



West Devon  
Borough  
Council

# West Devon Council

<b>Title:</b>	<b>Agenda</b>																																													
<b>Date:</b>	<b>Tuesday, 5th December, 2017</b>																																													
<b>Time:</b>	<b>4.30 pm</b>																																													
<b>Venue:</b>	<b>Chamber - Kilworthy Park</b>																																													
<b>Full Members:</b>	<p style="text-align: center;"><b>Chairman</b> Cllr Moody <b>Vice Chairman</b> Cllr Davies</p> <p><i>Members:</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Cllr Baldwin</td> <td style="width: 33%;">Cllr Musgrave</td> <td style="width: 33%;"></td> </tr> <tr> <td>Cllr Ball</td> <td>Cllr Oxborough</td> <td></td> </tr> <tr> <td>Cllr Cann OBE</td> <td>Cllr Parker</td> <td></td> </tr> <tr> <td>Cllr Cheadle</td> <td>Cllr Pearce</td> <td></td> </tr> <tr> <td>Cllr Cloke</td> <td>Cllr Ridgers</td> <td></td> </tr> <tr> <td>Cllr Edmonds</td> <td>Cllr Roberts</td> <td></td> </tr> <tr> <td>Cllr Evans</td> <td>Cllr Sampson</td> <td></td> </tr> <tr> <td>Cllr Hockridge</td> <td>Cllr Samuel</td> <td></td> </tr> <tr> <td>Cllr Jory</td> <td>Cllr Sanders</td> <td></td> </tr> <tr> <td>Cllr Kimber</td> <td>Cllr Sellis</td> <td></td> </tr> <tr> <td>Cllr Lamb</td> <td>Cllr Sheldon</td> <td></td> </tr> <tr> <td>Cllr Leech</td> <td>Cllr Stephens</td> <td></td> </tr> <tr> <td>Cllr McInnes</td> <td>Cllr Watts</td> <td></td> </tr> <tr> <td>Cllr Mott</td> <td>Cllr Yelland</td> <td></td> </tr> <tr> <td>Cllr Moyse</td> <td></td> <td></td> </tr> </table>	Cllr Baldwin	Cllr Musgrave		Cllr Ball	Cllr Oxborough		Cllr Cann OBE	Cllr Parker		Cllr Cheadle	Cllr Pearce		Cllr Cloke	Cllr Ridgers		Cllr Edmonds	Cllr Roberts		Cllr Evans	Cllr Sampson		Cllr Hockridge	Cllr Samuel		Cllr Jory	Cllr Sanders		Cllr Kimber	Cllr Sellis		Cllr Lamb	Cllr Sheldon		Cllr Leech	Cllr Stephens		Cllr McInnes	Cllr Watts		Cllr Mott	Cllr Yelland		Cllr Moyse		
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<b>Interests – Declaration and Restriction on Participation:</b>	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.																																													
<b>Committee administrator:</b>	Member.Services@swdevon.gov.uk																																													

**1. Apologies for Absence**

**2. Confirmation of Minutes**

**1 - 12**

To approve and adopt as a correct record the Minutes of the Meeting of Council held on 26 September 2017 and the Special meeting held on 31 October 2017.

**3. Declarations of Interest**

Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests they may have in any items to be considered at this meeting.

If Councillors have any questions relating to predetermination, bias or interests in items on this Summons, then please contact the Monitoring Officer in advance of the meeting.

**4. To receive communications from the Mayor or person presiding**

**5. Business brought forward by or with the consent of the Mayor**

**6. The Mayor or the person presiding to answer questions which people in West Devon can ask and to receive deputations or petitions under Council Procedure Rule 21**

**7. To consider (any) questions submitted under Council Procedure Rule 21**

**8. To consider (any) motions of which notice has been duly submitted by Members in accordance with Council Procedure Rule 15**

**9. To receive the Minutes of the following Committees, to note the delegated decisions and to consider the adoption of those Unstarred Minutes which require approval:**

**13 - 46**

**(i) Overview and Scrutiny Committee**

Meeting held on 5 September 2017

Meeting held on 17 October 2017

Meeting held on 7 November 2017

**(ii) Audit Committee**

Meeting held on 19 September 2017

**(iii) Development Management and Licensing Committee**

Meeting held on 19 September 2017

Meeting held on 17 October 2017

Meeting held on 14 November 2017 (to follow)

**(iv) Hub Committee**

Meeting held on 31 October 2017

**Unstarred Minute to agree**

Members are recommended to agree:

**HC 32 Formation of a Community Lottery for West Devon and South Hams**

That Council be **RECOMMENDED** to:

1. approve and implement the proposed business case for the establishment of a joint West Devon and South Hams local community lottery scheme (subject to approval from South Hams District Council);
2. appoint Gatherwell Ltd as an External Lottery Manager and Aylesbury Vale District Council to assist with project implementation (subject to a successful Contract Exemption application);
3. delegate to the Head of Paid Service to nominate two officers to be responsible for holding the Council's lottery licence and submit the necessary application to the Gambling Commission; and
4. delegate to the Group Manager (Business Development), in consultation with the lead Hub Committee Member for Assets, to approve the bespoke lottery business model policies required in order to submit a valid application to the Gambling Commission to obtain a lottery licence.

Meeting held on 28 November 2017 (to follow)

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|---|-----------------|
| <b>10. Head of Paid Service Replacement -to follow</b>                          |                 |
| <b>11. Commercial Property Strategy</b>   | <b>47 - 64</b>  |
| <b>12. Treasury Management Strategy -To follow</b>                              |                 |
| <b>13. Community Governance Review - To follow</b>                              |                 |
| <b>14. Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Update</b> | <b>65 - 102</b> |

Dated this 27<sup>th</sup> day of November 2017



Steve Jorden  
Head of Paid Service

# Agenda Item 2

At the Meeting of the **WEST DEVON BOROUGH COUNCIL** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK** on **TUESDAY** the **26<sup>th</sup>** day of **SEPTEMBER 2017** at **4.30pm** pursuant to Notice given and Summons duly served.

## Present

Cllr J B Moody – Mayor (In the Chair)  
Cllr M Davies – Deputy Mayor

Cllr K Ball	Cllr W G Cann OBE
Cllr R Cheadle	Cllr D W Cloke
Cllr C Edmonds	Cllr J Evans
Cllr L J G Hockridge	Cllr N Jory
Cllr P Kimber	Cllr B Lamb
Cllr A F Leech	Cllr C Mott
Cllr D E Moyse	Cllr C R Musgrave
Cllr R J Oxborough	Cllr G Parker
Cllr T G Pearce	Cllr L Samuel
Cllr P R Sanders	Cllr D K A Sellis
Cllr B Stephens	Cllr L Watts
Cllr J Yelland	

Head of Paid Service  
Monitoring Officer  
Senior Specialist – Democratic Services  
Section 151 Officer  
Group Manager – Commercial Services

## CM 27      **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs R E Baldwin, J R McInnes, P J Ridgers, A Roberts, R F D Sampson and J Sheldon.

## CM 28      **CONFIRMATION OF MINUTES**

It was moved by Cllr P R Sanders, seconded by Cllr L Samuel and upon the motion being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Council agree the Minutes of the Meeting held on 25 July 2017 as a true record.”

## CM 29      **DECLARATION OF INTEREST**

The Mayor invited Members to declare any interests in the items of business to be considered during the course of the meeting, but there were none made.

## CM 30      **MAYOR’S ANNOUNCEMENTS**

As a reminder, the Mayor highlighted that his Civic Service had been arranged to take place on Sunday, 22 October 2017 at 2.00pm. Any

Members who wished to attend, but had not let officers know, were asked to confirm their intention to the office as soon as possible.

**CM 31**

**URGENT BUSINESS**

The Mayor informed that he had agreed for two urgent items to be raised at this meeting that related to updates in relation to the Heart of the South West Devolution agenda and Torbay Council. He had considered both items to be urgent in light of recent developments that were of importance to the wider membership.

**(a) Heart of the South West Devolution Agenda**

By way of an update, the Leader made reference to:-

- the Minister having recently confirmed that he now recognised that it was not always appropriate for an elected Mayor to be a prerequisite for any meaningful Devolution deal. Members proceeded to note that a meeting had recently been held between each of the partner local authorities, who had all expressed a wish to build on this shift in emphasis; and
- agreement being made to the establishment of a Joint Committee in a shadow format. In so doing, the Leader advised that the Leader of Somerset County Council had been appointed Chairman of the Shadow Committee, with the Leader of East Devon District Council being appointed his Vice-Chairman.

At this stage, it was hoped that these shadow arrangements could be formalised by each Council before early January 2018. Moreover, it was also confirmed that the intention remained for each local authority to have one serving Member, with each retaining equal voting rights.

**(b) Torbay Council**

In his update, the Leader raised the following points:-

- Torbay Council had recently commissioned the Local Government Association and local partners to give consideration to the future status and structure of the Council;
- As part of these considerations, one of the potential options was for Torbay Council to transfer responsibility for their upper tier services to Devon County Council, with their district functions then being retained, with the ability for some shared working with the West Devon / South Hams being explored; and

- Whilst the matter would be considered at a meeting of the full Council at Torbay on 27 September 2017, the report recommendation was for the Council to retain its existing service delivery model whilst pursuing its own Transformation Programme in order to achieve the savings that they required. The Leader also confirmed that the agenda papers for the meeting were in the public domain.

## CM 32 MINUTES OF COMMITTEES

### a. **Overview and Scrutiny Committee – 11 July 2017**

It was moved by Cllr J Yelland, seconded by Cllr R Cheadle and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 11 July 2017 meeting be received and noted”.

### b. **Audit Committee – 18 July 2017**

In reply to a question, the Section 151 Officer confirmed that, at the end of August, housing benefit overpayment debt amounted to a much reduced £480,000. In addition, the officer stated that all of these monies were still recoverable.

A Member proceeded to ask a further question in relation to the accumulated absences account. In response, the Section 151 Officer advised that the sum was an accounting procedure only and gave an assurance that no members of staff lost any of their annual leave entitlement.

An Audit Committee Member also wished for his thanks to be extended to the Section 151 Officer, the Finance Community Of Practice and the Chairman of the Committee.

It was then moved by Cllr M Davies, seconded by Cllr K Ball and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 18 July 2017 meeting be received and noted”.

### c. **Development Management and Licensing Committee – 22 August 2017**

In addition to the amendments to the minutes that were made during the Committee meeting held on 19 September 2017 (Minute \*DM&L 21 refers) , it was also noted that Cllr L J G Hockridge was in attendance during this meeting and had declared a Disclosable Pecuniary Interest in planning application numbers 1433/17/VAR and 2456/16/FUL.

It was moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED**

and “**RESOLVED** that the Minutes of the 22 August 2017 meeting be received and noted”.

**d. Hub Committee – 12 September 2017**

It was moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 12 September 2017 meeting be received and noted, with the exception of Unstarred Minutes HC 20, HC 21, HC 22, HC 24 and HC 28”.

In respect of the Unstarred Minutes:

**i. HC 20 The Government’s Proposed 20% Increase In Planning Fees**

It was moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

1. Planning fees be increased by 20% once primary legislation was confirmed;
2. An appraisal be undertaken of resource and performance levels across the wider planning function to ascertain the best use of the additional resource, to be approved by the Head of Paid Service in consultation with the Section 151 Officer, the Leader of Council and the Lead Hub Committee Members for Customer First and Strategic Planning.”

**ii. HC 21 Street Naming and Numbering Policy**

In discussion, a Member was of the view that the Policy should be amended to ensure that road signs not only gave the name of the street, but also the name(s) of other streets that a road directly led on to.

As a way forward, a commitment was given to review this aspect of the Policy and Members were supportive of the suggestion whereby delegated authority should be given to the Head of Paid Services, in consultation with the Leader of Council, to investigate the merits of this point prior to the Policy being approved.

It was then moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the revised joint Street Naming and Numbering Policy (as outlined at Appendix A of the agenda report presented to the Hub Committee) be approved, subject to delegated authority being given to the Head of Paid Service, in consultation with the Leader of



Council, to consider whether the Policy should be amended to include the names of subsidiary roads on road signs.”

iii. **HC 22 O&S Draft Terms of Reference and Procedure Rules**

It was moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the amended Overview and Scrutiny Committee Terms of Reference and Procedure Rules (as outlined at Appendices A and B of the agenda report presented to the Hub Committee) be approved.”

iv. **HC 24 Business Rates Pilot 2018/19**

It was moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

1. the Council apply to become a business rates pilot for 2018/19 as part of a Devonwide business rates pilot bid to pioneer new pooling and tier-split models; and
2. authority be delegated to the Section 151 Officer, in consultation with the Leader, Deputy Leader and Head of Paid Service, to agree the detail of the business rates pilot bid (in conjunction with Devon Local Authority Section 151 Officer colleagues) with respect to the financial aspects and overall governance of the pilot bid.”

v. **HC 28 Purchase of Land**

It was moved by Cllr P R Sanders, seconded by Cllr G Parker and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the purchase price be funded (as set out in Section 1.1 of the agenda report presented to the Hub Committee) along with legal and associated costs from the Innovation Fund (Invest to Earn) Earmarked Reserve.”

**CM 33**

**DELIVERY OF BEST VALUE FOR MONEY FRONT LINE SERVICES**

(Resolved that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting on the grounds that exempt information is likely to be disclosed as defined in Paragraph 3 of Schedule 12(A) to the Act).

An exempt report was presented that sought a Council decision, based on the advice of the SH/WD Joint Steering Group, in relation to the manner in which front-line services were provided and designed.

For clarity, the Head of Paid Service confirmed that this matter had to be progressed in accordance with a legislative timeframe regardless of the imminent decision on the One Council proposal.

It was then moved by Cllr N Jory and seconded by Cllr P R Sanders and declared **CARRIED** and **RESOLVED** that:

1. waste collection, recycling and cleansing services be tested using the competitive dialogue procurement route to achieve a partnership solution in accordance with the Collaboration Agreement dated 2015;
2. the lead authority for the procurement in Recommendation 1 is West Devon Borough Council for the reasons outlined in paragraph 2.6 of the presented agenda report and in accordance with the Collaboration Agreement 2015;
3. West Devon Borough Council does not proceed with a wholly owned company bid for waste collection, recycling and cleansing services;
4. the Memorandum of Understanding and project board remit attached at Appendix D of the presented agenda report be approved subject to a minor amendment being included to emphasise that significant decisions related to the project would be reported to meetings of the Hub Committee and/or full Council for ultimate approval;
5. the two councils continue to explore the establishment of a wholly owned company or joint venture arrangement for the delivery of grounds maintenance, building and facilities maintenance and other related services considered in the scope of the work stream; and
6. the Waste Options Earmarked Reserve in West Devon be used to meet any additional costs of procurement over and above those available within the base budget, with a payback mechanism being agreed once annual service costs are identified.”

