenditure; or
 - is unlawful; or
 - is likely to cause a loss or deficiency; or
 - involve the Council entering an item of account unlawfully.
- (b) **Administration of financial affairs:** The Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management:** The Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice:** The Section 151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, and budget and policy framework issues to all Members and will support and advise Members and officers in their respective roles.
- (e) **Give financial information:** The Section 151 Officer will provide financial information to the media, members of the public and the community.

10.5 Duty to provide sufficient resources to the Monitoring Officer and Section 151 Officer

The Council will provide the [Head of Paid Service](#), Monitoring Officer and Section 151 Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

10.6 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

10.7 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 4 of this Constitution.

9.09 Professional Indemnity to Officers

The Council will indemnify all its employees accordance with the resolution by Council and in accordance with and subject to section 111 Local Government Act 1972 and the Local Authorities (Indemnities for Members and Officers) Order 2004 (SI 2004/3082 (or as amended form time to time).

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Part 2

Articles of the Constitution



Article 11: Decision-Making

11.1 Responsibility for Decision-Making

The Council will issue and keep up to date a Delegation Scheme as set out in Part 3 of this Constitution.

11.2 Principles of Decision-Making

All decisions of the Council will be made in accordance with the following principles:

- (a) The rule of law;
- (b) Reasonableness and proportionality (i.e. the action must be proportionate to the desired outcome) and a presumption in favour of openness;
- (c) the general principles of conduct contained in the Members' Code of Conduct
- (d) due consultation and the taking of professional advice from officers or appropriately qualified consultants;
- (e) respect for human rights and equality, and ;
- (f) considerations of biodiversity, sustainability, and the impact on crime and disorder;
- (g) consideration of the Council's priorities and Corporate Planning Documents;
- (h) clarity of aims and desired outcomes.

11.3 Record of Decisions

The record of decisions will include details of the options which were considered and the reasons for the decisions.

11.4 Types of Decision

(a) Decisions reserved to Full Council

Decisions relating to the functions listed in Article 4.3 will be made only by the full Council and not delegated.

(b) Key Decisions made by the Executive

A key decision is an Executive decision which is either:

- (i) likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates.

For this purpose "significant expenditure or savings" shall mean:

Revenue – Any contract or proposal with an annual payment of more than £50,000; and

Capital – Any project with a value in excess of £100,000); or

- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority, in the opinion of the Monitoring Officer (or the Senior Specialist - Democratic Services in his/her absence), in consultation with the respective local Ward Member(s)).

(NOTE: a decision taker may make a key decision only in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution).

11.5 Decision-Making by the Full Council

Subject to Article 11.9, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

11.6 Decision-Making by the Executive

Subject to Article 11.9, the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

~~11.7 Decision-Making by the Overview & Scrutiny Panel~~

~~The Overview & Scrutiny Panel will follow the Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.~~

11.8 Decision-Making by Other Bodies Established by the Council

Subject to Article 11.9, other Council bodies will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

11.9 Decision-Making by Council Bodies Acting as Tribunals

The Council, or a body of the Council or an officer acting as a tribunal or in a quasi-judicial manner or determining or considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

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Part 2

Articles of the Constitution



Article 12: Finance, Contracts and Legal Matters

12.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution.

12.2 Contracts

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

12.3 Legal proceedings

The Monitoring Officer and Deputy Monitoring Officer(s) are authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer or Deputy Monitoring Officer consider that such action is necessary to protect the Council's interests, in accordance with the Delegation Scheme as set out in Part 3 of this Constitution.

12.4 Authentication of documents

Where any document is necessary for any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or by any solicitor employed by the Council and authorised by him or her, unless any enactment otherwise authorises or requires, (or where urgency requires any other officer authorised by her and confirmed in writing) or the Council has given requisite authority to some other person (please see the Delegation Scheme in Part 3).

12.5 Common Seal of the Council

- (a) The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.
- (b) A decision of the Council (or of any Council body or Officers, in accordance with the Delegation Scheme) will be sufficient authority for sealing any document necessary to give effect to the decision.
- (c) The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed.
- (d) The affixing of the Common Seal will be attested by the **Monitoring Officer**. However, in the absence of the Monitoring Officer the following may attest the affixing of the Seal:
 - Any lawyer employed by the Council (or West Devon Borough Council)
 - In the absence of any lawyer, any Senior Officer
 - In matters of urgency, the Monitoring Officer or Deputy Monitoring Officers may authorise in writing another Officer to attest the Common Seal

Part 2

Articles of the Constitution



Article 13: Review and Revision of the ~~Review and~~ Constitution

13.1 Duty to Monitor and Review the Constitution

- (a) The Monitoring Officer will keep under review the operation of the Constitution to ensure that:
 - (i) the aims and principles of the Constitution are given full effect; and
 - (ii) the Council remains able to act lawfully, with probity and in accordance with the rules of natural justice.
- (b) The Monitoring Officer will be responsible for maintaining an up-to-date Constitution and will consult with the Audit Committee on matters of concern or where change is proposed.

13.2 Protocol for Monitoring and Review of Constitution by the Monitoring Officer

- (a) A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order to better achieve the purposes set out in Article 1.
- (b) In undertaking this task, the Monitoring Officer may:
 - (i) observe meetings of different parts of the Member and officer structure;
 - (ii) undertake an audit trail of a sample of decisions;
 - (iii) record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders; and
 - (iv) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

13.3 Changes to the Constitution

- a) **Approval:** Changes to the constitution will only be approved by the Full Council after consideration of either:

- a proposal by the Monitoring Officer;
- a recommendation from a Committee;
- a report of the Political Structures Working Group; or
- a motion on notice submitted by Members in accordance with Council Procedure Rule 10.

The Monitoring Officer may make minor amendments to the Constitution as and when deemed necessary.

- b) **Change from a Leader and Cabinet form of Executive to alternative arrangements, or vice versa:** The Council must take reasonable steps as prescribed by law to consult with local electors and other interested persons in the area when drawing up proposals.

Part 2

Articles of the Constitution



Article 14: Suspension, Interpretation and Publication of the Constitution

14.1 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules in Part 4 may be suspended by the full Council and the Executive to the extent permitted within those Rules and the law.

14.2 Interpretation

(a) **Council Meetings**

The ruling of the Chairman of the Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. In making any ruling the Chairman will be guided by the principles and purposes of this Constitution set out in Article 1.

(b) **Meetings of the Executive, Committees or Other Bodies of the Council**

The ruling of the Chairman of the Executive, Committee or other body as to the construction or application of this Constitution shall not be challenged at any meeting of the Executive, Committees or other bodies of the Council. In making any ruling the Chairman will be guided by the principles and purposes of this Constitution set out in Article 1.

14.3 Publication

- (a) The Monitoring Officer will ensure that an electronic or a printed copy of this Constitution is given to each Member of the Council upon delivery to him or her of that individual's declaration of acceptance of office when the Member is first elected to the Council. Updates to the Constitution will be made available in electronic format.
- (b) The Monitoring Officer will ensure that copies are available for inspection at Council offices and on its website. A paper copy can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the district, in print and on the Council's website and is updated as necessary.



Part 3 Delegation Scheme

Contents of Part 3 of the Constitution

1. General Overview of the Constitution

2. Principles of Delegation

3. Delegations to Council

4. Delegations to Executive

5. Delegations to Committees

Audit

Development Management Committee

Licensing Committee

Overview & Scrutiny

Salcombe Harbour

Other Council Bodies

6. Delegations to Senior Officers

Matters reserved for Council or Committee

Urgent items

Delegation to Specific Senior Officers

Head of Paid Service and Executive Directors

Monitoring Officer

151 Officer

Group Managers

Communities of Practice Leads and Level 3 and other Managers

Devon Building Control Partnership

~~1. GENERAL OVERVIEW OF THE CONSTITUTION~~

~~1.1 This Part of the Constitution deals with the manner in which the Council carries out its business. It sets out:~~

~~What statutory functions have been assigned by law to the Council?~~

- ~~• What other functions it has, by virtue of being a large organisation that owns property, employs staff and so on;~~
- ~~• Which Council body (Council itself, the Executive, or a Committee) is –
 - ~~□ Responsible for carrying out any of these functions, or~~
 - ~~□ Responsible for overseeing how each of these functions is carried out;~~~~
- ~~• Which senior officer is responsible to the Council for carrying out each of those functions; and,~~
- ~~• The extent of powers delegated to any Council body, individual Member of the Executive, or officer to carry out any function.~~

~~1.2 The Council operates executive arrangements which are as set out in Part 2 of this Constitution. Under those arrangements –~~