It was then moved by Cllr R F D Sampson and seconded by Cllr L Samuel and declared **CARRIED** and **RESOLVED** that the press and public be re-admitted to the meeting.”

(The Meeting terminated at 5.20 pm)

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**Mayor**

At the Special Meeting of the **WEST DEVON BOROUGH COUNCIL** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK** on **TUESDAY** the **31<sup>st</sup>** day of **OCTOBER 2017** at **4.30pm** pursuant to Notice given and Summons duly served.

**Present**

Cllr J B Moody – Mayor (In the Chair)  
Cllr M Davies – Deputy Mayor

Cllr K Ball	Cllr R E Baldwin
Cllr W G Cann OBE	Cllr R Cheadle
Cllr D W Cloke	Cllr C Edmonds
Cllr J Evans	Cllr L J G Hockridge
Cllr N Jory	Cllr P Kimber
Cllr B Lamb	Cllr A F Leech
Cllr J R McInnes	Cllr C Mott
Cllr D E Moyse	Cllr C R Musgrave
Cllr R J Oxborough	Cllr G Parker
Cllr T G Pearce	Cllr P J Ridgers
Cllr A Roberts	Cllr R F D Sampson
Cllr L Samuel	Cllr P R Sanders
Cllr D K A Sellis	Cllr J Sheldon
Cllr B Stephens	Cllr L Watts
Cllr J Yelland	

Head of Paid Service  
Monitoring Officer  
Specialist – Democratic Services

**CM 34      DECLARATIONS OF INTEREST**

The Mayor invited Members to declare any interests in the items of business to be considered during the course of the meeting, but there were none made.

**CM 35      URGENT BUSINESS**

The Mayor informed that he had agreed for one urgent item to be raised at this meeting that related to the appointment of two representatives to serve on the Devon County Locality Committee. The item was deemed urgent in light of the next meeting of the Committee taking place before the next West Devon Borough Council full Council meeting.

It was moved by Cllr P R Sanders and seconded by Cllr R F D Sampson and declared **CARRIED** and **RESOLVED** that Cllrs B Lamb and A F Leech serve on the Committee for the remainder of the 2017/18 Municipal Year.

**PROPOSAL FOR A SINGLE COUNCIL FOR SOUTH HAMS AND WEST DEVON**

The Council was presented with a report that sought approval to submit a proposal to the Secretary of State to form a single second-tier Council for South Hams and West Devon from 1 April 2020.

The Leader introduced the report and explained that the proposal was not a merger, but the dissolution of West Devon Borough Council and South Hams District Council and the creation of a new Council. It would require a Parliamentary process and the Department of Communities and Local Government had made clear that a Boundary Review would have to take place. West Devon Members would have no influence or control and there could be a significant reduction in numbers of West Devon Member representatives. The other major issue was the equalisation of Council Tax. Currently, residents in a Band D property in West Devon paid approximately £63 per annum more in Council Tax than their South Hams counterparts. The report set out the options available to equalise Council Tax but this would take time. In the interim period, there were still financial challenges to be met.

The Leader responded to a number of questions on the future governance structure, the consultation process, how the budget gap would be closed before 2020/21 and the different views of the two Councils on the risks associated with commercial property investments.

At this point, it was moved by Cllr R J Oxborough and seconded by Cllr R Cheadle:

*'That the proposal for a single council be deferred for a period of 12 months to allow time for further budget screening to be undertaken, including the examination of existing staffing levels and costs, to examine additional ways to generation income, drawing specifically on measures used by other councils around the country and thirdly to allow for issues raised around governance, location and leadership to be examined and clarified.'*

In accordance with Council Procedure Rule 19, a recorded vote was then undertaken. The voting on this motion was recorded as follows:

For the motion (9): Cllrs Ball, Cann OBE, Cheadle, Cloke, Leech, Oxborough, Roberts, Sheldon and Watts.

Against the motion (22): Cllrs Baldwin, Davies, Edmonds, Evans, Hockridge, Jory, Kimber, Lamb, McInnes, Moody, Mott, Moyse, Musgrave, Parker, Pearce, Ridgers, Sampson, Samuel, Sanders, Sellis, Stephens and Yelland.

and the motion was therefore declared **LOST**.

It was then moved by Cllr P R Sanders, seconded by Cllr L Samuel that:-

*'The Council submits a proposal to the Secretary of State no later than 30 November 2017 to form a single second-tier Council for South Hams and West Devon from 1 April 2020, as set out in Section 3 of the presented report.'*

During debate on this motion, points made included the following:

- There had been a great deal of talk about money but little had been heard about the residents in West Devon, who wanted services provided by West Devon Borough Council. A reduction in the number of Members would result in very poor representation of people in this rural area. West Devon was a Borough Council not a District and should be proud of its sovereignty;
- The likely reduction in number of Members was a cause for great concern amongst a number of Members as it would make it difficult to build strong connections with local communities. A further concern was the proposed Cabinet model of governance. A Cabinet would be made up of one political party, so there would be no room for representation from other minority groups. A Member also commented that it would help to know how many Members from the West Devon area would sit on the Cabinet. As a Borough Councillor, there was a dilemma between understanding the duty to the Borough as a whole but also having regard to those who elected them and listening to their views;
- Over many years, this Council had looked at ways to generate income and, in the face of cuts, this small rural authority had been successful and was at the forefront nationally of shared services and digital delivery and had a professional and agile workforce. The telephone survey had indicated that 61% of young people voted for the proposal and there was a need to look to the future. Balancing the books at a small level had become almost impossible, and the proposal indicated a loss of Members, but the numbers suggested was considered to be feasible;
- Aside from the statistically representative telephone survey, the turnout for the other consultation was disappointing. This should not be seen as a proposal in isolation, but as part of a suite of options, with the Commercial Property Strategy and other income generating possibilities also being investigated. Council Tax Equalisation taking up to ten years was felt to be correct and a new council should not be constrained by any decisions made at this meeting. Many residents do not know the difference between the various levels of local authority, and this proposal would ensure that we provided their services and represented them to the best of our ability;
- Facing budget cuts and making savings had been a continual exercise that the authority had had to face as a small council. Delivery of good quality services was deemed to be more important than local identity;

- This was the most significant decision that the Council had taken, there was felt to be a choice and clearly various views on what was best for the Borough. Joint working had so far enabled the Council to secure a future for both councils and there are benefits from shared working. If either council rejected this proposal, it was evident from the West Somerset/Taunton Deane experience, that support would not be forthcoming from central Government. In further support of the proposal, a Member stressed that the Council would be failing in its duty to its residents if Members did not vote in favour of what was a real opportunity to secure the future of both authorities. The report stated that the two councils were inextricably linked; therefore if either rejected the proposal, then there would be a risk to future cooperation and other joint ventures might be threatened. Whilst the Cabinet system proposal was disappointing, the proposals should result in a strong and robust Overview and Scrutiny function comprising of opposition Members;
- The Council had been through 10 years of shared services and had adopted one set of shared officers. Whilst this process had resulted in a loss of 30-40% staff, the West Devon Borough Council membership had remained constant throughout this period. It would not be very long before the new Council would come together and confidence was expressed that rural Members from both West Devon and South Hams would be able to work together;
- If this proposal was to succeed, it was felt that officers would need to work more closely with Members to develop a good strong professional relationship;
- The cost of creating the new council could be £400,000. However, Members were tasked with saving money and finding ways to make the Council more sustainable. The detrimental impacts on residents were considered to outweigh the benefits of the new council being established. Spending such a sum of money on creating one council could have a real detrimental impact. The authority had been let down by central government and committing to one council at this stage was not the right thing to be doing at this time;
- Whilst having a shared workforce, the two councils was currently asking its officers to do the same job twice. This was inefficient and prone to error and Members were urged to release officers from these pressures and duplication;
- Being such a significant decision, a Member emphasised the importance of all information being available and carefully considered. In addition, the Member was not wholly convinced that the budget had been rigorously scrutinised in order to find further savings;
- West Devon was facing a budget shortfall and this proposal would not address that in the short-term, with benefits not being realised until 2020/21;
- In regretting that a decision to defer was not supported, a Member was of the opinion that this decision was too soon and there were too many unknown factors, with not enough accurate facts to base this decision on;

- It was not bold to vote for a single council, but it would be to vote against it. Even if supported at this meeting, a Member commented that this was not a done deal, but there were still obstacles in the way. West Devon was a rural area, whilst the South Hams was a coastal area. The two councils therefore had distinct differences. A vote in favour of one council would result in a Council with the second largest land mass council in the country;
- The new council would be remote and it would be a long way for residents to travel to attend a meeting. In terms of council tax equalisation, West Devon residents would be paying more for a considerable length of time until the equalisation period was realised;
- Greater dialogue with local MPs was felt necessary since they were also required to agree to this proposal. If they were not going to support the proposal, then they needed to find a way of increasing our grant funding from central government;
- To best serve residents, a single body was deemed the only sensible way forward. The representation discussion focused on the number of residents per elected member. Moving to 2200 per councillor sounded dramatic until you realised that would put us on a par with other shire authorities. As a consequence, a single council would not harm our ability to serve our residents. Doing nothing was not an option and Members were elected to take decisions. Voting against this proposal was felt the epitome of doing nothing, whereas one council would help to provide stability in the medium term;

The Leader then summed up as follows:

It was not true that West Somerset had not had help and he hoped that this decision would not be based on the fear factor. Regardless of the decision made, residents would still get their services and there was a need for Members to vote based upon what they considered to be right for the residents of West Devon as a whole. All 31 Members will have to continue to run this council tomorrow and were entitled to their own opinion. It remained important to work together as a team and respect each other's views. As Leader of the Council, he did not feel it to be appropriate to force the position of how each Member voted and it was his hope that the Council would make a decision that every Member would be able to respect and support.

In accordance with Council Procedure Rule 19, a recorded vote was then undertaken. The voting on this motion was recorded as follows:

For the motion (13):                    Cllrs Baldwin, Jory, Kimber, Lamb, McInnes, Mott, Musgrave, Parker, Ridgers, Sampson, Samuel, Sanders and Sellis.

Against the motion (18): Cllrs Ball, Cann OBE, Cheadle, Cloke, Davies, Edmonds, Evans, Hockridge, Leech, Moody, Moyse, Oxborough, Pearce, Roberts, Sheldon, Stephens, Watts and Yelland.

and the motion was therefore declared **LOST**.

**CM 37**

**WASTE AND CLEANSING COMMISSIONING – SERVICE SCOPE**

(Resolved that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting on the grounds that exempt information is likely to be disclosed as defined in Paragraph 3 of Schedule 12(A) to the Act).

An exempt report was presented by the Lead Member for Commercial Services that sought endorsement of the service scope principles that had been proposed by the Project Board for consideration during the commissioning process for waste collection, recycling and cleansing services.

It was then moved by Cllr R F D Sampson, seconded by Cllr C R Musgrave and duly **CARRIED** and “**RESOLVED** that the service scope principles proposed by the Project Board for consideration during the commissioning process for waste collection, recycling and cleansing services be endorsed.”

It was then moved by Cllr P R Sanders and seconded by Cllr L Samuel and declared **CARRIED** and “**RESOLVED** that the press and public be re-admitted to the meeting.”

(The Meeting terminated at 7.00 pm)

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**Mayor**



# Agenda Item 9

At a Meeting of the **OVERVIEW & SCRUTINY COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **5<sup>th</sup>** day of **SEPTEMBER 2017** at **2.00 pm**.

**Present:**

Cllr R Cheadle – Vice-Chairman (in the Chair)	
Cllr R Baldwin	Cllr D W Cloke
Cllr J Evans	Cllr P Kimber
Cllr A F Leech	Cllr J R McInnes
Cllr D E Moyse	Cllr T G Pearce
Cllr P J Ridgers	Cllr A Roberts
Cllr D K A Sellis	

Head of Paid Service  
Development Management COP Lead  
Human Resources COP Lead  
Environmental Health COP Lead  
Specialist – Performance and Intelligence  
Senior Specialist – Democratic Services

**Also in Attendance:** Cllrs C Edmonds; B Lamb and J B Moody

- \*O&S 26 APOLOGIES FOR ABSENCE**  
Apologies for absence for this meeting were received from Cllrs C R Musgrave, J Sheldon and J Yelland.
- \*O&S 27 CONFIRMATION OF MINUTES**  
The minutes of the Meeting of the Overview and Scrutiny Committee held on 11 July 2017 were confirmed and signed by the Chairman as a true and correct record.
- \*O&S 28 DECLARATIONS OF INTEREST**  
Members and officers were invited to declare any interests in the items of business to be considered during the course of this meeting, but there were none made.
- \*O&S 29 PUBLIC FORUM**  
There were no issues raised during the Public Forum session at this meeting.
- \*O&S 30 HUB COMMITTEE FORWARD PLAN**  
The most recent (published 29 August 2017) Hub Committee Forward Plan was presented for consideration.

In discussion, the following points were raised:-

- (a) The Committee noted that the Housing Position Statement was still being developed and would therefore not be ready in time for consideration by the Hub Committee at its next meeting on 12 September 2017;
- (b) Similarly, the Head of Paid Service also confirmed that the Productivity Plan Joint Committee would not be ready for the consideration of the Hub Committee on 12 September 2017.

**\*O&S 31      PLANNING ENFORCEMENT SERVICE REVIEW**

The Committee considered a report that provided an update on the current workload position and revisions to the Planning Enforcement Service in order to address the business need.

In discussion, the following points were raised:-

- (a) Members questioned the reasons for the Service workload being far higher in comparison to other local authorities. In reply, officers felt that there was a number of reasons for this trend that included:
  - the large geographical areas of West Devon and South Hams;
  - a number of misunderstandings in relation to what could (and could not) be developed without planning permission being required; and
  - residents within both the Borough and South Hams District generally being more interested (and aware) of what was going on within their local areas.

In an attempt to mitigate some misunderstandings, it was noted that the COP Lead had attended a number of town and parish councils to deliver planning training and these sessions had each included reference to what constituted a valid breach of planning regulations;

- (b) With regard to the creation of a Local Enforcement Plan, officers hoped that this would be implemented before the end of December 2017;
- (c) It was confirmed that the proposed additional resource would be funded from within existing budgets largely by virtue of a re-allocation of duties within the Environmental Health Community Of Practice;
- (d) Some Members were of the view that there was a public perception that the Council was a soft touch that did not deal appropriately with enforcement complaints;
- (e) The Committee reiterated that there was a need for greater interaction between local Ward Members and those officers working in Planning Enforcement;

- (f) Upon the production of the latest schedule of enforcement cases, a Member requested that a brief progress update be added for each case.

It was then:

**RESOLVED**

That the Committee support the actions proposed and the ongoing monitoring of the Service by the Community Of Practice Lead and the Case Management Manager.

**\* O&S 32 SICKNESS ABSENCE MONITORING**

The Committee considered a report that provided an update on the level of sickness absence amongst Council employees and the measures in place to manage and monitor short and long term absence.

In discussion, reference was made to:-

- (a) the absences related to stress and depression being alarming. In acknowledging that the statistics were a cause for concern, officers informed that the figures related to two members of staff, one of which had now returned to work. In addition, the Council had recognised that people management was a key issue and front line managers were currently undertaking an in-house Training and Development Programme.

Furthermore, in recognising that staff were under a great deal of pressure, the Committee also welcomed the adoption of the Health and Wellbeing Strategy. When questioned, the Head of Paid Service advised that members of the Senior Leadership Team supported one another and, whilst they were all working long hours, this was not considered to be a problem at this present time;

- (b) the shared workforce. In light of the Council sharing its workforce with South Hams District Council, the Committee was of the view that the production of separate performance reports for Human Resources related matters was no longer necessary;
- (c) the use of exit interviews. Officers confirmed that exit interviews were undertaken for staff leavers, with one of the purposes of these being to establish whether there were any trends and/or underlying concerns;
- (d) staff enjoyment of their job. Whilst there were causes for concern within the Staff Survey findings, Members did acknowledge the outcome whereby 84% of staff had stated that they enjoyed their job;

- (e) the counselling service. Officers confirmed that the Council offered a counselling service, with staff having the ability to self-refer themselves. For the purposes of this service, it was also noted that there was no distinction between work and personal reasons for staff being able to self-refer.

It was then:

**RESOLVED**

That the Committee acknowledges that the Council continues to proactively manage and monitor short and long-term absence and that the HR Lead Specialist continues to report to the Senior Leadership Team on a monthly basis.

**\* O&S 33**

**Q1 PERFORMANCE MEASURES**

The Committee considered a report that presented the Quarter 1 performance measures for 2017/18.

In the ensuing debate, reference was made to:-

- (a) debtor write-offs. A Member expressed his disappointment that write-offs were no longer a part of the reported quarterly performance measures. In response, officers advised that write-offs were now reported quarterly to the Hub Committee. That being said, it was agreed that the merits of re-instating this particular performance measure would be investigated as part of the current Task and Finish Group review;
- (b) the T18 Programme timescales. Officers confirmed that this performance measure was now obsolete and it would not therefore be included in future quarterly performance reports.

It was then:

**RESOLVED**

That the performance levels against target communicated in the Balanced Scorecard and the performance figures supplied in the background and the exception report be noted.

**O&S 34**

**ANNUAL REVIEW OF HEALTH AND SAFETY POLICY**

A report was considered by the Committee that presented the annual review of the Council's Health and Safety Policy.

In the ensuing debate, the following points were raised:-

- (a) The Committee was advised that a Lone Worker Policy for elected Members was currently being drafted and the consequent training need was recognised;

- (b) When questioned, officers confirmed that near misses were reported and accidents (and remedial measures) were reported to the Senior Leadership Team on a monthly basis;
- (c) A Member expressed his specific concerns that the draft Policy did not state that *'on receipt of a threat against the Councils including those by letter or suspect package suspicious letter or parcel'* staff should, in all instances, leave the premises first. In response, officers stated that it would be appropriate in some instances to leave the premises first and it was agreed that a discussion specifically on this point would be held between the officer and Member outside of this meeting.

It was then:

**RECOMMENDED**

That the Hub Committee **RECOMMEND** to Council that the revised policy (as attached at Appendix A of the presented agenda report) be adopted and signed by the Head of Paid Service and the Leader of Council.

**O&S 35      REGULATION OF INVESTIGATORY POWERS ACT (RIPA) 2000  
POLICY AND UPDATE**

The Committee considered a report that sought to:-

- Review the Council's RIPA Policy and approve guidance on Social Networking Sites in investigations;
- Update Members on the use of RIPA;
- Report on the role of the Office of Surveillance Commissioners; and
- Report on training for officers.

In discussion, Members particularly welcomed the Policy being reviewed to reflect the emerging trends in relation to social media.

It was then:

**RECOMMENDED**

1. That the Hub Committee be **RECOMMENDED** that the guidance on Social Networking Sites in investigations (as outlined at Appendix A of the presented agenda report) be approved and included in the Council's RIPA Policy; and
2. That the Committee note that there has been no RIPA Authorisations in the last three years.

**\* O&S 36 Task and Finish Group Updates**

**(a) Discretionary Grant Funding Review**

The Committee noted that the Group was to meet in due course.

**(b) Performance Measure**

By way of an update, it was noted that the first Group meeting had been held with the lead Specialist. The main outcome of this meeting was that each Group Member had been assigned an individual service area of the Council to focus upon.

The Committee was advised that the primary focus of the Group Members (within each of their service areas of responsibility) was three fold namely:

1. To establish whether the performance measure was still relevant;
2. If so, to consider why the measure was set at the current level and who was responsible for setting that target; and
3. To determine who (and why) would be responsible for adjusting these measures and/or target levels.

**\*O&S 37 ANNUAL WORK PROGRAMME 2017/18**

The Chairman introduced the latest version of the Work Programme for the next 12 months and the following updates were highlighted:

- It was noted that an additional Committee meeting had been scheduled to take place on 17 October 2017. The main purpose for this meeting being convened was to consider the consultation process (and outcome) associated with the One Council proposal;
- With regard to Rural Broadband provision in the Borough, it was agreed that the Chairman would produce a Scrutiny Proposal Form for consideration. In the event of agreement ultimately being given to the establishment of a Task and Finish Group to review Rural Broadband provision, the Committee appointed Cllrs Cheadle, Cloke, Kimber, Pearce, Roberts and Sheldon for this purpose.

**\*O&S 38 MEMBER LEARNING AND DEVELOPMENT OPPORTUNITIES ARISING FROM THIS MEETING**

The Chairman reminded the Committee that Overview and Scrutiny related training would be arranged for all Members during the autumn.

In addition, the Committee noted that there was an identified need for a Member training session to be convened on the Lone Worker Policy and general health and safety awareness issues.

(The meeting terminated at 3.35 pm)

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Chairman

At a Meeting of the **OVERVIEW & SCRUTINY COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **17<sup>th</sup>** day of **OCTOBER 2017** at **2.00 pm**.

**Present:**

Cllr J Yelland – Chairman	
Cllr R Baldwin	Cllr D W Cloke
Cllr J Evans	Cllr P Kimber
Cllr A F Leech	Cllr J R McInnes
Cllr D E Moyse	Cllr C R Musgrave
Cllr T G Pearce	Cllr P J Ridgers
Cllr A Roberts	Cllr D K A Sellis
Cllr J Sheldon	

Head of Paid Service  
Executive Director – Service Delivery and  
Commercial Development  
Commissioning Manager  
Senior Specialist – Democratic Services

**Also in Attendance:** Cllrs W G Cann OBE; C Edmonds; N Jory; B Lamb; C M Mott; J B Moody; G Parker; R F D Sampson; L Samuel; and P R Sanders

- \*O&S 39 APOLOGIES FOR ABSENCE**  
Apologies for absence for this meeting were received from Cllr R Cheadle.
- \*O&S 40 CONFIRMATION OF MINUTES**  
The minutes of the Meeting of the Overview and Scrutiny Committee held on 5 September 2017 were confirmed and signed by the Chairman as a true and correct record.
- \*O&S 41 DECLARATIONS OF INTEREST**  
Members and officers were invited to declare any interests in the items of business to be considered during the course of this meeting, but there were none made.
- \*O&S 42 PUBLIC FORUM**  
There were no issues raised during the Public Forum session at this meeting.
- \*O&S 43 HUB COMMITTEE FORWARD PLAN**  
The most recent Hub Committee Forward Plan was presented for consideration.

In discussion, the Committee was advised that the 'Set up of a Local Authority Lottery' agenda item, that was scheduled for consideration by the Hub Committee at its meeting on 31 October 2017, would ultimately require the approval of the full Council.

**\*O&S 44      ONE COUNCIL CONSULTATION PROCESS**

Consideration was given to a report that provided a detailed overview of the One Council Consultation process, including how the consultation was devised and the range of methods used to engage with the public.

In her introduction, the Committee Chairman emphasised that the purpose of this agenda item was not to focus on the merits of the proposal, but to ensure that the consultation process had been fair, reasonable and balanced.

In discussion, reference was made to:-

- (a) the recent press release. The Leader was aware of a number of concerns that had been raised at the recent press release that had been issued. The Leader stated that it was his personal view that a press release should have been held back until after the Overview and Scrutiny Committee had been given the opportunity to scrutinise the consultation process and check that the applied methodology had been deemed to be sound;
- (b) the ICT glitch. The Leader reiterated that the glitch was outside of the control of the Council and had occurred on the last day of the consultation period. Officers proceeded to advise that mitigating measures (including extending the consultation period by one day) were put into place to minimise the impact of this unfortunate disruption;
- (c) the telephone survey. Members acknowledged that the telephone survey had been statistically representative of the Borough population in terms of age and gender and should be considered to be the most statistically valid and representative aspect of the consultation process;
- (d) Council Tax Equalisation. In reply to a question, officers confirmed that the questions related to Council Tax Equalisation were only considered by respondents to the South Hams survey;
- (e) the restriction on IT equipment. A Member expressed the view that the provision whereby a piece of IT equipment could only be used once to provide a survey response had been too restrictive. In reply, the Leader advised that a risk analysis had been undertaken and it had been concluded that a greater risk would have arisen from multiple responses being generated from the same piece of IT equipment;



- (f) the ability to obtain a paper copy of the survey. The Committee noted that the postcards that had been delivered to each household in the Borough had made it clear that residents could request a paper copy of the survey;
- (g) establishing a standalone Facebook consultation page. The view was expressed that, instead of a signposting page approach being adopted, a greater number of responses would have been made during the consultation process if the survey had been directly available from a standalone Facebook consultation page;
- (h) the low response rates from the business sector. When questioned, officers informed that they had engaged the Federation of Small Businesses for Devon; the Business Information Point in Okehampton; the local Chambers of Commerce and the Business Voice mailing list;
- (i) town and parish council responses. Whilst some Members felt that a 52% response rate from town and parish councils was low, the point was made that, in light of the lack of alternative options, a number had not felt in a position to make an evidence based submission to the survey. The Committee was also informed that, whilst aware that the consultation period had expired, Tavistock Town Council would be formally considering the proposal at its meeting later today;
- (j) the wording of the questions. Based upon feedback he had received, a Member stated that there was a perception amongst some residents that the questions had been somewhat leading towards encouraging a positive response to the survey;
- (k) the timing of the Committee meeting. A Member expressed his personal disappointment that the Committee meeting was not held at the exact same time as the equivalent Overview and Scrutiny Panel meeting at South Hams District Council.

In conclusion, a number of Members stated their belief that the consultation process had been robust and sound.

It was then:

**RESOLVED**

That the Committee has considered the consultation process and response.

**\* O&S 45      TASK AND FINISH GROUP UPDATES**

**(a) T18**

The Chairman advised that the Hub Committee had endorsed the recommendations of the Task and Finish Group at its meeting on 18 July 2017 (Minute \*HC 15 refers). In formally closing it down, the Committee wished to thank the Group Members for their contributions during the Review.

**(b) Discretionary Grant Funding Review**

In making reference to the linkages with some of the questions in the Member Budget Survey, the Chairman emphasised the importance of all Members completing the questionnaire during the current consultation process.

**(c) Performance Measure**

By way of an update, it was noted that the Group was still gathering information in advance of its next meeting on 29 November 2017. In addition, the Group remained on target to produce its final recommendations early in the New Year.

**\*O&S 46      ANNUAL WORK PROGRAMME 2017/18**

The Chairman introduced the latest version of the Work Programme for the next 12 months and the following updates were highlighted:

- The Committee agreed that the three partner annual updates that had been programmed for the meeting on 7 November 2017 should be deferred for consideration at the Draft Budget 2018/19 meeting on 16 January 2018 and re-titled: 'Grant Funding: Update Report';
- Following the request at the last Committee meeting, it was noted that a Scrutiny Proposal Form had been produced on Rural Broadband Provision in the Borough (Minute \*O&S 37 refers). It had been agreed that, as a way forward, the Committee would formally request that a meeting of the Rural Broadband Working Group be arranged in the upcoming weeks and that renewed energy be given to this Group in an attempt to influence an improvement in rural broadband provision in the Borough. It was also agreed that consideration should be given to co-opting additional interested Members on to the Working Group.

**\*O&S 47      MEMBER LEARNING AND DEVELOPMENT OPPORTUNITIES ARISING FROM THIS MEETING**

The Chairman advised the Committee that a trainer had been sourced to deliver the Overview and Scrutiny related training and a date would be fixed in due course.

In addition, the Committee noted that a Member training session would be convened on the Lone Worker Policy and general health and safety awareness issues in the upcoming months.

(The meeting terminated at 3.25 pm)

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Chairman

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At a Meeting of the **OVERVIEW & SCRUTINY COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **7<sup>th</sup>** day of **NOVEMBER 2017** at **2.00 pm**.

**Present:** Cllr J Yelland – Chairman  
Cllr R Cheadle – Vice Chairman

Cllr R Baldwin	Cllr D W Cloke
Cllr J Evans	Cllr P Kimber
Cllr A F Leech	Cllr C R Musgrave
Cllr T G Pearce	Cllr A Roberts
Cllr J Sheldon	

Executive Director – Service Delivery and Commercial Development  
Group Manager – Support Services and Customer First  
Specialist – Community Safety, Safeguarding and Partnerships  
Specialist – Performance & Intelligence  
Deputy Monitoring Officer  
Support Services Specialists Manager  
Specialist – Democratic Services

**Also in Attendance:** Cllrs C N Edmonds, L J G Hockridge, J Moody, C Mott, G Parker, R F D Sampson

- \*O&S 48 APOLOGIES FOR ABSENCE**  
Apologies for absence for this meeting were received from Cllrs J R McInnes, D E Moyse, P J Ridgers and D K A Sellis.
- \*O&S 49 CONFIRMATION OF MINUTES**  
The minutes of the Meeting of the Overview and Scrutiny Committee held on 17 October 2017 were confirmed and signed by the Chairman as a true and correct record.
- \*O&S 50 DECLARATIONS OF INTEREST**  
Members and officers were invited to declare any interests in the items of business to be considered during the course of this meeting, but there were none made.
- \*O&S 51 PUBLIC FORUM**  
There were no issues raised during the Public Forum session at this meeting.
- \*O&S 52 HUB COMMITTEE FORWARD PLAN**

The most recent Hub Committee Forward Plan was presented for consideration.

The Chairman advised that the 'Productivity Plan Joint Committee' and 'Housing Position Statement' reports were intended to be presented to the meeting of the Hub Committee scheduled for 28 November 2017.

**\*O&S 53 COMMUNITY SAFETY PARTNERSHIP**

Cllr Musgrave, in his capacity as the Council's representative on the Community Safety Partnership, presented a report that provided Members with the opportunity to scrutinise the work of the Community Safety Partnership (CSP) as defined by Sections 19 and 20 of the Police and Justice Act 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009.