- ~~• certain functions are restricted to the full Council;~~
- ~~• certain other functions are required to be carried out by a regulatory Committee, such as Development Management and Licensing;~~
- ~~• certain other committees have specific functions, namely Audit, and the Overview and Scrutiny Panel; and,~~
- ~~• the Council has chosen to have functions relating to the operation of the Salcombe Harbour carried out through the Salcombe Harbour Board.~~

~~Everything else is the responsibility of the Executive. The details of the arrangements are set out in this Part.~~

~~1. GENERAL OVERVIEW OF THE CONSTITUTION (cont'd)~~

~~Functions assigned by law~~

- ~~1.3 Councils carry out a large range of functions conferred upon them by Parliament. The list is too extensive to be placed here but there are some indications and examples in the Scheme of Delegation which follows. In addition, under the Localism Act 2011 the Council has been given a general power of competence, enabling it to do anything that an individual might do. This is subject to certain qualifications.~~
- ~~1.4 The organisational functions flowing from statutory powers are carried out as described in the Scheme of Delegation. This is in two parts:~~
- ~~• the powers exercisable by Members of the Council, in whatever capacity; and,~~
 - ~~• those exercisable by officers.~~
- ~~1.5 In this Part are summarised the functions specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, which are reserved to Council, those which may or must be exercised by the Executive, and those which must not be exercised by the Executive. The body or person to whom the function is assigned is named.~~
- ~~1.6 The Principles of Decision Making are set out in Part 2, Article 11.~~

2. PRINCIPLES OF DELEGATION

2.1 Section 101 of the Local Government Act 1972 provides that:

- A Council may delegate its powers (except those incapable of delegation) to a committee or an officer
- A Committee may delegate its powers to a sub-committee
- A Committee may delegate its powers to an officer
- Powers which have been delegated may be exercised by the delegating body or officer.

Under the Localism Act the Council has been given a general power of competence enabling it to do anything that an individual might do. This is subject to certain qualifications.

2.2 Any delegation to the Executive, an individual Executive Member, Committee or a Senior Officer shall be exercised in compliance with the Council's Constitution, any other policies or conditions imposed by the Council and with the law.

2.3. In making any decision regard shall be had to the Council's Priorities and principles of decision-making as set out in Article 11 of the Constitution.

2.4 A Senior Officer may nominate another named Officer to carry out any powers and duties which have been delegated to that Senior Officer.

2.5 If any officer to whom a function has been delegated is for any reason unable to act, or if the post of any such officer is vacant, the Head of Paid Service, or in his absence, the Executive Director (Service Delivery & Commercial Development) may exercise the delegated power, or nominate another named officer to carry out those duties.

2.6 In an emergency, the Head of Paid Service is empowered to carry out any function of the Council.

2.7 Where officers are contemplating any action under delegated powers which is likely to have a significant impact in a particular area, they should also consult the relevant local ward Members.

2.8 A delegated officer must ensure that s/he obtains appropriate advice from the Council's legal, financial and other specialist staff before action is taken.

2.9 The Monitoring Officer may make consequential amendments to the Delegation Scheme to reflect the re-designation or amendment of any post which affects the terms of the scheme.

2.10 The Monitoring Officer shall settle any points requiring interpretation or clarification in the practical application of this Delegation Scheme.

3. DELEGATIONS TO FULL COUNCIL

Only the Council may exercise the following functions:

To adopt and approve the Constitution and governance arrangements including the form of the executive (save for minor amendments authorised in Article 13).

To approve and adopt or amend the Policy Framework.

To approve and adopt the Budget.

To determine the Council's Priorities.

To appoint the Chairman and Vice-Chairman.

To appoint the Council Leader ~~and Deputy Leader~~.

To appoint Committee Chairmen and Vice-Chairmen.

To appoint members of the Executive.

To appoint and to agree or amend the terms of reference for bodies of the Council, to decide on their composition and to make appointments to them.

To appoint representatives to outside bodies (unless the appointment is a function of the Executive or has been delegated by the Council).

To receive for noting at the next Council meeting any amendments to the political composition of the Council.

To adopt the schedule of meetings for the ensuing year.

To approve joint arrangements for the discharge of any of the Council's functions by another local authority.

To authorise or approve Members' duties in connection with Council business for the purposes of their allowances.

To consider the recommendations of the Independent Remuneration Panel and adopt a Scheme for Members' Allowances that can be claimed by Members of the Council in respect of authorised or approved duties.

To make any decisions that would be contrary to the Policy Framework.

To determine matters involving expenditure for which budget provision is not made or is likely to be exceeded.

To determine matters which do not fall within the remit of the Executive or any Committee or body.

3. DELEGATIONS TO FULL COUNCIL (cont'd)

To appoint the Head of Paid Service, Executive Directors and Properstatutory officers

To determine matters affecting or likely to affect more than one Council body or where consultation with or approval of more than one Council body is required

To determine any matters referred to it by a Committee in accordance with Procedure Rule 14

To make decisions concerning district boundaries, elections, electoral areas and divisions, wards or polling districts taking account of recommendations from time to time by the Boundary Committee/Commission

To make orders for the grouping of parishes, and make appointments to vacant seats on a parish council where it is not quorate

To make community governance orders.

To direct the executive to reconsider any draft plan or strategy submitted for the Council's consideration

To approve for public consultation draft proposals for the alteration or replacement of a development plan

To amend any draft plan or strategy submitted for the Council's consideration

To approve for submission to the Secretary of State or any Minister of the Crown a draft plan or strategy

To adopt any draft plan or strategy submitted for the Council's consideration with or without modifications

To maintain a system of internal control that identifies objectives and obligations, the risk to the achievement of these objectives and obligations and controls to mitigate the risks

To approve the Annual Governance Statement and to receive an annual report on the risk management process

To borrow money

To receive statutory reports from the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer

3. DELEGATIONS TO FULL COUNCIL (cont'd)

To determine whether or not to accept delegation from another local authority

To approve the Treasury Management Strategy and Investment Strategy

To make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation or private Parliamentary Bills

To change the name of the District

To confer the title of Honorary Alderman

To consider all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Executive

To consider any matter required by law to be considered by Council

Terms of Reference for Committees and Council bodies

Each Council body or Committee has delegated authority to decide matters within its terms of reference (except for those matters which are reserved for Council) set out below:

4. DELEGATIONS TO THE EXECUTIVE

Responsibilities:

- 4.1 The Executive is responsible for determining and arranging for the carrying out of all and any functions except those which–
 - i. are on the list of matters reserved for full Council, or
 - ii. are specifically delegated to another Council body or an officer, or
 - iii. the Executive is prevented by law from doing.
- 4.2 Certain functions are as a matter of local choice carried out by the Executive and for clarity these are listed below.
- 4.3 The list of matters reserved to full Council is set out above in this Part of this constitution.
- 4.4 The matters delegated to another Council body or to an officer are listed below in this part of the Constitution.
- 4.5 The matters which the Executive is prevented by law from doing are these:
 - a. Functions relating to town and country planning and development control, the protection of trees and hedgerows and complaints about high hedges which are delegated to the Development Management Committee and the Community of Practice Lead Specialist for Development Management.
 - b. Functions relating to licensing and regulation of liquor sales and entertainments, gambling, taxis and other miscellaneous activities and trades, health and safety at work and smoke-free premises, all of which are delegated to the Licensing Committee and the Community of Practice Lead (Environmental Health).
 - c. Power to make, amend, revoke, or re-enact byelaws which remains with the Council or to enforce byelaws which is delegated to the relevant Senior Officer.
 - d. Miscellaneous functions which mostly remain with the Council, namely:
 - making standing orders to regulate procedures and governance of contracts and procurement;
 - designation of the Head of Paid Service, the monitoring officer, and provision of their staff;
 - making arrangements for proper administration of financial affairs including the appointment of the S151 Officer;

4. DELEGATIONS TO THE EXECUTIVE (cont'd)

- d. Miscellaneous functions which mostly remain with the Council, namely: (cont'd)
- approving the Council's statement of accounts, income and expenditure and balance sheet, or record of payments and receipts – although the Executive will consider and recommend approval;
 - approving the Members' Allowances Scheme;
 - making arrangements for the discharge of functions by a committee or officer, or by another local authority, making appointments to committees and delineating the voting rights of co-opted members or scrutiny panels;
 - making requests for electoral schemes or making community governance orders;
 - making payments or providing other benefits in cases of maladministration etc. which are delegated to the head of paid service;
 - appointing staff, and determining the terms and conditions on which they hold office (including procedures for their dismissal) which are delegated to the Head of Paid Service;
 - appointing "proper officers" which is delegated to the Head of Paid Service and Group Managers.