The Senior Community Safety Officer (SCSO), South Devon and Dartmoor Community Safety Partnership, highlighted several areas within the report and responded to questions. She also raised two areas not listed in the report, the first of which was a methodology for the trafficking of drugs which targeted vulnerable young people and as such was a focus for the Partnership. The second issue was the prevalence of gang culture within one of the towns in the South Devon and Dartmoor area.

In discussion, reference was made to:-

- (a) the likelihood of continued funding. In response the SCSO advised that the funding was guaranteed for a further year however there was uncertainty arising from the proposed merger between Devon and Cornwall Police and Dorset Police Authorities;
- (b) that the frontline Police were very supportive, albeit within resource constraints;
- (c) that Members would appreciate a training session on the issues that the Partnership dealt with. All Members supported the request for training and it was agreed that it should be included in the recommendation;
- (d) that the Partnership provided very good value for money.

It was then:

**RESOLVED**

1. That the report be noted; and
2. That training for Members be arranged on issues relevant to the Partnership.

**\*O&S 54      JOINT LOCAL PLAN: STANDING AGENDA ITEM**

The Lead Member for Strategic Planning and Housing gave a verbal update on progress with the Joint Local Plan (JLP).

Key areas included:

- A timetable for the examination of the Plan would be circulated to Members;
- The Inspector had built in time to enable discussion on matters that may arise;
- There was a comprehensive Local Plan Library as the Inspector was concerned that members of the public could access any documents;
- There had been representations from people with sites that had not been allocated. Alternative sites would only be looked at if sites within the Plan were unsustainable;
- In terms of a five year land supply, full details would be made available to the public on 29 November 2017.

In response to a question on how performance of the Plan could be measured, the Lead Member confirmed that the JLP Steering Group had turned its attention to that and the Plan contained a series of measures. It would be important to agree which were the key measures to monitor. The five year land supply figures would be reviewed annually. It would also be important to monitor and reflect on the performance of the delivery of the Plan itself.

Another Member raised the problem of planning permissions being granted but not actioned, so questioned whether there was any mechanism to enforce. The Lead Member responded that there were a range of actions that could be taken at a local and national level, but that West Devon did not perform badly in terms of housing delivery. The JLP would be a 20 year programme, some sites would come forward sooner than others and the key would be to identify sites that could be in trouble.

One Member asked if proposals to standardise the methodology for assessing housing need could affect the numbers of houses that the authority was required to provide. The Lead Member responded to the question in detail and concluded that within the JLP area, the Group had added together the requirements and then looked at the most sustainable way to provide those houses across the three authorities.

The Chairman thanked the Lead Member for his update and agreed that it would now be appropriate for a short update on progress of the Plan to be presented to the O&S Committee at each meeting.

**\*O&S 55      QUARTER 2 PERFORMANCE INDICATORS**

The Lead Member for Support Services presented a report that set out the performance levels against target as communicated in the Balanced Scorecard and the performance figures supplied in the presented background and the exception report. Member's attention was drawn to a new indicator, percentage of Change of Circumstances benefits claims received online.

During discussion, reference was made to the following:

1. The length of time taken to process new benefits claims being back within tolerance;
2. Whilst it was accepted that not all benefits claimants had access to a computer, encouraging channel shift would 'free up' call handlers to assist those who needed to contact by phone;
3. The indicator for percentage of enquiries resolved at first point of contact no longer being collected. This led to a wider discussion on the Customer Contact Centre and Members were advised that the Centre was set up in such a way that the Customer Contact Centre Manager was able to quickly more resource within teams to respond to changing levels of demand;
4. The way that sickness absence was recorded was not helpful and this would be reviewed to reflect the single organisational workforce.

It was then:

**RESOLVED**

That the performance levels against target communicated in the Balanced Scorecard and the performance figures supplied in the background and the exception report be noted.

**\*O&S 56      OMBUDSMAN ANNUAL REVIEW LETTER**

The Lead Member for Support Services presented a report that considered the Local Government Ombudsman's Annual Review Letter 2017 regarding complaints received against the Council for the period 1 April 2016 to 31 March 2017. As part of his introduction, he set out how the level of complaints had decreased over the previous four years indicating a steady improvement in service levels.

It was then:

**RESOLVED**

That the Ombudsman Annual Letter for 2017, as presented at Appendix A, be reviewed, corporate lessons learnt and whether service improvements are required had been considered.



**\*O&S 57      GENERAL DATA PROTECTION REGULATION – READINESS UPDATE**  
The Lead Member for Support Services presented a report that outlined the changes that the Council would need to implement in order to achieve compliance with the General Data Protection Regulation (GDPR) by 25 May 2018. He advised that progress would be reviewed on a regular basis.

The Support Services Specialist Manager advised Members that the Information Commissioners Office had been in touch in respect of the need for Members to be registered as data controllers. As part of their role, they collected data relating to residents. He advised that it was likely that the Council would cover the cost of ensuring all Members were appropriately registered. He also confirmed that training for town and parish councils on Data Protection Regulations was being considered. Members welcomed this information and requested that they be included in any training sessions that were arranged.

It was then:

**RESOLVED**

That the approach to General Data Protection Regulation readiness ahead of implementation in May 2018 was supported, and that Members should be fully trained in the implications and responsibilities of the regulations.

**\* O&S 58      TASK AND FINISH GROUP UPDATES**

**(a) Partnership Grant Funding Review**

The Chairman confirmed that this group had not met yet, and also advised that the name of the group should be Partnership (not Discretionary). They would meet in time to bring a report to the January 2018 meeting of the O&S Committee.

**(b) Performance Measure**

By way of an update, it was confirmed that joint working with South Hams District Council was currently on hold. The outcome of this piece of work was not needed until April 2018.

**\*O&S 59      ANNUAL WORK PROGRAMME 2017/18**

The Chairman introduced the latest version of the Work Programme for the next 12 months and the following updates were highlighted:

- Following recent incidents where the Ambulance Service were reported to have failed to provide an appropriate level of service to residents, a Member asked if they could be invited to attend a future meeting of the Overview and Scrutiny Committee to have the opportunity to outline

how they were facing public sector challenges. The Committee agreed to this request and asked that they attend the meeting scheduled for 27 February 2018;

- JLP Update would now be a standing agenda item for every meeting.

**\*O&S 60 MEMBER LEARNING AND DEVELOPMENT OPPORTUNITIES ARISING FROM THIS MEETING**

The Chairman advised the Committee that a trainer had been sourced to deliver the Overview and Scrutiny related training and this would take place on the morning of 5 December 2017 commencing at 10.00am.

In addition, the Committee noted that, further to items earlier in the agenda, training sessions would be arranged on the Community Safety Partnership and Data Protection.

(The meeting terminated at 4.20 pm)

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Chairman

At a Meeting of the **AUDIT COMMITTEE** held in the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **19th** day of **September 2017** at **2.00pm**

**Present:** Cllr M Davies (Chairman)

Cllr K Ball                      Cllr W Cann OBE  
Cllr B Stephens              Cllr L Watts  
Cllr B Lamb

**Officers in attendance:** Executive Director –Service Delivery and Commercial Development  
Chief Internal Auditor

Business Development Group Manager  
Section 151 Officer  
Finance COP Lead  
Adam Bunting KPMG  
Darren Gilbert KPMG

**Also in attendance:** Cllr C Edmonds (lead Hub Committee Member)

**\* AC 12      APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllr Hockridge.

**\* AC 13      CONFIRMATION OF MINUTES**

The Minutes of the Meeting held on 18 July 2017 were confirmed and signed by the Chairman as a correct record.

**\* AC 14      KPMG EXTERNAL AUDIT REPORT 2016/17**

Mr Bunting & Mr Gilbert presented the External Audit Report to the committee. KPMG confirmed that they did not identify and audit adjustments on the Draft Accounts and they anticipate issuing an unqualified opinion on the Council's Accounts before 30 September 2017. For the year ending 31 March 2017, the Accounts reported an underspend of £70,000 in the General Fund during the year.

KPMG confirmed their conclusions (Page 12 of the agenda) in relation to the allocation of shared costs between West Devon and South Hams. Their report stated that:-

- They had reviewed the basis of allocation of shared costs between West Devon and South Hams and had found this to be appropriate and reflect the nature of the activities involved.
- They had performed an analytical review of the staff recharges for 2016/17 as this expenditure results in over 90% of shared costs between the Councils. No issues were identified as a result of their work.

- They has also reviewed the shared services (non-salaries) and the costs had been reasonably apportioned between the two Councils. No issues were identified.

In summarising Mr Bunting gave an unqualified opinion. He also stated that KPMG anticipated issuing an unqualified value for money opinion. The Chairman acknowledged the hard work from the S151 officer and the finance team. The Chairman was also thanked for his work from a member of the committee.

It was then **RESOLVED** that

The External Audit report from KPMG be noted.

**\* AC 15 KPMG: ROLE OF EXTERNAL AUDIT**

Mr Bunting gave the committee an overview of the role of the external auditors. He went on to explain that they looked for value for money and that procedures and processes were in place.

**\*AC16 ANNUAL STATEMENT OF ACCOUNTS 2016/17**

The S151 Officer took Members through the Annual Statement of Accounts 2016/17. It was noted by the Audit Committee that these were the same Accounts that the Audit Committee reviewed at their July 2017 meeting (the Draft Accounts) and had already gone through. There had been no changes (except minor presentational changes) to the draft Accounts presented. With no further questions raised;

It was then:

**RESOLVED** that

1. The wording of the Letter of Representation be approved (Appendix A)
2. The audited Statement of Accounts for the financial year ended 31 March 2017 be approved (Appendix B)
3. The Annual Governance Statement post audit (Appendix C); be approved by Members

**\*AC17 CONSULTATION ON AUDITOR APPOINTMENT FROM 2018/19**

Members were taken through the consultation of the appointment of Grant Thornton to audit the accounts of West Devon Borough Council from 1 April 2018 for a period of 5 years. It was reported that it was hoped there would be a fee reduction. Fee would be known by March 2018.

It was then:

**RESOLVED**

To accept the proposed appointment of Grant Thornton (UK) LLP to audit the Accounts of West Devon Borough Council for five years from 2018/19.

**\*AC18      SIX MONTHLY UPDATE – STRATEGIC RISK ASSESSMENT**

The Business Development Group Manager took Members through the Strategic Risk Assessment Update. A mini closedown in September and another in December would produce a faster closedown at year end. This is needed due to the closedown of 17/18 accounts being brought forward 4 weeks to end of May 2018.

It was then:

**RECOMMENDED** that

The Committee review the strategic risks and make recommendations to Council on any further action the Committee concludes should be considered.

**\*AC19      INTERNAL AUDIT CHARTER AND STRATEGY 2017/18**

The Chief Internal Auditor took members through the Internal Audit Charter.

It was then:

**RECOMMENDED** that

The Committee review and approve the Internal Audit Charter and Strategy 2017/18

**\*AC20      UPDATE ON PROGRESS ON THE 2017/18 INTERNAL AUDIT PLAN  
(Includes update on Strategic Debt Review)**

The Chief Internal Auditor updated the Committee on the progress of the 2017/18 internal Audit Plan. It was reported that nine days of Audit time had been lost due to sickness. It was suggested that either a reduction in plan or a buy in of the days would cover this.

It was then:

**RECOMMENDED** that

The progress made against the 2017/18 internal audit plan, and any key issues arising are approved.

(The Meeting terminated at 3.10pm)

Dated this



At a Meeting of the **DEVELOPMENT MANAGEMENT & LICENSING COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **19<sup>th</sup>** day of **SEPTEMBER 2017** at **10.00am**

**Present:** Cllr P R Sanders – Chairman  
Cllr A Roberts – Vice-Chairman

Cllr W G Cann OBE	Cllr C Mott
Cllr D E Moyse	Cllr G Parker
Cllr T G Pearce	Cllr J Yelland

**Substitutes:** Cllr B Lamb for Cllr R E Baldwin  
Cllr A F Leech for Cllr L J G Hockridge

Senior Specialist Development Management (AHS)  
Planning Specialist (TJ)  
Planning Specialist (TF)  
Solicitor (SN)  
Senior Specialist Democratic Services (DW)

**In attendance:** Cllrs L Samuel and L Watts

**\*DM&L 19 APOLOGIES FOR ABSENCE**

Apologies were received from Cllr R E Baldwin for whom Cllr B Lamb acted as substitute and Cllr L J G Hockridge for whom Cllr A F Leech acted as substitute.

**\*DM&L 20 DECLARATION OF INTEREST**

Members were invited to declare any interests in the items of business to be considered and the following were made:

Cllr T G Pearce declared a personal interest in all applications, by virtue of being a Member of the Devon Building Control Partnership. He remained in the meeting and took part in the debate and vote on each item.

**\*DM&L 21 CONFIRMATION OF MINUTES**

The Minutes of the Development Management and Licensing Committee Meeting held on 22 August 2017 were confirmed and signed by the Chairman as a correct record, subject to inclusion of the following amendments:-

1. That Cllrs L J G Hockridge and G Parker be included in the list of those Committee Members present at this meeting;
2. That Cllrs D E Moyse and J Yelland be removed from the list of those Committee Members present at this meeting;
3. That Cllr L J G Hockridge declared a Disclosable Pecuniary Interest in application numbers 1433/17/VAR and 2456/16/FUL by virtue of his business benefitting from visitors to the application site and proceeded to leave the meeting room during consideration of these planning applications; and

4. That Cllr Mott be removed from the list of those speakers who had been invited to address the meeting during application numbers 1433/17/VAR and 2456/16/FUL.

**\*DM&L 22 PLANNING PERFORMANCE INDICATORS**

The Senior Specialist Development Management presented the latest set of Performance Indicators and outlined the key information for Members consideration.

In discussion, reference was made to:-

- an acknowledgement that the use of time extensions was playing a fundamental role in ensuring that major planning applications were being determined in time;
- a recruitment and selection exercise was underway to appoint an additional Enforcement Specialist Officer;
- the trend whereby planning income had decreased in comparison to last year, whereas the number of planning applications had increased. It was noted that, whilst this trend illustrated that fewer major planning applications were being received by the Council, there had been a considerable increase in minor applications validated;
- a request (in future reports) for the figures used on some of the indicators to be adjusted to remove reference to a quarter (and a half) of an application/case; and
- the ongoing review of the Performance Measures Task and Finish Group. In highlighting the relevance to the Committee of the Development Management aspects of the review, it was agreed that Cllr Roberts would support Cllr Cheadle in progressing this matter.

**\*DM&L 23 PLANNING, LISTED BUILDING, TREE PRESERVATION ORDER AND ENFORCEMENT REPORTS**

The Committee considered the applications prepared by the Development Management Specialists and considered also the comments of Town and Parish Councils together with other representations received, which were listed within the presented agenda reports and summarised below, and **RESOLVED**:

**(a) Application No: 1987/17/FUL      Ward: Exbourne**

**Site Address: Hayfield House, Hayfield Road, Exbourne EX20 3RS**

Erection of a two-storey 3 bedroomed house, a separate single garage and parking for 2 vehicles

**RECOMMENDATION:**      Conditional Approval

Following a detailed officer presentation, it became evident during the subsequent Member questions that there was an apparent discrepancy over the site plans.



Following a short adjournment, the Chairman advised that, in the absence of any revised site plans, it would be wholly inappropriate for the Committee to determine the application at this meeting. It was therefore agreed that this application should be deferred for consideration at a future meeting.

For completeness, the Chairman gave each of the registered speakers the option to either address the Committee at this meeting or to wait until the application was re-presented. In response, each registered speaker confirmed that they would take their opportunity at the future meeting when the application was re-considered.

**COMMITTEE DECISION:** Deferral

**\*DM&L 24 PLANNING APPEALS UPDATE**

The Committee received and noted the updated list of Planning Appeals including enforcement appeals.

In so doing, reference was made to:-

- (a) the appeal decision at Land South Of North Road, Lifton. In highlighting that the applicant had been awarded partial costs, the Chairman and officers stressed the difficulty of being able to substantiate a refusal reason on highways grounds for those applications when County Highways had raised no objections. As a consequence, the Committee was asked to continually bear this point in mind during its future deliberations.

In relation to the role of County Highways, some Members expressed their frustrations at the lack of highways related objections that were coming forward. In reply, officers acknowledged these concerns but also advised that the National Planning Policy Framework had made it even harder for highways colleagues to raise legitimate objections. In making their recommendations, it was noted that the almost sole focus for Highways Officers to be able to raise an objection had to be concerned with whether or not an application would have a 'severe impact' on the highway.

In conclusion, the Committee Chairman gave a commitment to invite a Senior County Highways Officer to undertake a presentation and respond to Member questions at a future briefing session;

- (b) Conservation Areas. In lamenting some recent appeal decisions, a Member was of the view that the integrity of Conservation Areas in the West Devon area was being destroyed.

(The Meeting terminated at 11.30am)

Dated this

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**Chairman**

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At a Meeting of the **DEVELOPMENT MANAGEMENT & LICENSING COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **17<sup>th</sup>** day of **OCTOBER 2017** at **10.00am**

**Present:** Cllr P R Sanders – Chairman  
Cllr A Roberts – Vice-Chairman

Cllr R E Baldwin	Cllr W G Cann OBE
Cllr L J G Hockridge	Cllr C Mott
Cllr D E Moyse	Cllr G Parker
Cllr T G Pearce	Cllr J Yelland

COP Lead Development Management (PW)  
Planning Specialist (MJ)  
Solicitor (SN)  
Specialist Democratic Services (KT)

**In attendance:** Cllr J Evans, B Lamb, T Leech

**\*DM&L 25 DECLARATION OF INTEREST**

Members were invited to declare any interests in the items of business to be considered and the following were made:

Cllr T G Pearce declared a personal interest in all applications, by virtue of being a Member of the Devon Building Control Partnership. He remained in the meeting and took part in the debate and vote on each item.

**\*DM&L 26 URGENT BUSINESS**

The Chairman advised that application **4161/16/OPA**: Outline planning application with all matters reserved for construction of 4 dwellings – Land at SX516892, opposite Springfield Park, Bridestowe was deferred from this meeting for further information and would be presented to the Committee on a later date.

**\*DM&L 27 CONFIRMATION OF MINUTES**

The Minutes of the Development Management and Licensing Committee Meeting held on 19 September 2017 were confirmed and signed by the Chairman as a correct record.

**\*DM&L 28 PLANNING PERFORMANCE INDICATORS**

The COP Lead Development Management presented the latest set of Performance Indicators and outlined the key information for Members consideration. Members discussed the information presented in respect of pre-apps and the Cop Lead advised that discussions were ongoing with agents in respect of the structure of pre-app fees.

**\*DM&L 29 PLANNING, LISTED BUILDING, TREE PRESERVATION ORDER AND ENFORCEMENT REPORTS**

The Committee considered the applications prepared by the Development Management Specialists and considered also the comments of Town and Parish Councils together with other representations received, which were listed within the presented agenda reports and summarised below, and **RESOLVED**:

**(a) Application No: 2789/17/VAR Ward: Tavistock South West**

**Site Address: Land adjacent to Brook Farm, Brook Lane, Tavistock**

Variation of condition 4 (approved plans) of planning consent APP/Q1153/W/15/3131710(00233/2015) for 23no. dwellings with associated access road, parking and external works

Speakers included: Objector – Ms Helen McShane: Supporter – Mr Ed Perse: Ward Member – Cllr Jess Evans

**RECOMMENDATION:** That delegated authority be given to the CoP Lead in consultation with the Chairman of the Committee to approve the application subject to the conditions listed below and the prior satisfactory completion of a Section 106 Agreement Deed of Variation

However, in the event that the Section 106 legal agreement remains unsigned six months after this resolution, that the application is reviewed by the CoP Lead, in consultation with the Chairman of the Committee, and if no progress is being made delegated authority is given to the CoP Lead to refuse the application in the absence of an agreed s106 Agreement.

In presenting this application, the Case Officer outlined the background in that planning permission had been granted at appeal, and the Inspector had included some plans but not a site location plan. The intention of the application was to remove the condition that sought approval in line with the existing plans and replacing with a condition that sought approval of the permission in accordance with a Site Location Plan that would enable control of all reserved matters to rest with the local planning authority. The Solicitor confirmed that the applicant was entitled to submit a section 73 application to the local planning authority.

The officers responded to a number of detailed questions regarding this application.

In her address to Committee, one of the local Ward Members commented that the s73 application may have arisen at this late stage because the developer was having difficulty in fitting the number of houses on the site. She asked that the Committee refuse the application and that the developer be encouraged to sit down with residents and work with them to find a successful, non-contentious design.

During debate, Members were concerned at the implication of removing a condition applied by a Planning Inspector. The Solicitor reiterated that Members were not being asked to re-determine the Planning Inspector

decision and that they were able to determine the application presented to them today.

It was then **PROPOSED, SECONDED** and on being put to the vote declared **LOST** that the application be **APPROVED**, for the following reasons:

Consideration of scale as set out in drawings 1319 PL01D and PL02 is an important and integral part of the permission for the reasons set out in para 24 and 26 of the Inspector's decision letter.

A Member then **PROPOSED** refusal of the application which was **SECONDED** and on being put to the vote declared **CARRIED** that the application be refused.

**COMMITTEE DECISION:** Refusal

**\*DM&L 30 PLANNING APPEALS UPDATE**

The Committee received and noted the updated list of Planning Appeals including enforcement appeals. The CoP Lead Development Management advised that he had received a response from the Planning Inspector to a letter sent at the Committee's request querying a recent appeal decision. The letter would be circulated to all Members in due course.

(The Meeting terminated at 11.30am)

Dated this

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**Chairman**

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At a Meeting of the **HUB COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **31<sup>st</sup>** day of **OCTOBER, 2017** at **12.30pm**

**Present:** Cllr P R Sanders – Chairman

Cllr C Edmonds	Cllr N Jory
Cllr J B Moody	Cllr C Mott
Cllr R Oxborough	Cllr G Parker
Cllr R F D Sampson	Cllr L Samuel

**In attendance:** Executive Director (Strategy and Commissioning)  
Executive Director (Service Delivery and Commercial Development)  
Section 151 Officer  
Deputy Section 151 Officer  
Group Manager Business Development  
CoP Lead Assets  
Specialist Democratic Services

**Other Members in attendance:**

Cllrs Cheadle, Cloke, Evans, Lamb, Leech, Moyse, Musgrave, Pearce, Roberts and Sheldon

**\*HC 29 APOLOGIES FOR ABSENCE**

There were no apologies for absence received for this meeting.

**\*HC 30 DECLARATIONS OF INTEREST**

Members were invited to declare any interests in the items of business to be discussed and the following were made:

Cllrs P R Sanders and J B Moody both declared a personal interest in Item 8: 'Meadowlands Leisure Centre – Legal Decision' (Minute \*HC 35 below refers), by virtue of being Members of Tavistock Town Council and they did not take part in the debate and vote on this item.

**\*HC 31 MINUTES**

The Minutes of the Hub Committee meeting held on 12 September 2017 were confirmed and signed by the Chairman as a correct record.

**HC 32 FORMATION OF A COMMUNITY LOTTERY FOR WEST DEVON AND SOUTH HAMS**

Members were presented with a report that set out the proposal to implement a joint local community lottery scheme to benefit the residents of West Devon and South Hams. The scheme would be shared across both areas to widen the appeal of the lottery and reach a wider audience of participating good causes and supporters/ticket buyers. A shared scheme recognised that the councils had a shared workforce and supported many of the same Voluntary and Community Sector (VCS) groups.

The Lead Member for Assets, who was also a member of the Invest to Earn Working Group, presented the proposal and introduced Cllr Derek Town and Caroline Wheller, Corporate Commercial Strategy Manager from Aylesbury

Vale District Council who responded to a number of questions and provided more detail on the financial aspects of the scheme.

Members discussed the proposal and could see the benefits of the scheme as a way of supporting local charitable organisations and an opportunity to do something for the community.

It was then **RESOLVED** that Council be **RECOMMENDED** to:

- 1) APPROVE & IMPLEMENT the proposed business case for the establishment of a joint West Devon and South Hams local community lottery scheme (subject to approval from South Hams District Council);
- 2) Appoint Gatherwell Ltd as an External Lottery Manager (ELM) & Aylesbury Vale District Council (AVDC) to assist with project implementation (subject to a successful Contract Exemption application);
- 3) Delegate to the Head of Paid Service to nominate two officers to be responsible for holding the Council's lottery licence and submit the necessary application to the Gambling Commission; and
- 4) Delegate to the Group Manager, Business Development in consultation with the Assets portfolio holder to approve the bespoke lottery business model policies required in order to submit a valid application to the Gambling Commission to obtain a lottery licence.

#### \*HC 33

#### **MEDIUM TERM FINANCIAL POSITION**

Members were presented with a report that set out the Council's Medium Term Financial Position, based on a financial forecast over a rolling five year timeframe to 2022/23.

The Leader introduced the report. The Leader and Section 151 Officer responded to a number of detailed questions. During discussion, the Lead Member for Economy **PROPOSED** an addition to the presented recommendation and this was **SECONDED** and on being put to the vote declared **CARRIED**, to the effect that a Working Group of Members and officers should look at further options to close the budget gap such as potential investments and to examine the extent to which statutory services are delivered and current staffing levels..

It was then **RESOLVED** that:

1. The contents of the Member survey on the Budget Options attached at Exempt appendix D had been considered; and
2. Officers undertake further work in order to set the Budget for 2018-19 in accordance with the comments in presented exempt Appendix D, to include convening a Member/officer group to examine the extent to which statutory services are delivered and current staffing levels.



**\*HC 34**

**WRITE OFF REPORT**

The Portfolio Holder for Support Services introduced a report that informed Members of the debt written off for revenue streams within the Revenue and Benefits service. Debts up to the value of £5,000 were written off by the s151 Officer under delegated authority. Permission was sought to write off individual debts with a value of more than £5,000. In respect of the debts with a value of more than £5,000, Members were advised of how they had arisen.

In introducing the report, he advised that the second recommendation was included by error, and should be deleted. He also advised Members that a Strategic Debt Recovery team was now in place and he would have regular meetings with them.

It was then **RESOLVED**:

That, in accordance with Financial Regulations, that the s151 Officer had authorised the write-off of individual West Devon Borough Council debts totalling £114,989.98 as detailed in Tables 1 and 2 be noted.

**\*HC 35**

**MEADOWLANDS LEISURE CENTRE – LEGAL DECISION**

Members were presented with a report that set out the latest position on the negotiations and terms of the legal agreements with Meadowlands Pool, between Tavistock Town Council (TTC) and West Devon Borough Council (WDBC) having reached the stage where a decision needs to be made as to whether to enter into them or not.

The Lead Member for Assets introduced the report and set out the background. In doing so, he advised that progress had been made on the discussions and he **PROPOSED** an amendment to the presented recommendation 2 which was subsequently **SECONDED** and on being put to the vote declared **CARRIED**. In response to questions he made clear to Members that nobody had been unreasonable, but rather that both TTC and WDBC were both following their own legal advice.

It was then **RESOLVED** that:

1. the Council continue to try and hold political discussions for the next 30 days and then;
2. having considered the report and risks comparison, authority be delegated to the CoP Lead Assets in consultation with the Head of Paid Service and Lead Member for Assets, to enter into the legal agreements as drafted (or as may be revised during further negotiations with TTC), recognising that in the event of a breach by WD and TTC enforcing the terms of the agreements, WD would have to give up possession of the land, and bear the cost of the demolition of the Meadowlands Leisure Centre.

(NOTE. Cllrs J B Moody and P R Sanders abstained from the vote on this item).

**\*HC 36**

**INSURANCE CONTRACT**

Members were presented with a report that sought authority to delegate award of the Council's Insurance contract to the s151 Officer, in consultation

with the Leader and Lead Member for Support Services. The existing contract was due to expire on 31 December 2017.

The Lead Member for Support Services introduced the report.

It was then **RESOLVED** that:

1. The progress of the procurement be noted; and
2. Authority to award the Insurance contract for a period of 3 years from 1 January 2018 with the option to extend up to 4 further years be delegated to the s151 officer in consultation with the Leader and Lead Member for Support Services.

**\*HC 37**

**REQUEST FOR GRANT OF A LONG LEASE**

*(Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information))*

Members were presented with an exempt report that sought approval to conclude detailed negotiations of a long lease for a term in excess of 15 years, or freehold disposal of land.

It was then **RESOLVED** that authority be delegated to the CoP Lead Assets in consultation with the s151 Officer and Leader of Council to conclude either a freehold or a long-leasehold disposal (for a term in excess of 15 years) to Devon County Council, of a small parcel of land as detailed within the presented report.

(The meeting terminated at 2.40 pm)

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Chairman

Report to: **Council**

Date: **5 December 2017**

Title: **Commercial Property Acquisition Strategy Update**

Portfolio Area: **Cllr Philip Sanders, Leader of the Council, Strategy & Commissioning**

Wards Affected: **All**

Relevant Scrutiny Committee: **Overview & Scrutiny Committee**

Date next steps can be taken: **Immediately following this Meeting**

Authors: Invest to Earn Working Group, Members:  
**Cllrs Baldwin, Edmonds & Jory**  
**Darren Arulvasagam,**  
Group Manager, Business Development  
[Darren.Arulvasagam@swdevon.gov.uk](mailto:Darren.Arulvasagam@swdevon.gov.uk)

## **Recommendations:**

That Council:

1. **APPROVE & IMPLEMENT** the updated commercial property acquisition strategy as detailed in Appendix A; and
2. **BORROW** funds on fixed rate terms from the appropriate source in order to pursue this strategy. To complete tranche 1 this would require total borrowing of up to £37.45m (£35m plus acquisition costs of 7%).