4.6 Where the Executive is prohibited from carrying out particular functions it is also prohibited from:

- a. imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration or determining any other terms to which any such approval, consent, licence, permission or registration is subject, or
- b. amending, modifying, varying or revoking any such approval, consent, licence, permission or registration or any condition, limitation or term to which it is subject or
- c. determining whether, and in what manner, to enforce against any failure to comply with an approval, consent, licence, permission or registration or any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject, or other contravention or
- d. determining whether to make a charge for any approval, consent, licence, permit or registration and the amount of any such charge.

4. DELEGATIONS TO THE EXECUTIVE (cont'd)

4.7 As a matter of local choice, the Executive will carry out the following functions:

- i. Any functions under any local Act except for the Pier and Harbour Order (Salcombe) Confirmation Act 1954.
- ii. Determination of appeals from any decisions made by the authority.
- iii. Functions relating to drafting, submitting, revising and publishing local area agreements.

4.8 The following “local choice” functions will be delegated to officers:

- review of council tax and housing benefit applications;
- functions relating to contaminated land, control of pollution, or air quality;
- inspection, detection and service of an abatement notice for statutory nuisance;
- the obtaining of information and particulars about persons interested in land.

4.9 The following “local choice” functions are reserved to Council:

4.9.1 The appointment of any individual:

4.9.1.1 to any office other than an office in which s/he is employed by the authority;

4.9.1.2 to anybody other than:

- the authority;
- a joint committee of two or more authorities; or
- to any committee or sub-committee of such a body, and

4.9.1.3 the revocation of any such appointment.

4.9.2 The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities

4.9.3 The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area

4. DELEGATIONS TO THE EXECUTIVE (cont'd)

- 4.10 In discharging the functions of preparing for adoption a plan or strategy listed below, the Executive may consider and make a recommendation about them to Council:
- Control of borrowing, investments, capital expenditure or determining the authority's minimum revenue provision;
 - Licensing Authority Policy Statement;
- 4.11 In the following circumstances, the Executive may not exercise the functions described below:
- 4.11.1 When the decision to approve any plan or strategy other than those listed above has been reserved to itself by Council;
- 4.11.2 When an individual member of the Executive or the Executive as a body is minded to determine a matter relating to the authority's budget, borrowing or capital expenditure in a manner that is either:
- not in accordance with the budget or any current capital investment plan, or
 - not authorised by the authority's executive arrangements, financial regulations, standing orders or other rules or procedures in the intended terms;
- 4.11.3 When an individual member of the Executive or the Executive as a body is minded to determine a matter which is the Executive's responsibility in a manner that is not in accordance with a plan or strategy that has been approved by Council.
- 4.12 For the avoidance of doubt:
- 4.12.1 The Executive will manage all the Council's land and property;
- 4.12.2 The Executive will, having regard to the views of the Overview & Scrutiny Panel, keep under review and recommend to Council the fees and charges for the Council's services (other than those within the remit of the Development Management Committee and the Licensing Committee) where
- i. statutory authority exists for the levying of such charges, and
 - ii. where, in the opinion of the section 151 Officer the levying of such charges will not give rise to a material adverse impact on the overall budget of the Council.
- 4.12.3 The Executive will be responsible for approval of Delivery Plans which are subordinate to the Plans listed in paragraph 10 above.

5. DELEGATIONS TO COMMITTEES

AUDIT COMMITTEE

General Function:

The Audit Committee will provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment and to oversee the financial reporting process

Responsibilities

To carry out the Council's responsibilities for the following areas:

Internal Audit

- To consider and approve (but not direct) the Internal Audit Terms of Reference (Charter), Strategy and Audit Plans.

To consider:

- Progress on the Internal Audit Plan and summary of internal audit activity, opinions and findings;
- The Internal Audit Annual Report including an opinion on the Council's overall control environment for the purpose of the Annual Governance Statement;
- Reports dealing with the management and performance of the internal audit service providers (known as the 'effectiveness of the system on internal audit');
- Reports from Internal Audit on agreed recommendations not implemented within a reasonable timescale (known as 'follow up');
- Reports on data quality to ensure that all performance information meets data quality standards; and
- The monitoring of the progress of Internal Audit plans including summaries of Internal Audit reports.

To promote:

- Internal control, including commissioning work from internal audit in association with the s151 officer and monitor audit performance;
- To make any necessary recommendations to the relevant Committee / Executive or Council in respect of the above.

5. DELEGATIONS TO COMMITTEES

AUDIT COMMITTEE

Responsibilities (cont'd)

External Audit

To consider:

The External Auditor's Annual Governance Report and other relevant external audit reports;

External Audit work to ensure that it gives value for money;

The External Audit plans;

Reports dealing with the management and performance of the external audit service providers; and

Commission work and other specific reports from external audit as agreed with the External Auditor in association with the s151 officer.

To liaise with the Audit Commission (or relevant government body) over the appointment of the Council's External Auditor.

Accounts

To review and approve the Annual Statement of Accounts and to consider whether appropriate accounting policies have been followed;

To consider the External Auditor's report on the annual audit of accounts;

To make any necessary recommendations to the relevant Committee / Executive or Council in respect of the above.

Regulatory Framework

To:

Maintain an overview of the Council's Constitution;

Recommend to Council the adoption of:

- A Code of Corporate Governance
- Antifraud, Corruption and Bribery Strategy
- Anti Money Laundering Policy
- Risk Management Policies

Oversee the System of Internal Control and the process for producing the Annual Governance Statement (AGS) and approve the AGS on behalf of the Council with the Annual Statement of Accounts;

Monitor Value for money (including benchmarking);

Make any necessary recommendations to the relevant Committee /Executive or Council in respect of the above.

5. DELEGATIONS TO COMMITTEES

AUDIT COMMITTEE

Responsibilities (cont'd)

Review and Scrutiny of Strategies

To monitor:

- Risk Management Strategy
- The Assurance Framework (including System of Internal Control)
- Code of Corporate Governance
- Antifraud, Corruption and Bribery Strategy
- Anti Money Laundering Policy
- Whistle-blowing Policy
- Treasury Management

And to make any necessary recommendations to the relevant Committee, Executive or Council in respect of the above

2. Budget

To have authority for spending within the allocated budget.

Comment [KT1]: To check with Lisa – do they have a budget?

3. Review

The Audit Committee will undertake an annual review of its performance as part of the system of internal audit.

5. DELEGATIONS TO COMMITTEES

DEVELOPMENT MANAGEMENT COMMITTEE

Responsibilities

The Development Management Committee is responsible for and authorised to consider and make determinations (with or without site inspection, subject to statutory and other appropriate consultation and subject to the concurrent exercise of powers by Officers under the Scheme of Delegation (set out in this Part of the Constitution) in the following areas:

PLANNING

5.1 Development Management and Control

Advertisement Control.

Agreements regulating the development or use of land.

Applications by Local Planning Authorities.

Authority to determine whether planning permission required.

Certificate of Appropriate Alternative Development. (Land Compensation Act)

Certificates of Lawful Use or Development.

Consultations by Crown and Duchy.

Discontinuance of use or alteration or removal of buildings or works.

Electricity Supply Acts Consultations.

Enforcement Control (including Planning Contravention Notices, Requisitions, Breach of Condition Notices, Stop Notices (including temporary stop notices) etc)

General Planning Control including the determination of planning applications

Land adversely affecting the amenity of the neighbourhood.

Authorising Prosecutions

Provisions as to compensation and provisions enabling an owner to require the purchase of an interest.

Responding to Dartmoor National Park, and other neighbouring authority consultations.

5. DELEGATIONS TO COMMITTEES

DEVELOPMENT MANAGEMENT COMMITTEE (cont'd)

PLANNING

5.1 Development Management and Control (cont'd)

Responding to Statutory and other consultees

Revocation or modification of planning permission.

Telecommunication Mast Applications.

To extinguish/divert public rights of way under the Town and Country Planning Acts and to make representations to other Authorities in relation to their exercise of these powers under that or other legislation.

5.2 Conservation - Historic Buildings

Building Preservation Notices.

Compulsory acquisition of buildings in need of repair and related powers.

Historic Building Grants

Listed Building Consents and Conservation Area Consents.

Listed Building Enforcement.

Revocation or modification of Listed Building Consent.

Urgent repairs or works

5.3 Community Landscaping

High Hedges

Hedgerows

To comment on consultations by the Forestry Commission.

To offer grant aid for tree surgery to trees of public amenity importance within the financial limits set down in the Council's estimates.

Tree Preservation Orders and related control and enforcement.