### **1.0 Executive Summary**

- 1.1 On 25<sup>th</sup> July 2017 Council approved the recommendations of a report entitled "Commercial Property Investment". This agreed borrowing of up to £26.75m to implement the strategy that was adopted.
- 1.2 This report seeks to update Members on that decision and recommends updating the strategy and increasing the size of tranche 1 by £10m, plus the associated acquisition costs.
- 1.3 It is not proposed that the adopted strategy's upper spend limit of £75m is updated. Appendix A shows the recommended changes made to the adopted strategy. Appendix B shows the financial implications of this change.
- 1.4 No purchases have been completed to date. A number of opportunities have been considered by officers and the 'Invest to Earn' group. It has become apparent that in order to secure a property, increased flexibility would be beneficial – the changes proposed seek to provide this flexibility.
- 1.5 The Council is currently forecasting a £0.7m budget gap by 2020/21 as detailed in the Medium Term Financial Position which was reported to Hub Committee on 28<sup>th</sup> November. This has been reduced from the previous figure quoted of £1.1m, due to the savings and income generation initiatives which were identified at the Members' Budget Workshop held in October 2017. An income

target of £200,000 from commercial property acquisitions has been built into the 2018/19 Base Budget. This represents roughly half of the anticipated income from a full £25 million commercial property acquisition portfolio. This income target will be revised as and when commercial property opportunities are realised.

- 1.6 The objective of this strategy is unchanged: generate revenue streams to contribute to the financial sustainability of the Council, enabling it to continue to deliver, and where possible improve, frontline services.
- 1.7 Regeneration efforts within the Borough can be funded from revenue generated by the implementation of the strategy. It will be necessary for officers to continuously review on a case by case basis areas within the Borough which can benefit from the revenue generated from the acquisition of properties.
- 1.8 Revenue generation will be achieved by the focussed acquisition of commercial property assets using predominantly prudential borrowing or any other unallocated or available Council reserve or capital receipt.
- 1.9 Income from this strategy is designed to contribute closing the Council's predicted budget shortfall from 2018/19.
- 1.10 It is important to note that the elected 'Invest to Earn' working group will consider each and every acquisition on its own merits. Building a balanced property portfolio conforming to the proposed strategy could take up to two years. If approved, the Council will implement this strategy with the aid of commissioned property experts, whose costs are included within the financial projections.
- 1.11 Portfolio performance will be closely monitored by the 'Invest to Earn' working group and the Council's Senior Leadership Team. It is also proposed that portfolio performance will be reported to the Council's Audit Committee on a quarterly basis.
- 1.12 The proposed strategy and/or implementation could be updated or ceased at any point prior to the full acquisition budget being expended, if Members determine that market conditions have deteriorated enough to make it financially unattractive. The 'Invest to Earn' working group retain the right to review the acquisition strategy at any time.

## 2. **Background**

- 2.1 On 25<sup>th</sup> July 2017 Council approved the recommendations of a report entitled "Commercial Property Investment". This agreed borrowing of up to £26.75m to implement the first tranche of the adopted Commercial Property Acquisition Strategy.
- 2.2 This report seeks to update Members on that decision and recommends updating the strategy and increasing the size of the first tranche by £10m, plus the associated acquisition costs.
- 2.3 It is not proposed that the adopted strategy's upper spend limit of £75m is updated. Appendix A shows the recommended changes

to the adopted strategy. Appendix B shows the financial implications of this change.

### **3.0 Commercial Property Acquisition**

- 3.1 The Member 'Invest to Earn' working group have reviewed a number of potential acquisitions since the strategy was adopted in July. A purchase has not been possible thus far either due to timescales or properties falling slightly outside the criteria of the adopted strategy.
- 3.2 Many of the most recently reviewed properties have been just out of reach, with lot sizes ranging from £26m - £32m. The revised strategy would enable the Council to consider these opportunities.
- 3.3 It is the intention of this report to increase the flexibility of the strategy, allowing each acquisition to be considered on its own merit.
- 3.4 The upper limit for the overall strategy remains unchanged. This envisages the Council increasing its borrowing to £80.25m to acquire £75m in commercial property, plus a further 7% of that sum (£5.25m) to cover related acquisition costs, in order to build a commercial property portfolio within 24 months.
- 3.5 Originally, the intention was that this strategy would be split into three equal tranches, with the first tranche of spend totalling £25m plus acquisition costs. Subsequent tranches would be approved once Members were satisfied with the success of the strategy.
- 3.6 However, this report recommends that the first tranche budget amount is increased from £25m to £35m. This flexibility will enable the group to consider a wider number of properties.
- 3.7 Whilst there has been wide press coverage that local authority commercial property acquisition may lead to changes in regulations, this has yet to materialise. It is therefore the intention of the 'Invest to Earn' group to continue to seek acquisitions as a means towards closing the predicted budget gap.
- 3.8 The adopted strategy is shown in Appendix A and this shows the updates designed to increase the flexibility of the strategy. All other elements are to remain as per the current strategy (i.e. delegations / governance arrangements). Appendix B shows the financial implications of this change.
- 3.9 Following the budget workshop, held on October 10<sup>th</sup> 2017, a Member survey was undertaken to understand Member appetite for its commercial property acquisition strategy. 17 elected Members participated in the survey. Of those:
  - 3.9.1 53% said the Council should acquire £25m of commercial property portfolio to sustain the Council's revenue position
  - 3.9.2 24% said the Council should acquire £50m
  - 3.9.3 12% said the Council should acquire £75m

- 3.9.4 The remainder chose "other", but did not go on to state what.
- 3.10 These findings suggest that there is support for the strategy both in its current form and in an expanded format.

#### 4.0 **Options available and consideration of risk**

- 4.1. The Council will not be able to fund its forecast budget deficit through normal efficiency savings or transformation alone, nor is continuous service reduction a realistic option. Therefore, other methods of income generation must be considered as an alternative strategy.
- 4.2. This property acquisition strategy identifies an alternative source of income that could deliver a major share of the required savings. It must be understood that this strategy's principal purpose is not to drive regeneration in West Devon, rather it is income focussed, identifying properties from anywhere in the country that deliver the returns which can be used to help take forward regeneration and contribute to the delivery of other Council priorities.
- 4.3. It must be noted that alternative efficiencies and sources of income still need to be identified to close the Council's budget gap. If pursued, this recommendation presents the Council with significant achievable revenue streams in-year, whereas other opportunities will take longer to realise and are not solely capable of achieving the required quantum.
- 4.4. Property acquisition is a dynamic area which generally does not sit well with traditional officer, committee and Council meeting schedules and structures. Decisions often need to be made quickly otherwise opportunities can be missed. Research shows that where Councils undertake this activity, there is an increasing level of delegation, enabling them to move quickly when properties come to the market.
- 4.5. This report recommends that decisions are delegated to the Head of Paid Service, in line with the strategy detailed in Appendix A.
- 4.6. The current strategy has reduced the flexibility afforded to the 'Invest to Earn' group and this update seeks to address this.
- 4.7. Members could opt to follow, amend or reject the recommendations.
- 4.8. The strategy looks to mitigate risks by setting specific criteria for purchases and necessary due diligence must be completed before officers and the 'Invest to Earn' group recommend any purchase.
- 4.9. The Council cannot remove all risk from this strategy, but the strategy is built in such a way to mitigate the risk as much as possible.
- 4.10. The strategy and business plan allow for the costs needed to acquire and manage the portfolio, e.g. acquisition, disposal, maintenance and management.

- 4.11. A revised Treasury Management Strategy is on this agenda for approval if this report's recommendations are approved.

### Proposed Way Forward

- 5.1 It is proposed that if the Council approve this report's recommendations, the new strategy will be adopted immediately. Property specialists have already been commissioned to work on behalf of the Council in relation to the adopted strategy. As and when suitable properties have been sourced, the 'Invest to Earn' group will convene to appraise the available options and recommend action to the delegated parties (as described in Appendix A).

### 6.0 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/ Governance	Y	<p>Advice on the relevant powers and appropriate vehicles for delivering these proposals has been sought from external specialist advisers and legal counsel. Legal counsel opinion has been obtained which sets out the various powers available to the Council, which supports the Council's proposed strategy as described in this report.</p> <p>This proposal is consistent with the Council's powers to borrow and invest under the Local Government Act 2003 and section 1 Localism Act 2011 (the general power of competence) and / or section 120 Local Government Act 1972 (power to acquire land).</p> <p>The Council is empowered to buy pursuant to section 120 of the Local Government Act 1972. Section 1 of the Local Government Act 2003 provides a power to the Council to borrow for the purposes of any enactment.</p> <p>Disposal of any of the acquired properties will have to be undertaken in accordance with the provisions of section 123 Local Government Act 1972.</p> <p>In order to lawfully implement the acquisition strategy, each proposal (including the funding strategy for purchases) should be reviewed as part of a decision to purchase or sell, and tested for value for money, and regulatory compliance.</p> <p>There is an overriding duty toward prudent management of risk, and officers, including the Council's section 151 officer owe a fiduciary duty in relation to given transactions.</p> <p>Given the limited nature of the proposals, the current levels do not suggest that the Council is engaged in commercial work, though this matter will be reviewed as the implementation of this strategy develops before any increase to the approved borrowing level and trading of acquired assets takes place. Concluding that the strategy is commercial work would necessitate conducting business through a separate company.</p>
Financial	Y	<p>The Council will purchase assets directly on balance sheet and therefore the direct costs of purchase and acquisition can be capitalised. This will include costs such as stamp duty, legal fees, due diligence and agency fees.</p> <p>When individual purchase decisions are made, a bespoke business case will be produced alongside a package of due diligence information to</p>

		<p>support the decision making process. The delegated authorities approving a purchase will need to be satisfied that any proposed acquisition not only delivers best value but also meets the criteria contained within the Commercial Property Acquisition Strategy and has proper regard to the following:</p> <ul style="list-style-type: none"> <li>• The relevant capital and revenue costs and income resulting from the properties over the whole life of the asset(s).</li> <li>• The extent to which the property is expected to deliver a secure ongoing income stream.</li> <li>• The level of expected return on the amount spent.</li> <li>• The payback period of the capital expended.</li> </ul> <p>Part of the business case for each commercial property acquisition will be an assessment of the Internal Rate of Return (IRR) calculation.</p> <p>Any PWLB borrowing to fund the acquisition of commercial property is not secured on the property acquired.</p> <p>PWLB borrowing rates are fixed for the term of the loan. Individual borrowing decisions will be taken prudently in line with the Council's treasury management strategy and by officers within that function. The Council will not exceed its affordable borrowing limit to implement this strategy.</p> <p>The Council has adopted the CIPFA Code Of Practice for Treasury Management and produces an Annual Treasury Management Strategy and Investment Strategy in accordance with CIPFA guidelines. If this report's recommendations are approved, a revised Treasury Management Strategy will be presented to Council before this strategy is implemented.</p> <p>If successful, the proposed Commercial Property Acquisition Strategy has the potential to make a significant contribution to the current predicted cumulative budget gap for the Council. A £35m commercial property portfolio could deliver a net surplus of £520,000 per annum, as set out in Appendix B of this report.</p> <p>A revised Treasury Management strategy will be required to progress the recommendations of this report – this is also being considered on this Council agenda.</p> <p>Investment interest income is reported quarterly to SLT and Hub.</p>
Risk	Y	<p>The security risk is that the capital value of an acquired property falls. Whilst this would have an effect on the Council's balance sheet, this loss will only be realised if the Council chooses to sell the property and incurs a capital loss. The liquidity risk is the risk of failure of a tenant within one of the acquired properties.</p> <p>The yield risk is that the income derived from the acquired assets will alter during the life of the asset. This will be actively managed; with specialist agents commissioned to manage the asset and its tenants. Properties will only be acquired if they have a minimum of 5 years unexpired lease term and are located in areas deemed to be attractive for future lettings / sales, limiting the risk to the Council's portfolio.</p> <p>The Council already owns and operates a property estate valued at c.£20m. It therefore has experience of managing such an estate and can act as an intelligent client to fulfil the proposed strategy, with the aid of commissioned property experts. The cost of these experts has been included in the financial projections from this strategy.</p>
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	N	Not Applicable



Safeguarding	N	Not Applicable
Community Safety, Crime and Disorder	N	Not Applicable
Health, Safety and Wellbeing	N	Not Applicable
Other implications	N	Not Applicable

### **Supporting Information**

#### **Appendices:**

Appendix A - Commercial Property Acquisition Strategy & Criteria  
(showing updates to the previously adopted strategy)

Appendix B - Indicative Financial Projections & Borrowing Costs

#### **Background Papers:**

- Investment in Commercial Property, presented to Council July 25<sup>th</sup> 2017
- Investment in Commercial Property, presented to Hub Committee June 20<sup>th</sup> 2017
- Investment in Commercial Property, presented to Hub Committee March 28<sup>th</sup> 2017
- MTFP, presented to Hub Committee October 31<sup>st</sup> 2017
- Treasury Management Strategy, presented to Council July 25<sup>th</sup> 2017

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## Appendix A – WDBC Commercial Property Acquisition Strategy & Criteria

### Overall Objective:

Increase revenue streams to contribute to the financial sustainability of Council, enabling it to continue to deliver and/or improve frontline services in line with adopted strategy & objectives.

This will be achieved by the focussed acquisition of existing commercial property assets using predominantly prudential borrowing or any other unallocated or available Council reserve or capital receipt.

[The strategy criteria below are based on an overall spend profile of £75m + costs, recognising that approval has only been granted for an initial tranche of £35m.](#)

### Strategy

- Acquire commercial properties to provide rental income with a minimum gross yield of 5.85% across the portfolio (once complete)
- Achieve a spread of risk across a greater number of assets and by acquiring properties across the range of different property asset classes, namely retail, ~~leisure~~, office, industrial or alternative (e.g. leisure, health, ~~PRS~~private rented sector, energy)
- Properties will be acquired to hold for the short to medium term rather than to dispose
- ~~The Council will operate independently – The Council is not reliant on another Council to progress with this strategy~~
- The Council will acquire properties so that the portfolio's net revenue receipt delivers sufficient income to fund the initiative and make a significant contribution to the Council's forecast budget gap ~~(with the potential to meet the budget gap)~~
- Acquisition costs are forecast not to exceed 7% (Stamp Duty Land Tax (SDLT) / Legal / Agents / Due Diligence). These services are to be commissioned via a procurement exercise.
- Management of the acquired assets will be outsourced to property professionals where appropriate. The cost of this management ~~will~~is to be included within the target return
- The legal work required to complete transactions ~~is to~~may be outsourced
- Specialists will be commissioned to act on behalf of the Council to source suitable properties and manage the acquisition due diligence process

### Risk

- The risks of acquiring property may be mitigated through the acquisition of assets with secure, long income streams
- This needs to be balanced against the requirement for a given level of income yield from acquisitions made in a careful and controlled manner, with specific analysis of risk criteria carried out in the 'due diligence' stage prior to the completion of each purchase
- Should the portfolio yield drop below 5.85%, a review of the strategy will be triggered
- The portfolio of properties being acquired should be diversified in order to spread risks via a balanced portfolio, such diversification principally being across geographical locations and the use type of properties

- The portfolio will be relatively risk-averse, when appropriate, limiting fresh acquisitions to properties with minimum unexpired lease terms of ~~five~~four years at the date of acquisition, and tenants of strong financial standing

The final decision over the definition of “strong”, “spread”, “balanced”, “well-let” and “sound” will be agreed between the property acquisition advisers (including legal due diligence) and the individuals delegated with the responsibility to conclude the acquisition of the properties. This discretion will be based on both the risk to the capital value of the asset and its revenue returns.

***Initially, acquisition decisions will be taken as long as they fit within the below criteria:***

#### **Location:**

- Neutral – wherever opportunities arise in order to quickly acquire good properties which deliver the minimum prescribed yield and are deemed an acceptable risk
- In order to not over expose the Council to one particular geographical area, properties outside of the Council’s area will be favoured
- As the portfolio gets larger, a mix of locations will be sought to create a balanced portfolio
- ~~A maximum exposure of 25% per location is sought once the total strategy budget is exhausted~~
- Good, commercially strong locations to protect capital value and ensure ongoing occupier demand. E.g. for retail – good out-of-town retail clusters/parks; for offices – close to transport infrastructure and catchment for employees; for industrial – close to major road / rail hubs

#### **Sector:**

- Neutral – Wherever opportunities arise in order to quickly acquire good properties which deliver the minimum prescribed yield and are deemed an acceptable risk
- As the portfolio gets larger, a mix of sectors will be sought to create a balanced portfolio
- ~~A maximum exposure of 25% to one sector will be sought once the total strategy budget is exhausted~~

#### **Tenant mix:**

- As the portfolio gets larger, a mix of tenants will be sought to create a balanced portfolio
- ~~A maximum exposure of 15% to one tenant will be sought once the total strategy budget is exhausted~~
- The final decision over the appropriateness of any tenant would be reviewed at the time of acquisition

#### **Lease length:**

- Minimum ~~5~~4 years unexpired (mean unexpired term for multi-let properties)
- Unless ~~in exceptional circumstances (e.g. the property is being purchased with a view to redevelopment or the property is located in a prime location),~~ or let to a strong covenant, single-let properties will not be favoured
- For multi-let properties, a mix of lease expiry dates are preferred, thereby limiting void risk (unless the property is purchased with a view to re-development)
- Properties are to be well-let to sound tenants on leases with a preference for ‘Full Repairing and Insuring’ leases for single occupiers and through internal repair obligations and a service charge for multi-let properties
- ~~The final decision over the definition of “well-let” and “sound” will be agreed between the property acquisition advisers (including legal due diligence) and the individuals delegated with~~

~~the responsibility to conclude the acquisition of the properties. This decision will be based on both the risk to the capital value of the asset and its revenue returns~~

**Yield:**

- Per lot, a minimum gross yield of 4.0% will be sought, before management, maintenance and funding costs
- A maximum gross yield in excess of 11% will not normally be sought
- As the portfolio gets larger, a mix of yields will be sought to create a balanced portfolio
- The overall portfolio will have a target balanced portfolio yield of 5.85%

**Cost:**

- ~~Individual lot sizes of up to £15m~~
- Larger lot sizes are favoured - smaller size properties have disproportionately higher management costs and expose the Council to greater property void risks
- All acquisitions will normally be subject to a minimum lot size of ~~£3m~~£2m

**For all of the above, flexibility of +/- 15% (relative to the measure) is allowable in order to conclude a deal without recourse to reviewing the terms of this strategy. The overall budget for acquisitions is not subject to this flexibility.**

**Funding:**

- This is to be secured on a case by case basis on the most favourable terms available predominantly through prudential borrowing or any other unallocated or available Council reserve or capital receipt
- The term will not exceed the expected remaining life of the property, but as a rule, the Council wishes to secure borrowing over a maximum 50 year term
- The Council will opt to borrow monies on the most commercially advantageous terms, seeking advice from its retained Treasury Management Advisors

**Exit Strategy:**

- The Council is acquiring to hold for the short to medium term. It is not looking to actively trade commercial property in this timeframe
- If capital values determine that the most prudent action is to sell an individual asset, this will be considered on a case by case basis and will be acted upon in consultation with the 'Invest to Earn' group Chair, Leader, S151 officer and Head of Paid Service
- It is proposed that all properties will be held as Council Assets. This may change if the Council were to set-up an arms-length management organisation (ALMO) or trading company and it was found to be commercially advantageous for such a vehicle to hold the asset
- It is important to note that there would be early repayment charges if the loan used to acquire the commercial property were to be repaid before the end of the loan term. However, Public Works Loan Board (PWLB) lending is not secured against property, so this would not inhibit the asset being traded during the loan period. An alternative asset would need to be purchased (& held) with any sale proceeds

**Tax Implications:**

- Due to the Council holding the asset, it is not anticipated that there will be any corporation tax or income tax implications from this strategy
- Some properties may be VAT elected, meaning VAT must be charged to tenants. This will be dealt with on a case by case basis and will be covered by the due diligence connected with that acquisition. The Council is able to charge and recover VAT
- Capital Gains Tax would not apply to assets sold from Council ownership. This position may change if a company were to be used to hold the acquired asset

**Governance Arrangements:*****Purchase***

Purchases must conform to the adopted commercial property acquisition strategy. Any deviation from the agreed strategy (beyond the flexibility parameters) will require Council approval.

Delegated authority to be given to the Head of Paid Service, in consultation with the S151 officer and Leader and Chair of the 'Invest to Earn' group. Each receive one vote to proceed with purchase. In the event of a split decision, the S151 officer has the casting vote. Only purchases which are in line with the agreed strategy will be considered by this group. The 'Invest to Earn' group will determine its chair and will receive details of potential purchases from the Assets CoP. They will vote on whether to bring a potential purchase decision to the Head of Paid Service.

***Running / Review***

Assets to be managed by a contracted third party initially, with overview by Assets CoP, Group Manager, Business Development and the S151 officer. Invest to Earn group to receive regular reporting to confirm portfolio composition and performance. Regular reporting to Audit Committee.

***Disposal***

Once acquired, decisions relating to the ownership of any acquired properties will be dealt with in-line with the Council's constituted scheme of delegation.

Disposal will be considered if the portfolio breaches the approved strategy. Decisions to be made in consultation with the 'Invest to Earn' group Chair, Leader, S151 officer and Head of Paid Service.

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## Appendix B – Indicative Financial Projections & Borrowing Costs

Based on information available at the time of writing (November 2017), below is a breakdown of how an acquisition fund of £75m plus acquisition costs can derive c£1m of revenue after costs to support the financial sustainability of the Council. The proceeds from the first tranche of £35m are also shown.

	Original 1st Tranche Investment	Updated 1st Tranche Investment	Entire Investment
<b>Capital Investment</b>	<b>25,000,000</b>	<b>35,000,000</b>	<b>75,000,000</b>
Acquisition fees @ 7%	1,750,000	2,450,000	5,250,000
<b>Total Borrowing / Expenditure</b>	<b>26,750,000</b>	<b>37,450,000</b>	<b>80,250,000</b>

<b>Borrowing</b>			
Term (Years)	50	50	50
Annuity PWLB Loan Interest Rate % @ 23/11/17	2.66	2.66	2.66
<b>Interest Payments pa</b>	<b>711,550</b>	<b>996,170</b>	<b>2,134,650</b>

<b>Profit &amp; Loss Example (Income less Costs)</b>			
Target Portfolio Yield %	5.85	5.85	5.85
<b>Rent Receivable (Yield x Investment) pa</b>	<b>1,462,500</b>	<b>2,047,500</b>	<b>4,387,500</b>
Interest Payments pa	(711,550)	(996,170)	(2,134,650)
Management costs @ 3% of Rent Receivable	(43,875)	(61,425)	(131,625)
Sinking fund @ 5% of Rent Receivable	(73,125)	(102,375)	(219,375)
<b>Surplus Generated (before MRP*) pa</b>	<b>633,950</b>	<b>887,530</b>	<b>1,901,850</b>
Annuity Minimum Revenue Provision (MRP)	(261,995)	(366,793)	(785,985)
<b>Surplus (After Annuity MRP*) pa</b>	<b>371,955</b>	<b>520,737</b>	<b>1,115,865</b>

### Sensitivity analysis in change in gross rental income

The business plan identifies a target gross rental yield of 5.85%, which if achieved would generate £1.9m per annum in income after costs, but before MRP. The table below shows the impact a change in the gross income yield could have on the annual income estimates:

Sensitivity Analysis	£25m	£35m	£75m
Change in income yield 0.5%	£ 125,000	£ 175,000	£ 375,000
Change in income yield 1.0%	£ 250,000	£ 350,000	£ 750,000
Change in income yield 1.5%	£ 375,000	£ 525,000	£ 1,125,000
Change in income yield 2.0%	£ 500,000	£ 700,000	£ 1,500,000
Change in income yield 2.5%	£ 625,000	£ 875,000	£ 1,875,000

For example, if the income yield were to increase from 5.85% to 6.85% (an increase of 1%), this would generate additional income of £350,000 per annum on a £35m portfolio. A reduction in yield would have the opposite effect.

### Sensitivity Analysis on the Surplus Generated

A sensitivity scenario analysis is shown in the table below to illustrate the effect that the yield has on the return achievable from the portfolio – assuming an acquisition fund of the full £75m or the updated tranche 1 acquisition fund of £35m. This highlights that the portfolio needs active management and care in choosing the right acquisitions to ensure the minimum yield is achieved.

All of the figures below are based on the annuity MRP treatment shown above, providing either £785,985 (for the £75m acquisition fund) or £366,793 (for the £35m acquisition fund) of MRP in year one. The provision for the repayment of borrowing (level of MRP) would increase year on year.

<b>Portfolio Size</b>	<b>25,000,000</b>	<b>35,000,000</b>	<b>75,000,000</b>
<i>Projected Annual Surplus @ 5.85%</i>	371,955	520,737	1,115,865
Projected Annual Surplus @ 4.00%	-90,545	-126,763	-271,635
Projected Annual Surplus @ 4.50%	34,455	48,237	103,365
Projected Annual Surplus @ 5.00%	159,455	223,237	478,365
Projected Annual Surplus @ 5.50%	284,455	398,237	<b>853,365</b>
Projected Annual Surplus @ 6.00%	409,455	573,237	<b>1,228,365</b>
Projected Annual Surplus @ 5.297%	233,705	327,187	<b>701,115</b>
<i>Breakeven: Projected Annual Surplus @ 4.36%</i>	205	287	615

### **Breakeven**

A minimum yield of 4.363% is required in order for the £75m acquisition fund to breakeven in year one, i.e. cover the cost of loan repayments, the alternate Minimum Revenue Provision, the sinking fund for maintenance and the expected management / administration costs.

### **Indicative Borrowing Financial Implications**

The Council will consider a number of factors when assessing how much the Council will borrow to finance the commercial property strategy. It is likely that the majority of the commercial property acquisition strategy will be funded via Public Works Loan Board (PWLB) borrowing.

When assessing affordability, the Council will consider the annual cost of financing the acquisitions, the income generated, the costs of running and maintaining the property and the factors that could potentially affect the net income to the Council (which is needed to repay the financing costs of the proposed property acquisitions of £35m or £75m).

Council officers who have responsibility for treasury management will, in consultation with the S151 officer, determine the most appropriate product(s) for the Council's borrowing requirements. There are a number of options available to them and they will be advised by the Council's treasury management advisors and guided by the Council's adopted treasury management strategy and CIPFA regulations.

### **Percentage Increase in Council Tax**

It is clear that a significant reduction in rental income (a yield below 4.363%) would result in a revenue budget deficit being created. If the Council did not have the available budget surplus to cover this additional cost, it may be forced to cut expenditure or increase Council tax to cover the deficit. The table below shows the impact on Council Tax and the additional income that a % increase in Council Tax generates (using the existing Council Tax base).

<b>Impact on Council Tax</b>	<b>£</b>
Increase of 1.0%	£ 45,000
Increase of 2.0%	£ 90,000
Increase of 3.0%	£ 135,000
Increase of 4.0%	£ 180,000
Increase of 5.0%	£ 225,000
Increase of 6.0%	£ 270,000
Increase of 7.0%	£ 315,000
Increase of 8.0%	£ 360,000
Increase of 9.0%	£ 405,000

The business case for property acquisitions allows for reserves to be built up in a sinking fund to cover any shortfall in rent or maintenance cost for which the council would be liable. The strategy that is to be adopted by the Council addresses the risk that changes in rental income could affect overall portfolio profitability by virtue of being spread across asset types, classes and geographies.

Different tenant classes and lot sizes and indeed borrowing terms will mean that a loss on one asset could well be compensated by a profit on another asset. It also important to note that the strategy has excluded any profit or loss for a change in capital values.

#### **Summary**

If a portfolio yield of 5.85% is achieved, the above figures show that an acquisition fund of £80.25m could generate a surplus of £1.12m per annum. This is net of forecast administration and maintenance (sinking fund) costs. Using the same basis, a £35m acquisition fund could generate a surplus of £0.521m per annum.

As part of the Annual Treasury Management Strategy setting process, Members have the opportunity to set the Council's policy for providing for MRP (Minimum Revenue Provision). There are various methods which can be employed and members will be able to determine the most prudent method of provision. The annuity accounting method has been adopted, but this decision could be reviewed in the future for further borrowing. MRP accounting methods have a fundamental impact on the surplus that can be generated from this type of strategy.

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Report to: **Council**

Date: **5 December 2017**

Title: **Regulation of Investigatory Powers Act 2000 (RIPA) Policy and update**

Portfolio Area: **Support Services**

Wards Affected: **All**

Relevant Scrutiny Committee: N/A

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

Date next steps can be taken:  
(e.g. referral on of recommendation or implementation of substantive decision) **Immediately following this meeting**

Author: **Catherine Bowen** Role: **Monitoring Officer**

Contact: [Catherine.Bowen@swdevon.gov.uk](mailto:Catherine.Bowen@swdevon.gov.uk)

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## RECOMMENDATIONS

**That Council RESOLVES that the guidance on Social Networking Sites in investigations (Appendix B) be approved and included in the Council's RIPA policy.**

### 1. Executive summary

- 1.1. The purpose of this report is to:
  - 1.1.1. review the Council's RIPA policy and approve guidance on Social Networking Sites in investigations
  - 1.1.2. update Members on the use of RIPA, and
  - 1.1.3. report on the role of the Office of Surveillance Commissioners (OSC)
  - 1.1.4. report on training for Officers
- 1.2. The Regulation of Investigatory Powers Act 2000 (RIPA) was designed to regulate the use of investigatory powers, and its effect is that formal authorisation must be obtained before carrying out certain surveillance, monitoring and other evidence gathering activities. RIPA ensures that the right balance is achieved between public interest and individual human rights.