5. DELEGATIONS TO COMMITTEES

DEVELOPMENT MANAGEMENT COMMITTEE (cont'd)

Relevant Statutory Powers

~~Town and Country Planning Act 1990~~

~~Planning (Listed Buildings and Conservation Areas) Act 1990~~

~~Planning (Hazardous Substances) Act 1990~~

~~Planning (Consequential Provisions) Act 1990~~

~~Planning and Compensation Act 1991~~

~~Planning Act 2008~~

~~Planning and Energy Act 2008~~

~~Localism Act 2011~~

~~or any statutory re-enactment, amendment or variation of any of them as from time to time determined by Parliament.~~

5.4. Local Land Charges

To provide and administer a comprehensive Land Charges system.

Fees

~~To keep under review the fees and charges for the Committee's services where statutory authority exists for the levying of such charges and to levy the same where, in the opinion of the section 151 Officer, the levying of such charges will not give rise to a material adverse impact on the overall budget of the Council.~~

2. Budget

To have authority for spending within the allocated budget.

Comment [KT2]: [Check with Lisa](#)

5. DELEGATIONS TO COMMITTEES (cont'd)

LICENSING COMMITTEE

Responsibilities

To be responsible for all of the Council's licensing functions including:

- To review and recommend to Council:
 - the Licensing Statement of Policy
 - the Gambling Statement of principles
 - the Policy not to permit casinos
- To review and be responsible for all other Licensing Policies
- ~~To determine to revoke or suspend Hackney Carriage / Private Hire Driver or Private Hire Operator Licenses~~
- To determine whether to refuse to grant a licence for the following licensing functions;
 - Street Trading Licence (South Hams)
 - Zoo Licensing
 - Sex Establishments
 - Houses in Multiple Occupation
- To determine such other applications as referred to the Licensing Committee by the Community of Practice Lead for Environmental Health.

LICENSING SUB COMMITTEES

- ~~To determine to revoke or suspend Hackney Carriage / Private Hire Driver or Private Hire Operator Licenses~~
- a) Licensing sub-committees have the following responsibilities in relation to functions under the **Licensing Act 2003**:
 - Applications for personal licences - if there is a police objection
 - Applications for personal licences with unspent convictions – all cases
 - Review of personal licences – if there is a police objection
 - Applications for premises licence / club premises certificate – if a relevant representation is made
 - Applications for provisional statement – if a relevant representation is made
 - Application to vary premises licence/club premises certificate - if a relevant representation is made
 - Applications to vary designated premises supervisor – if police objection made
 - Applications for transfer of premises licence – if police objection
 - Applications for interim authorities – if a police objection
 - Applications to review premises licence/club premises certificate – all cases

- Decision to object when Council is a consultee and not relevant authority - all cases
- Determination of a police or Environmental Health objection to a temporary event notice - all cases

5. DELEGATIONS TO COMMITTEES

LICENSING SUB COMMITTEES (cont'd)

- b) Licensing sub-committees have the following responsibilities in relation to the **Gambling Act 2005**:
- Application for premises licence: if a relevant representation has been made and not withdrawn
 - Application for a variation to a licence: if a representation has been made and not withdrawn
 - Application for a transfer of a licence: where representations have been received from the Gambling Commission
 - Application for a provisional statement: if a representation has been made and not withdrawn
 - Review of a premises licence
 - Application for club gaming/club machine permits: where objections have been made and not withdrawn, or where refusal proposed
 - Temporary use notice: Decision to give a counter notice, or where objection notice received
 - Fees

Community of Practice Lead for Environmental Health

Shall have the delegated authority:

- To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence.
- To determine in consultation with the Chair and Vice-chair of the Licensing Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Community of Practice Lead for Environmental Health).
- To refer such applications which, in the opinion of the Community of Practice Lead for Environmental Health, should be determined by the Licensing Committee.
- To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals;
 - Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments).
 - Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.)
 - Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, Licensing of camping sites, Licensing of caravan sites)
 - Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers)

- To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation.
- To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy.
- To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy South Hams only)
- Authority **to suspend licences** in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Community of Practice Lead for Environmental Health)

STATUTE
Local Government (Miscellaneous Provisions) Act 1976
Town Police Clauses Acts 1847 & 1889
Public Health Act 1875
Equalities Act 2010
Road Safety Act 2006
Local Government (Miscellaneous Provisions) Act 1976 as amended by Section 52 of the Road Safety Act 2006
Transport Acts 1980 & 1985
House to House Collections Act 1939
Local Government (Miscellaneous Provisions) Act 1982— Schedule 3
Scrap Metal Dealers Act 1964 & 2013
Police, Factories etc (Miscellaneous Provisions) Act 1916
Vehicle (Crime) Act 2001 and Motor Salvage Operators Regulations 2002
Public Health Acts Amendment Act 1907 (Boats and Boatman)

The Development Management Committee's Delegation to Officers

Planning Delegation – Development Management

Definitions:

- **CoP Lead:** Community of Practice Lead Specialist Development Management
- **In writing:** shall include email
- **DM Committee:** Development Management Committee at South Hams District Council
- **Working days:** days which are not weekends or bank holidays
- **Planning Application:** full, outline and reserved matters only
- **Representation:** means representations from any source excluding internal consultees
- **Immediate family:** parent, spouse, child, sibling (including 'step' and 'adopted')

1. General Planning Delegation to Officers

1.1 Subject to paragraph 1.2 below, the CoP Lead has delegated authority for all functions assigned to the DM Committee under the Town and Country Planning Acts, Orders, and Regulations (as set out in Part 3 of the Council's Constitution and as amended from time to time) except those:

- a) Planning Applications
- b) Listed Building Consents
- c) Advertisement Consents
- d) TPO final confirmations (excluding emergency TPOs), and
- e) Works to TPO trees

Which:

- i. relate to the Council's own land
- ii. is an application submitted by a Councillor, (or an immediate family member), (including Councillor as agent or professional advisor) or an Officer (or an immediate family member)

Or which in the opinion of the CoP Lead:

1. are of sub-regional or district-wide significance
2. ought to be determined by the DM Committee

1.2 In the case of planning, listed building, advertisement applications and TPO applications and confirmations, where any written representations are received, including those from a Parish or Town Council, which are contrary to the CoP Lead's recommendations and where the representations are considered material and relevant planning issues. The CoP Lead shall have delegated authority to determine these only where:

- a) agreement to issuing a delegated decision has been sought in writing from the Ward Member(s) and Chairman of DM Committee and,
- b) no written request (supported by material planning reasons) to call the application to Committee has been received from the Ward Member(s) or Chairman within the notification period. The notification period is defined as **three working days**, unless a Ward Member requests an extension of time (of up to 48 hours, and giving good reason for doing so). The notification period commences when the Ward Member has been notified of the request that a delegated decision be made.

2. Ward Members/Chairman of DM Committee

2.1 Ward Members/Chairman of DM Committee can call to Committee, with material planning reasons,

- a. any Planning Applications
- b. Listed Building Consents
- c. Advertisement Consents
- d. TPO final confirmations (excluding emergency TPOs), and
- e. Works to TPO trees

with no contrary comment, by notifying the CoP Lead prior to the expiry of the public consultation period.

2.2 For the avoidance of doubt all Members in a multi-Member ward shall be notified /consulted by the CoP Lead

2.3 Unless a Ward Member/Chairman of DM Committee requests an extension of time of up to 48 hours for a response, s/he must advise the CoP Lead of his/her views within **three working days** of being notified.

2.4 In the absence of a Ward Member consultation response within the permitted time frames, the CoP Lead shall determine the matter in accordance with the officer recommendation, without the Member's views.

2.5 Where a Ward Member is unavailable for consultation (for whatever reason e.g. holiday, DPI or other interest) then s/he should nominate an alternative member to carry out this role and notify Member Services accordingly in writing. If the Chairman of DM Committee is unavailable, the Vice Chairman should be contacted in his/her place.

3. Action on decisions of the DM Committee

3.1 Where the Committee **approves** an application, the CoP Lead will issue the Approval Notice including such conditions as are reasonably required to give effect to the Committee's decision

3.2 Where the Committee **refuses** an application which the CoP Lead recommended should be approved, it shall give the reasons for the decision but the CoP Lead shall determine the precise wording of the reasons for refusal

4. Delegation in respect of Enforcement Action

4.1 The CoP Lead has delegated authority to:

- a) decide that no breach has been found
- b) decide that it is not expedient to take enforcement action (in accordance with the Council's Enforcement Policy), unless notified by the Ward Member otherwise
- c) invite regularising Planning Applications where appropriate
- d) carry out all enforcement action (including but not limited to) issuing and serving Planning Contravention Notices, Untidy Site Notices, Stop Notices, Breach of Condition Notices and Building Preservation Notices, providing the relevant Ward Members are notified prior to such notices being issued or served
- e) issue Enforcement Notices in respect of which Ward Member(s) have been notified in writing allowing 3 working days (with an extension of up to 48 hours to be granted if requested with good reason) for Members to request, in writing supported by material planning reasons, that the proposed action is brought to the DM Committee for decision and no such request has been received
- f) take Prosecutions and Injunctions in respect of which Ward Member(s) have been notified in writing allowing 3 working days (with an extension of up to 48 hours to be granted if requested with good reason) for Members to request, in writing supported by material planning reasons, that the proposed action is brought to the DM Committee for decision and no such request has been received

SAVE that the Monitoring Officer has delegated authority to take a Prosecution or Injunction where the Council's position would be compromised if action is not taken urgently

4.2 The CoP Lead may refer complex matters to the Committee at his/her discretion, or where there are relevant budgetary implications.

5. Section 106 Agreements

The CoP Lead may:

- a) authorise the execution of a section 106 agreement where required in advance of the grant of planning permission
- b) in consultation with the Ward Member(s) and Chairman of DM Committee, vary the terms of a section 106 agreement (or take such other action as necessary) to secure the objectives of the Committee which agreed the 106 agreement

5. DELEGATIONS TO COMMITTEES (cont'd)

OVERVIEW & SCRUTINY PANEL

1 Terms of Reference

The Council will appoint one **Overview & Scrutiny Panel** with the following functions.

- (a) the ability to hold the Executive to account;
- (b) to review and scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (c) to make reports and evidence-based recommendations to the full Council, the Executive and other bodies of the Council including those established under Joint Arrangements in connection with the discharge of any functions;
- (d) to make reports and evidence-based recommendations to the full Council on any matters of broad local concern or importance within their remit;
- (e) to conduct reviews and carry out community and other consultation in the analysis of policy issues and possible options;
- (f) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive or an Executive Portfolio Holder or key decisions made but not yet implemented by officers;
- ~~(g) undertake the functions within the thematic areas set out in the table below. These thematic areas will of necessity be broadly defined;~~
- (h) to be able to appoint such time limited Task & Finish groups as it considers appropriate to fulfil its functions;
- (i) approve its own work programme;
- (j) to review the system of referrals from Scrutiny to the Executive to ensure that these are managed efficiently and do not exceed reasonable time limits as set out in this Constitution;
- (k) to respond to reasonable requests from the Executive to develop or review policy;
- (l) in the event of reports to the Executive exceeding reasonable time limits, or if the volume of such reports creates difficulty for the management of Executive business or jeopardises the efficient running of Council business, at the request of the Executive, to make decisions about the priority of referrals made;
- (m) encourage and enhance community participation in the development of policy options and general decision making by openness and transparency.

Work in conjunction with West Devon Borough Council to avoid duplication of effort and unnecessary inconsistencies in policy and findings between the two councils

5. DELEGATIONS TO COMMITTEES

OVERVIEW & SCRUTINY PANEL (cont'd)

Thematic area
Enhancing the prosperity of businesses, communities and individuals, and maintaining and enhancing the quality of the environment.
Securing safe and healthy communities and securing a supply of affordable housing for local people. Considering leisure contract monitoring reports and undertake an annual review in line with the Funding and Management Agreement. Discharging the functions of a Crime and Disorder Scrutiny Committee.
The performance of the “back office” services, complaints (including Ombudsman complaints and those against Members alleging a breach of the Code of Conduct), access to information and related policies and protocols. To be responsible for the standards responsibilities under the Localism Act (to include the Code of Conduct, Registers of Interests, Policy & Procedures, training, advice, standards complaints, investigations, considering reports, hearings, sanctions and dispensations). To scrutinise the T18 Programme and provide a quality control function. Review of the Council’s RIPA Policy and to consider reports on the use of RIPA on a regular basis

2 Scrutiny: Specific Functions

The Overview & Scrutiny Panel will:

- (a) review and scrutinise the decisions made by and performance of the Executive or council officers both in relation to individual decisions and decisions made over time and may question Members of the Executive and officers whether generally or in relation to specific decisions, initiatives or projects;
- (b) scrutinise the need for and the appropriateness of the Council’s policies and the effectiveness of the outputs of the delivery systems in achieving the outcomes of those policies;

5. DELEGATIONS TO COMMITTEES

OVERVIEW & SCRUTINY PANEL (cont'd)

2 Scrutiny: Specific Functions (cont'd)

- (c) review and scrutinise the performance of the Council in relation to its budget, policy objectives, performance targets or particular service areas, and assist in the development of the budget and policy framework by in-depth analysis of the current provision, performance and policy issues;
- (d) make recommendations to the Executive and Council arising from the outcome of the scrutiny process and its reviews;
- (e) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address a Scrutiny Panel and local people about their activities and performance; and
- (f) question and gather evidence from any person with relevant knowledge, expertise or responsibility (with their consent).
- (g) instigate research, community and other consultation in the analysis of policy issues, possible options and the development of policy;
- (h) regularly involve Members of the Executive and occasionally Members of other bodies of the Council and officers to find out their views or advice on issues, proposals and policy affecting the area;
- (i) consider reports or questions from any individual Councillor on matters relevant to the terms of reference of the Group to enable the views of constituents and other organisations to be taken into account; and
- (j) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- (k) to be responsible for all matters relating to Member learning and development

1.1. Partnership arrangements

The Overview & Scrutiny Committees shall be responsible for the monitoring of partnership arrangements in accordance with the Council's Partnership Policy.

3 Standards Matters

Roles and Functions:

- (a) to provide and maintain high standards of conduct by councillors (and co-opted members if appointed);
- (b) to assist councillors (and co-opted members) of the authority to observe the Council's Code of Conduct;

- (c) to advise the Council on the adoption or revision of the Members' Code of Conduct and on matters relating to the ethical conduct of the Council and its Members;

5. DELEGATIONS TO COMMITTEES

OVERVIEW & SCRUTINY PANEL (cont'd)

3 Standards Matters (cont'd)

- (d) to advise and train councillors and co-opted members on matters relating to the Code of Conduct;
- (e) to grant dispensations to District Councillors (and where relevant, co-opted members of the District Council) on requirements relating to Disclosable Pecuniary Interests in the following circumstances:
 - i. where many Members of the decision-making body have a Disclosable Pecuniary Interest, which would result in the political balance being affected;
 - ii. it is in the interests of the inhabitants that a dispensation be granted; or
 - iii. it is appropriate to grant a dispensation.

In addition, (and when it is not expedient to wait until the next scheduled Panel meeting) dispensations can also be granted by:-

A Code of Conduct Hearing Panel, or

the Monitoring Officer in consultation with the Chairman and Vice Chairman of the Overview & Scrutiny Panel.

- (f) to consult the Independent Person(s) in accordance with the 'Dealing with Complaints Policy';
- (g) to consider complaints alleging a breach of the Code of Conduct by District Councillors (and any co-opted members where relevant) and those members of town and parish councils in the District of South Hams; and
- (h) to receive investigation reports and to carry out Hearings (including sanctions) in respect of allegations of misconduct for District Councillors (and co-opted Members where relevant) and town and parish council members, and to recommend sanctions or other recommendations / actions.

4 Overview & Scrutiny Panel Sub Committees – Standards Matters

Roles and Functions:-

- (a) to consider complaints alleging a breach of the Members' Code of Conduct as referred by the Council's Monitoring Officer; and
- (b) to receive investigation reports and carry out Hearings (including sanctions) in respect of allegations and misconduct.

5. DELEGATIONS TO COMMITTEES

OVERVIEW & SCRUTINY PANELS (cont'd)

5 Officers

The Overview & Scrutiny Panel will have administrative support and be able to call on other relevant officer support and external expertise where necessary.

6 Annual Report

The Overview & Scrutiny Panel must report annually to full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.

1.4 Public Forum Procedures

a) General

Members of the public may raise issues and ask questions at meetings of the Overview and Scrutiny Committee. This session will last for up to fifteen minutes at the beginning of each meeting.

(b) Notice of Questions

An issue or question may only be raised by a member of the public provided that they have given written notice (which may be by electronic mail) to Darryl White (darryl.white@swdevon.gov.uk) by 5.00pm on the Thursday, prior to the relevant meeting.

(c) Scope of Questions

An issue may be rejected by the Monitoring Officer if:

- it relates to a matter within the functions of the Development Management Planning & Licensing Committee;
- it is not about a matter for which the local authority has a responsibility or which affects the borough
- it is offensive, frivolous or defamatory;
- it is substantially the same as a question which has previously been put in the past six months; or
- it requires the disclosure of confidential or exempt information.

Comment [KT3]: Should Public Forum Procedures be included here?

SALCOMBE HARBOUR BOARD

Consultation is required before embarking on a review of the Harbour's governance

Specific Board functions:

- (i) That Salcombe Harbour will conduct operations in accordance with the powers granted to the **Council as a Harbour Authority** by the Salcombe Harbour Order 1954 (The Pier and Harbour Order (Salcombe) Confirmation Act 1954) and any other enabling legislation and, insofar as it falls within the scope of these powers, the policy of the Council in relation to the Harbour as expressed through:-
 - The Harbour Policy Document;
 - [The Strategy Business Plan](#)
 - Estuary and Environmental Management Plans;
 - Any byelaws approved and adopted in respect of the Harbour;
 - Safety Management Systems in Compliance with the Port Marine Safety Code;
 - Other Council decisions from time to time.
- (ii) That the Harbour is self-financing and that it maintains commercial accounts in conjunction with the accounts as required by the Authority to demonstrate the Harbour's commercial viability;
- (iii) That a ~~five~~three-year strategic business plan for the Harbour is produced, approved by Council and reviewed annually;
- (iv) That decisions relating to the Harbour are based on advice from officers who have a clear understanding of the special requirements of the Harbour;
- (v) That they adopt and maintain transparent, speedy and informative communication with relevant Members of the Council's Executive for consultation and reporting purposes;
- (vi) That they have due regard for the interests of the local community and user groups, attending community forums seeking views to gain a balanced picture of the effects of policy and decisions;
- (vii) That the existing systems for the delegation of functions be kept under review;
- (viii) That any matter which is beyond delegated authority is recommended to the Council by the Board;
- (ix) That charges and subsidies be recommended by the Board for approval by the Council on a yearly basis;
- (x) That they monitor and review all matters relating to the Harbour land and property in accordance with policies which may be laid down by the Council from time to time, for which financial and other provision has been expressly made by the Council. The Harbour's asset base is laid out in the associated plan;

- (xi) That they oversee the running of services to contract and/or to business plan on commercial lines by advising on business direction in the context of the Council's budget and policy framework;
- (xii) They monitor and analyse performance against budget, other indicators and performance plans;
- (xiii) That issues of concern are raised with officers of the Council.

5. DELEGATIONS TO COMMITTEES (cont'd)

OTHER COUNCIL BODIES

COUNCIL TAX SETTING PANEL

The Council Tax Setting Panel has the following functions:

- (a) To exercise delegated authority to set the level of Council Tax in accordance with the Council's agreed budget;
- (b) To undertake the task detailed in (a) above following notification from Devon County Council, the Devon and Cornwall Police Authority, Devon and Somerset Fire and Rescue Authority, and each Parish/ Town Council of their individual precepting requirements.

DEVON BUILDING CONTROL PARTNERSHIP

The responsibilities of the Partnership are:

- To agree the appointment of the Head of Partnership.
- To agree budgets, monitor performance, approve the statement of accounts and agree any distribution of surpluses/deficits in the Trading Account.
- To monitor the development and business plans of the Partnership.
- To agree the Partnership's (Action) Improvement Plan.
- To monitor service delivery, value for money and performance of the Partnership.
- To monitor the service delivery and cost effectiveness of the Host Council.

POLITICAL STRUCTURES WORKING GROUP

To make recommendations to full Council on the decision making processes and structure of the Council.

PUBLIC SPACES WORKING GROUP

The Public Spaces Working Group has the following terms of reference:

Advising officers in relation to the allocation of funding for public open space proposals from S106 payments and external grants

Monitoring the quality and timing of investment in public open space utilising the funding streams identified above

Promoting the coordination of actions between grounds maintenance activity in Environment Services and the public open space 'client' role in Assets.

Providing support to the Portfolio Holders for Assets and Environment Services

To investigate and promote opportunities to work with local communities

Liaising with the 2015 Localism Programme Board regarding opportunities for the localisation of public open space services and asset management

Providing Member input on reviews and future development of policy or strategy which will affect public open spaces

The Working Group will have no decision-making powers and therefore will make recommendations to the Overview & Scrutiny Panel for subsequent consideration by the Executive.

6. DELEGATIONS TO SENIOR OFFICERS

Matters reserved for Council, Executive or Committee

6.1 Subject to **urgent items** (see paragraph 2 below), the following matters shall be referred to the Executive, or relevant Committee, or Council, where appropriate.

Any matter which:

- (a) is reserved to Council
- (b) is reserved to the Executive or Portfolio holders
- (c) is strategic in nature (as determined by Senior Leadership Team); or
- (d) requires a new policy; or
- (e) requires an alteration to an existing policy (other than a minor amendment); or
- (f) would be contrary to the Policy Framework; or
- (g) involves expenditure, or a reduction in income, for which there is no sufficient budgetary provision; or
- (h) is an issue of principle as determined by Senior Leadership Team; or
- (i) in the opinion of the Head of Paid Service or Monitoring Officer, cannot in law or in accordance with the Constitution be decided by an Officer; or
- (j) upon which a Committee has requested a report; or
- (k) in the opinion of the officer concerned, should be determined by a Committee; or
- (l) is reserved to the Development Management Committee, the Licensing Committee or the Salcombe Harbour Board.

(i) a Member has requested an item to be put on an agenda under Procedure Rules 12 and 13; or

Comment [KT4]: Does this apply?
Included at WD

Urgent Items

6.2 Matters of urgency, as determined by the Head of Paid Service (or in his absence another Senior Officer) shall be delegated to the relevant officer in consultation with the Leader and Deputy Leader or the Chairman and Vice Chairman of the relevant Committee, subject to a report being made to the next meeting of the Executive or the appropriate Committee.

6. DELEGATIONS TO SENIOR OFFICERS (cont'd)

Authority for Officers to Act

32. 'Senior Officers' includes for the time being: Executive Directors, Group Managers, s151 Officer, Community of Practice Lead Specialists, Lead Specialists, Managers (Level 3) and Monitoring Officer.
43. Throughout the Constitution references to:
- Executive Directors shall include ~~Executive Director of Strategy & Commissioning~~ (HoPS) and Executive Director of Service Delivery & Commercial Development
 - Section 151 Officer and Chief Finance Officer shall include the Group Manager Strategic Finance Community of Practice Lead Specialist (Finance) or her nominated Deputy
 - Heads of Services shall include Group Managers, Community of Practice Lead Specialists, Lead Specialists and Level 3 Managers
- ~~Middle Managers shall include Community of Practice Lead Specialists, Lead Specialists and Level 3 Managers~~
54. Subject to those matters which are reserved for Council or Committee (see paragraph 1 above) **all Senior Officers** shall be responsible and shall have **delegated authority** for the **day-to-day operation and management** of his/her Group / service area and of the services and land for which s/he is responsible.
65. Any matter not reserved for Council or Committee (i.e. any matter falling outside the criteria contained in paragraph 6.1 above) shall be regarded as falling within the day-to-day operation and management of the relevant department and shall be delegated to the appropriate Senior Officer and shall be exercised in accordance with the principles of delegation.
76. **All Senior Officers** are appointed across both West Devon Borough Council and South Hams District Council and shall have authority to:
- issue written authorisation to individual officers to act as the Council's authorised officers in the performance of their statutory or other duties (provided that any written authority to enter upon the land or premises shall be in pursuance of a statutory power of entry or inspection)**
 - to nominate officers to deputise in their absence
 - call for and accept quotes and tenders within the Contract Procedure Rules
 - to act as Proper Officer for their service** to be recorded in a separate record held by the relevant Community of Practice, Lead Specialist or Manager.

87. In the absence of the Monitoring Officer or section 151 Officer, any officer duly appointed by them to act as their deputy may exercise any of the powers or duties delegated to the Monitoring Officer or Section 151 Officer.
98. Delegations to Senior Officers in respect of **financial matters** are set out in the Financial Procedure Rules (Part 4 of the Constitution).
109. Delegations to Senior Officers in relation to the letting of **contracts** are set out in the Contract Procedure Rules (Part 4 of the Constitution).
1140. Delegations to Senior Officers in respect of **land and premises** are set out in the Financial Procedure Rules.
1244. The **Council's Monitoring Officer / Community of Practice Lead Specialist (Legal)** shall be responsible for signing / sealing all the Council's Official Documents (unless otherwise specifically delegated). In her absence, any other Lawyer employed by The Councils may carry out these functions, or in their absence a Senior Officer.
132. All Communities of Practice Specialist Leads/Level 3 Managers/Lead Specialists are responsible for considering and issuing a formal caution in respect of any matter for which they are responsible. In the absence of the Community of Practice Lead/ Manager/Lead Specialist this can be carried out by his/her nominated deputy or the relevant Group Manager.
143. All Senior Officers are responsible for authorising, signing and issuing Notices and all other documentation (save for legal proceedings) for those matters for which they have responsibility.
154. The Head of Paid Service shall be the Proper Officer for any function of the Council in the absence of any other appointment (or in the absence of that Officer for any reason) as specified within this Delegation Scheme.
165. Where the Council is required to institute or defend legal proceedings, authority must be first obtained from the Monitoring Officer.
1746. Officers are authorised to attend Court in relation to Revenue & Benefit proceedings, RIPA applications and sundry debts.

Delegation to Specific Senior Officers

Delegation to the Executive Director of Strategy & Commissioning

The **Executive Director of Strategy & Commissioning (Head of Paid Service)** shall have delegated authority for the following:

- Head of Paid Service functions
- Strategy & Commissioning, including overarching responsibility for the services, functions and roles of the following:
 - Business Development Group Manager
 - S151 Officer
 - Communications and Media Lead Specialist
 - Strategy Commissioning Managers Lead Specialist
 - Democratic Services Lead Specialist
 - Elections Senior Specialist
 - Performance
 - Governance
 - Corporate planning
 - Strategic finance
 - Democratic support and Member Development
 - Corporate Procurement Officer (shared with West Devon and Teignbridge)
- External partnerships
- Transformation programme
- Senior Information Risk Officer
- Safeguarding Children & Vulnerable Adults Officer
- Electoral Registration Officer and Returning Officer (West Devon)
- Deputy Electoral Registration Officer (South Hams)

Delegation to the Executive Director of Service Delivery & Commercial Development

The **Executive Director of Service Delivery & Commercial Development** shall have delegated authority for the following:

- All of the powers of the Head of Paid Service to act in his absence
- Service Delivery & Commercial Development, including overarching responsibility for:
 - Commercial Services
 - Customer First Services
 - Support Services
- Transformation Programme
- Electoral Registration Officer and Returning Officer (South Hams)
- Deputy Electoral Registration Officer (West Devon)

Delegation to the Monitoring Officer

The Monitoring Officer shall have delegated authority for the following:

- Monitoring Officer issues (including those matters set out in Article 9)
- Standards
- Conduct of legal proceedings on behalf of the Council as its solicitor.

Delegation to the s151 Officer

The s151 Officer shall have delegated authority for the following:

- Strategic Finance and Finance
- Matters set out in the Financial Procedural Rules
- To act as the Proper Officer relating to financial matters in the Local Government Acts and
- Finance Acts

Delegation to Group Managers

The Council is undergoing a staff restructure during 2016 and during this process there may be an overlap of delegated responsibilities between:

- the posts formerly designated as Heads of Service / Middle Managers and
- the Group Managers (Level 2), Community of Practice Specialist Leads, Lead
- Specialists and Managers (Level 3).

until the restructure is complete.

Further details are set out under the Community of Practice Specialist Leads and Manager roles set out below. Please see attached structure plan.

Delegation to the Business Development Group Manager

The **Business Development Group Manager** shall have delegated authority for:

- Strategic Asset Management
- Performance and Intelligence

Delegation to the Commercial Services Group Manager

The **Commercial Services Group Manager** shall have delegated authority for the following services and functions:

- Responsibility and Management of the Commercial Services Group
- Overarching responsibility for the services, functions and roles of the following Managers and service areas (Level 3) (see below):
 - Operational Manager (Environment)
 - Operational Manager (Waste)

- Lead Specialist Recycling & Waste Resources
- Building Control, Partnership and Services
- Areas of Outstanding Natural Beauty
- Ferries and Harbours
- Localities

Delegation to the Customer First Group Manager (Customer First responsibilities)

The **Customer First Group Manager** shall have delegated authority for the following services and functions:

- Responsibility and management of the Customer First Group
- Overarching responsibility for the services, functions and roles of the following Community of Practice, Leads and Managers and service areas:
 - Community of Practice Lead Specialist – Development Management
 - Community of Practice Lead Specialist – Environmental Health
 - Community of Practice Lead Specialist – Housing, Benefits & Revenues
 - Community of Practice Lead Specialist – Assets
 - Community of Practice Lead Specialist – Place Making
 - Customer First Managers (Level 3)
 - Contact Centre Management
 - Customer First and Customer Services
 - Website development
 - Street Naming & Numbering

Delegation to the Customer First Group Manager (Support Services responsibilities)

The **Customer First Group Manager** shall have delegated authority for the following services and functions:

- To be the Council's Data Protection Officer
- Responsibility and management of the Support Services Group
- Overarching responsibility for the services, functions and roles of the following Community of Practice Leads and Managers (Level 3):
 - Community of Practice Lead Specialist – Legal
 - Community of Practice Lead Specialist – Human Resources
 - Community of Practice Lead Specialist – Finance
 - Community of Practice Lead Specialist – Information Technology
 - Support Services Specialist Manager
 - Audit
 - Customer Support (internal)
 - Support Service Case Management and payroll

Delegation to the Senior Leadership Team

The Senior Leadership team shall be responsible for setting the Council Tax base
2018

Delegation to Community of Practice Specialist Leads and Level 3 Managers

Strategy and Commissioning Group

Delegation to Communications & Media Lead Specialist

The **Communications & Media Lead Specialist** shall have delegated authority for the following:

- Communications (Internal and External)
- Communications Strategy
- Media and social media

Delegation to Democratic Services Lead Specialist

The **Democratic Services Lead Specialist** shall have delegated authority for the following:

- Member Support Services
- Member Development

Delegation to Elections Senior Specialist

The **Elections Senior Specialist** shall have delegated authority for the following:

- Elections

Delegation to Lead Specialist- Place & Strategy

The **Lead Specialist for Place & Strategy** shall have delegated authority for the following:

Delegation to Lead Specialist - Recycling and Waste

The **Lead Specialist for Recycling and Waste** shall have delegated authority for the following:

Strategic responsibility for recycling and waste services including:

- o Recycling
- o Waste collection
- o Commercial waste services
- o Transport and waste / recycling haulage
- o Health & Safety

Commercial Group Services

Delegation to Operational Manager – Waste

The **Operational Manager (Waste)** shall have delegated authority for the following operational services and functions:

- Recycling
- Waste collection – domestic and commercial waste services
- Marketing and service design
- Transport and waste / recycling haulage
- Health & safety

Delegation to Operational Manager – Environment

The **Commercial Services Group Manager and the Lead Specialist Waste Strategy**, until such time as the **Operational Manager (Environment)** has been appointed, shall have delegated authority for the following operational services and functions:

- Car parking
- Building maintenance
- Dog fouling and stray dogs
- Grounds maintenance
- Public conveniences
- Cleansing services (internal and external)
- Abandoned vehicles
- Environmental enforcement
- Markets
- Events management
- Ferry operation
- Stores
- Facilities Management

Delegation to the Salcombe Harbour Master (SH only)

The **Salcombe Harbour Master** shall have delegated authority for the following:

- Salcombe and Kingsbridge estuary
- In-house management of Harbour Authority assets
- Marine byelaw enforcement
- Beach, marine and water safety
- Prevention and management of marine oil pollution

Customer First Group

Delegation to Community of Practice Lead Specialist – Assets

The **Community of Practice Specialist Lead for Assets** shall have delegated authority for the following:

- To be the Council's **Corporate Property Officer**
- **Estates** - to include:
 - In-house management of operational assets (facilities management)
 - Estates management
 - Valuations
 - Strategic Asset Management
- Asset Delivery Programme
- Matters set out in relation to Assets in the Council's **Financial Procedure Rules** (currently listed as assigned to the Head of Assets)
- **Engineering** - to include:
 - Engineering services – commercial
 - Civil engineering (drainage, flood, coastal and fluvial)
 - Asset Capital Programme Management
 - Development management consultancy
 - Coastal protection statutory functions
 - Flood Protection statutory functions
- **Natural Environment, Countryside and Leisure** – to include:
 - Policy and management of parks, green space, play area and outdoor sport
 - Grounds maintenance (client)

Delegation to Community of Practice Lead Specialist – Development Management

The **Community of Practice Specialist Lead for Development Management** shall have delegated authority for the following:

- **Development Management** (as set out in the Planning Committee remit) including:
 - Development management
 - Pre-application advice
 - Enforcement and Prosecution
 - Conservation and historic buildings
 - Planning Policy (Development Management)
- **Land Charges**

Delegation to Community of Practice Lead Specialist- Environmental Health

The **Community of Practice Lead Specialist for Environmental Health** (or until such appointment, the **Customer First Specialist Manager** or in his absence the **Senior Specialist (Environmental Health)**) shall have delegated authority for the following:

Environmental Protection and Licensing:

- o Emergency planning and response
- o Contaminated land
- o Nuisance
- o Private water supplies
- o Licensing (licences, enforcement, advice)
- o Community Safety
- o Antisocial behaviour

Environmental Health – business:

- o Food safety and enforcement
- o Inspections
- o Approved premises
- o Infectious disease control
- o Health and safety (regulatory)
- o Fatalities /accidents
- o Health and safety (internal functions /corporate liability)
- o Inspections / enforcement

Housing and Health

- o Private sector housing and enforcement
- o Houses in multiple occupation
- o Disabled facilities grants
- o Private sector renewal – loans / grants
- o Caravan sites
- o Public Health / Health and well-being
- o Fuel poverty
- o Home energy conservation
- o Empty homes

Management of **out of hours service** (including homelessness and emergency planning)

In relation to Licensing functions the Community of Practice Lead for Environmental Health shall have authority:

- To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence.
- To determine in consultation with the Chair and Vice-chair of the DM P&L Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Community of Practice Lead for Environmental Health).
- To refer such applications which, in the opinion of the Community of Practice Lead for Environmental Health, should be determined by a Licensing Sub-Committee.
- To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals;
 - o Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments).

- Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.)
 - Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, Licensing of camping sites, Licensing of caravan sites)
 - Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers)
- To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation.
 - To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy.
 - To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy - South Hams only)
 - **to suspend licences** in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Community of Practice Lead for Environmental Health

The **Community of Practice Lead Specialist for Environmental Health** shall act as the **Proper Officer** in respect of the signing of all appointments and authorisations of authorised officers or Inspectors appointed under legislation relevant to environmental health, food safety, health and safety, housing and licensing and also the signing of authorisations of other persons to accompany authorised officers or Inspectors (including Consultants or other agencies where appropriate) and to be given discretion to specify which powers under the relevant legislation are to be exercised by particular authorised officers or Inspectors.

Delegation to Community of Practice Lead Specialist - Housing, Benefits and Revenue

The **Community of Practice Specialist Lead for Housing, Benefits and Revenue** shall have delegated authority for the following:

Vulnerable customers – safeguarding and child protection:

- o Identification and protection

Business rates:

- o Collection and enforcement
- o Billing
- o Government submissions
- o Pool membership
- o Policy

Housing Benefit:

- o Assessment of claims
- o Collection and recovery
- o Subsidy maximisation
- o Discretionary housing payments

Housing, Options & advice

- o Prevention and homelessness
- o Choice based letting
- o LDWSF
- o Direct lets
- o Administration & maintenance of the Housing Register for allocation of social housing

Council tax and non-domestic rates:

- o Collection and enforcement
- o Billing
- o Government submissions
- o Council tax reduction
- o Exceptional hardship fund

Fraud:

- o Maximising income
- o Recovery

Delegation to Lead Specialist - Place Making

The **Lead Specialist for Place Making** shall have delegated authority and responsibility for the following:

- Strategic Planning
 - o Local Plan and Local Development Framework, SPDs
 - o Infrastructure planning and delivery
 - o Supporting neighbourhood planning
- Economic Development:
 - o Regeneration
 - o Development
 - o Business engagement
- Housing enabling:
 - o Affordable housing
 - o Specialist housing needs
- Community Development

- Assets of Community Value
- Corporate planning
- Natural Environment:
 - Areas of Outstanding Natural Beauty and South Devon AONB Partnership
 - Tree and Hedge protection
 - Protected landscapes and landscape character
 - Biodiversity conservation and enhancement
 - Green infrastructure and Healthy Communities Partnerships

Delegation to Locality Manager

The **Locality Manager** shall have delegated authority for the following, in conjunction as necessary, with the relevant Community of Practice Lead Specialists and Managers for Assets, Environmental Health, Development Management, Housing, Revenues & Benefits, Place & Strategy, and the Operational Managers for Waste and Environment.

- Managing Locality workers and the Locality Team who will have the following responsibilities ranging across the Customer First and Commercial Services functions and services:
 - Site inspections from public land or where invited on to private land
 - Posting site notices and serving notices
 - Initial investigations and assessments, evidence gathering and preliminary interviews
 - Monitoring and compliance – contracts, repairs and assets
 - Customer visits
 - Enforcement
 - Liaison role

Delegation to Customer First Specialist Manager

The **Customer First Specialist Manager** shall have delegated authority and overarching responsibility for the Community of Practice Lead Specialists for:

- Assets,
- Environmental Health,
- Development Management
- Place Making
- Housing, Revenues & Benefits.

Support Services Group

Delegation to Community of Practice Lead Specialist - Legal

The **Community of Practice Specialist Lead for Legal** shall have delegated authority for the following:

- Legal Services
- Monitoring Officer (see above)

Delegation to Community of Practice Lead Specialist – Human Resources

The **Community of Practice Specialist Lead for Human Resources** shall have delegated authority for the following:

- Human Resources services
 - Recruitment and resourcing
 - Employee relations
- Employee Learning and Development
- Employment law

Delegation to Community of Practice Lead Specialist - Finance

The **Community of Practice Specialist Lead for Finance** shall have delegated Authority for the following:

- Strategic Finance
- Finance
- Budget setting (capital and revenue)
 - Income and expenditure
- Financial Statements
- Investments, taxation and insurance
- To act as the Council's s151 / Chief Finance Officer as the Proper Officer relating to financial matters in the Local Government Acts and Finance Acts
- Matters set out in the Council's Financial Procedure Rules for Head of Finance & Audit / 151 officer

Delegation to Community of Practice Lead Specialist - ICT

The **Community of Practice Specialist Lead for ICT** shall have delegated authority for the following:

ICT Services
Infrastructure design and delivery
Business systems design and delivery
Information security management and delivery

Delegation to the Internal Audit Service

The Internal Audit Service is an independent appraisal function that objectively examines, evaluates and reports on the adequacy of internal control. Management of the Council's Internal Audit function is carried out by **Devon Audit Partnership** together with the Council's Internal Audit Officers. The **Internal Audit Service** shall have delegated authority and responsibility for the following:

- Review the Council's financial and management systems and must act if fraud or corruption is found. Internal Audit will also comment on how to achieve better value.
- Carrying out audits of Council functions and in the proper exercise of their duties, the Internal Audit Service have the right to:
 - Access to all records, documents and correspondence held by or on behalf of the Council;
 - Require from staff co-operation and such explanations as are necessary;
 - Require any Council employee to produce cash, stores or any other Council property under their control;
 - Investigate irregularities
 - Liaise with Police and other enforcement agencies under the Accounts and Audit Regulations 2006.

Delegation to the Corporate Procurement Officer

The **Corporate Procurement Officer** shall have delegated authority for the Council's Procurement and Contract Services and advice

Delegation to the Devon Building Control Partnership and Commercial Services Group Manager

The Devon Building Control Partnership and Commercial Services Group Manager have delegated authority to exercise on behalf of the Council such statutory duties or powers conferred on the Council by the following enactments and any enactments amending or replacing them and also any regulations, orders, bylaws and other subsidiary legislation made under the following enactments.

For the avoidance of doubt the functions conferred by this scheme of delegation shall include:

- Appointment and/or authorisation of officers to exercise statutory functions
- Undertaking of inspections, investigations, interviews, service of notices, notifications, consultation responses, and legal proceedings under the legislation applicable thereto set out below, and to exercise all other relevant powers, including powers of entry provided under such legislation.
- Determination of applications, service of notice, exercise of powers in default and recovery of expenses.
- The institution of legal proceedings including the issuing of formal cautions. Exercise of powers of entry.
- The production and operation of a Scale of Building Regulation Charges that will comply with the Building (Local Authority Charges) Regulations 1998.
- Setting of fees and charges which it has discretion to levy.

List of Enactments:

- The Building Act 1984 and regulations made under that Act, including the Building Regulations 1991 (as amended), the Building Regulations 2000 together with the Fire Precautions Act 1971
- Local Government (Miscellaneous Provisions) Act 1982
- Town Improvement Clauses Act 1847 and the Public Health Act 1925
- Town and Country Planning Act 1990The Fire Safety and Places of Sport Act 1987
- Licensing Act 2003
- Party Wall etc Act 1996
- The Building (Local Authority Charges) Regulations 1998
- The Building (Approved Inspectors etc) Regulations 1985 and
- The Building (Approved Inspectors etc) Regulations 2000

Note: the above list of enactments is also to include any subsequent amendments or new legislation to the acts listed that are introduced.

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