- 1.3. RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised. These procedures are set out in the RIPA Policy attached to this report (Appendix A) and they are designed to protect the Council against a claim of a breach of Article 8 of the Human Rights Act if correctly followed (right to respect for private and family life, home and correspondence).
- 1.4. RIPA also requires the Chief Surveillance Commissioner to keep under review the use of RIPA by local authorities, and this is carried out by inspectors from the OSC. Historically these reviews were carried out by an Inspector's visit to all local authorities every three years, but given the reduction in the number of RIPA authorisations by local authorities, the OSC has changed the inspection regime, and visits are no longer automatic.
- 1.5. The Chief Surveillance Commissioner is now applying a more flexible approach to RIPA inspections to ensure compliance with RIPA. The Council was due a visit in August 2017 (the previous inspection having been carried out in August 2014) but this has been carried out this year by the completion of a questionnaire and submission of relevant documentation. The Inspector will send a report based on the information we have supplied in due course and a further report will be brought back to the Overview & Scrutiny Committee.
- 1.6. The Overview and Scrutiny Committee considered this matter at its meeting on 5 September 2017. In its discussions, Committee Members welcomed the Policy being reviewed to reflect the emerging trends relating to Social Media and proceeded to recommend that the guidance be approved and included in the Council's RIPA Policy (Minute O&S 35 refers).

## **2. RIPA Policy**

- 2.1. The Council's RIPA Policy is attached at Appendix A. It was amended following the last OSC visit in 2014 to reflect the minor amendments recommended by the Inspector, and to also reflect changes to the Authorising Officers following the appointment of the current Senior Leadership Team.
- 2.2. The previous Inspector confirmed that (subject to the above minor amendments made at the time) the Policy is comprehensive and very clear and no further amendments have been made at this time. The 2017 Inspector's report may make recommendations on any updates that he considers are necessary (see 1.5 above) but if this is the case, a further report will be brought to Overview & Scrutiny.
- 2.3. The previous Inspector recommended that the Council adopts guidance on the use of Social Networking Sites for RIPA investigations and a draft is attached at Appendix B to this report for Members' approval. The approved version will form Annex B to the Council's RIPA Policy to ensure all of the policy documentation is accessible in one document.

### **3. RIPA activity**

3.1. No RIPA authorisations have been applied for, or granted, in the three years since the inspection in August 2014.

3.2. The reasons are due a combination of factors, including the fact that for local authorities, the only statutory reason for a RIPA authorisation is for the purposes of preventing or detecting a criminal offence where that offence is punishable by a minimum term of at least 6 months imprisonment. The OSC also cite reduced resources, greater access to data-matching and overt, rather than covert, law enforcement.

### **4. OSC report**

4.1. The OSC is responsible for reviewing RIPA activity and monitoring compliance with RIPA and previously had a three-year inspection programme for councils. On this basis, the Council was due a visit in August 2017. As set above, the OSC recognise that, for a variety of reasons, local authorities have granted fewer RIPA authorisations with many councils not having granted any authorisations over the last three years. The OSC can therefore elect to review a Council's RIPA activity through a questionnaire, submission of documents and details of training undertaken by relevant officers. This is the case for West Devon, and a report is awaited from the Inspector in due course. It is likely that the Inspector will make recommendations in the same way that he has made recommendations following a visit, and a further update will be brought to Members once that has been received.

### **5. Training**

5.1. The Senior Leadership Team (the Authorising Officers) together with the Monitoring Officer, and officers who would be responsible for carrying out any RIPA investigations, attended RIPA training in February this year. The training covered a wide range of issues including the following:

- Why RIPA?
- RIPA and Local Authorities
- Surveillance
- CHIS
- Communications Data
- Role of authorising officers
- Necessity and proportionality
- Judicial Approval
- Social Networks
- The Investigatory Powers Act 2016

5.2. As the Council has not made any RIPA applications in the previous three years, (unless recommended otherwise by the OSC Inspector) further training will only be required when we appoint new Authorising or Investigating Officers or as a refresher to those currently trained officers. This will be built into the Councils' developing training programmes.

## 6. Outcomes/outputs

- 6.1. The Council aims to achieve compliance with the RIPA requirements and where authorisations are granted, that these are authorised as necessary and proportionate and in accordance with Policy.
- 6.2. Regular reviews of Council Policy, monitoring and reporting of any RIPA activity will ensure that compliance is achieved.

## 7. Options available and consideration of risk

- 7.1. The Council is obliged under the Regulation of Investigatory Powers Act, a series of regulations and Home Office guidance, to have a RIPA Policy in place and ensure compliance with that Policy. Home Office guidance also requires that officers are trained in RIPA in the future event that the Policy needs to be applied and authorisations granted.
- 7.2. Failure to review the Policy and non-compliance with the Policy, exposes the Council to the risk that it breaches the Human Rights Act, and is unable to legally enforce against unlawful activity.

## 8. Proposed Way Forward

- 8.1. To consider the current Policy attached at Appendix A. Pending the OSC Inspector's report, no amendments are recommended at this time save for the approval of the guidance for Social Networking Sites investigations to be added as Annex B to the Policy.

## 9. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Council's duties for covert surveillance are set out in RIPA and these requirements are reflected in the Council's RIPA Policy at Appendix A. The Home Office guidance on covert surveillance recommends that Members should review the RIPA policy annually, and regularly consider reports on the use of RIPA. Reports on the use of RIPA will be brought to O&S if the Council grants any authorisations.
Financial	N	There are no direct financial implications to this report.
Risk	Y	Adoption of (and compliance with) a RIPA policy will minimise any risk to the Council of breaches of the Human Rights Act in any future investigations involving covert surveillance. Regular review of Policy



		and RIPA use, together with reporting to O&S will further mitigate that risk and ensure consistent application of the policy.
Comprehensive Impact Assessment Implications		
Equality and Diversity		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Safeguarding		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Community Safety, Crime and Disorder		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Health, Safety and Wellbeing		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Other implications		N/a

### **Supporting Information**

#### **Appendices:**

**Appendix A:** RIPA Policy

**Appendix B:** Guidance on the use of Social Networking Sites for RIPA investigations

#### **Background Papers:**

Overview and Scrutiny Committee agenda and minutes – 5 September 2017 meeting.

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**SOUTH HAMS DISTRICT Council  
And  
WEST DEVON BOROUGH COUNCIL**

**Regulation of Investigatory Powers Act 2000  
Joint Policy**

## Contents

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# Introduction

## **Overview**

The Regulation of Investigatory Powers Act 2000 (RIPA) means that formal authorisation from a senior officer must be obtained before carrying out certain surveillance, monitoring and other evidence-gathering activities. The Council may not carry out any other types of surveillance at all.

It is important to remember that RIPA must always be complied with, regardless of whether the information obtained is to be used as evidence in court proceedings. Failure to comply with RIPA doesn't just mean that the evidence cannot be used in court; it means that the whole procedure is illegal and that the officers concerned do not benefit from the above protection.

This Policy applies to South Hams District Council and West Devon Borough Council.

## **What is this document for and why is it needed?**

The Councils' are allowed and required to carry out investigations in relation to their duties. Such investigations may require surveillance or information gathering of a covert nature.

Article 8 of the European Convention on Human Rights provides:

- Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.
- Article 8.2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

This right is not absolute, it is a qualified right. This means that in certain circumstances the Council *may* interfere with the right if the interference is:

- in accordance with the law
- necessary, and
- proportionate

Covert Surveillance and information gathering may constitute an interference with the right to respect for private and family life. To ensure that such an action is not unlawful under the Human Rights Act 1998, the Council needs to meet the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA).

In simple terms, RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary and is properly authorised. Surveillance is usually a last resort that an investigator will use to prove or disprove an allegation. RIPA sets out a statutory mechanism for authorising covert surveillance and the use of covert human intelligence sources (see below). RIPA seeks to ensure that any interference with an individual's rights under Article 8 is necessary and proportionate and that, therefore,

there is a balance between public interest and an individual's human rights. Covert surveillance will only be undertaken where there is no reasonable and effective alternative means of achieving the desired objective.

### **What is meant by necessary?**

It is essential to consider whether an investigation requiring surveillance or information gathering can be done overtly rather than covertly. What would the result be if you carried out the investigation overtly?

If an investigation can be reasonably carried out by any means other than by using covert surveillance, then the use of covert surveillance is not necessary.

It must then be considered whether it is necessary to conduct covert surveillance or use covert human intelligence sources in the circumstances of the particular case for the **purpose of preventing or detecting crime where the offence is punishable by imprisonment of a term of six months or more.**

### **What is meant by proportionate?**

This is an important concept, and it means that any interference with a person's rights must be proportionate to the intended objective. The action must be aimed at pursuing a legitimate aim. Interference will not be justified if the means used to achieve the aim are excessive in all the circumstances.

The use of surveillance must be designed to do no more than meet the objective in question; it must not be unfair or arbitrary, and the impact on the individual (or group of people) concerned must not be too severe. In deciding whether the use or action is proportionate, the risk of intrusion into the privacy of persons other than those who are the object of the investigation must be considered, and the measures proposed to minimise such intrusion must be properly assessed. You must be satisfied that, on balance, the principle of the subject's right to privacy is outweighed by the purpose of the investigation. Clearly, the more serious the matter being investigated, the more likely that surveillance will be proportionate.

The proportionality test will also require you to consider whether there are any other appropriate means of obtaining the information and whether there is a risk of collateral intrusion. The least intrusive method will be proportionate. Some of the things you may also wish to consider in terms of proportionality are whether covert surveillance is the only option, what other options have been considered, the intended length of the investigation, the number of officers to be deployed in the investigation.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means.

### **What is covered by the Regulation of Investigatory Powers Act 2000?**

The main purpose of the Regulation of Investigatory Powers Act 2000 is to ensure that the relevant investigatory powers are used in accordance with human rights. The Act sets out



these powers in more detail. Part II of the Act sets out the powers available to local authorities.

The Council is able to carry out investigations using covert surveillance and/or by using a covert human intelligence source under RIPA following the formal authorisation procedures and codes of practice as set out in this document. RIPA applies to the Council's core functions. Please ask the RIPA Co-ordinating Officer for advice if you are unsure as to whether RIPA will apply.

RIPA not only covers the surveillance of members of the public but would also cover the observation of staff and members as part of an internal investigation.

### **Do we need to follow these rules?**

Although RIPA does not impose a requirement for local authorities to comply with it, it is essential for the Council to do so to ensure that:

- it is less vulnerable to a challenge under the Human Rights Act and
- any material gathered is admissible by the civil and criminal courts.

Following the requirements of RIPA and acting in accordance with this Policy, will therefore protect the Council against potential challenges to its decisions and procedures. Not following the procedures specified in this document could also lead to a complaint of maladministration or a complaint to the independent Tribunal set up under RIPA, details of which are to be found at the end of this document.

### **What is the relevant legislation?**

- The Regulation of Investigatory Powers Act 2000
- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010
- Protection of Freedom Act 2012

Authorisation may only be granted if it is necessary for the reason permitted by RIPA. For local authorities the only statutory reason is **for the purposes of preventing or detecting a criminal offence where that offence is punishable (whether on summary or indictment) by a minimum term of at least 6 months imprisonment.**

This means that directed surveillance cannot be used for minor offences.

### **What is the Council's Policy on RIPA?**

This document is the Council's policy on RIPA. As such, it should be adhered to unless it is in conflict with either of the Government Codes of Practice which have been made under RIPA. The Codes of Practice are admissible as evidence in court and **must** be complied with.

Copies of the Codes of Practice are available on the Home Office site: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). These are:

- Covert Surveillance Code Of Practice
- Covert Human Intelligence Sources Code Of Practice

### **When will this document be reviewed?**

This document shall be subject to review once a year. An earlier review may take place should circumstances in the law so require it. Minor amendments may be made from time to time.

### **Who is responsible for reviewing and monitoring this document and the use of RIPA?**

West Devon Borough Council's **Overview and Scrutiny Committee** and South Hams District Council's **Corporate Performance & Scrutiny Panel** are responsible for the overview of the RIPA policy and the Councils' use of RIPA. The Committees will not be involved in making decisions on specific authorisations.

The RIPA Co-ordinating Officer is responsible for the RIPA Policy, the Central Register of authorisations, and for making regular reports on the use of RIPA to the Councils' Scrutiny Committees.

### **How do I find out more?**

General guidance on RIPA may be found on the Home Office site:  
<http://www.homeoffice.gov.uk/>

Please contact the Council's Legal Section if you require any further advice on RIPA, this document or any of the related legislative provisions.

For the Benefits Section – further guidance may be found in the DWP Circulars.

# Surveillance

## What is Surveillance?

“**Surveillance**” includes

- monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications
- recording anything mentioned above in the course of authorised surveillance
- surveillance, by or with, the assistance of appropriate surveillance device(s)
- the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if it is one sent by, or intended for, a person who has consented to the interception of the communication.

Surveillance can be overt or covert.

### **Overt Surveillance**

Most of the surveillance carried out by the Council will be done overtly.

General observations made by officers in the course of their duties constitutes overt surveillance.

Warning the person about the surveillance (preferably in writing) constitutes overt surveillance. Consideration should be given to how long the warning should last. This must be a reasonable length of time (three months may be appropriate in many cases), but each case must be assessed as to what is reasonable having regard to the circumstances. Whatever period is chosen, this **must** be set out in the written warning. At the expiry of the period, further written warning should be given otherwise the surveillance will become covert.

Overt surveillance does not require authorisation under RIPA.

### **Covert Surveillance**

“Covert Surveillance” means surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

Covert surveillance does require authorisation under RIPA.

## What are the different types of covert surveillance?

RIPA regulates two types of covert surveillance:

- Directed Surveillance, and
- Intrusive Surveillance;

RIPA also regulates the use of Covert Human Intelligence Sources.

### **Directed Surveillance**

Directed surveillance is defined as surveillance which is:

- covert,
- not intrusive (see definition below)
- undertaken for the purposes of a specific investigation or specific operation;
- carried out in such a manner as is likely to result in the obtaining of private information about a person (whether or not that person is the target of the investigation or operation); and
- undertaken in a planned manner, and not as an immediate response to events or circumstances.

### **Intrusive surveillance**

Intrusive surveillance is surveillance of any activities on any residential premises or in any private vehicle by a person (other than a Covert Human Intelligence Source) on those premises or in that vehicle or is carried out by means of a surveillance device on the premises or in the vehicle or which provides information of the same quality and details as if it was on the premises or in the vehicle

However, directed surveillance authorisation may be granted for parts of residential premises, such as gardens or driveways which can be observed from the public highway. Further guidance on this point may be obtained from the Council's Legal Section.

It is important to get this right because:

### **COUNCIL OFFICERS CANNOT CARRY OUT INTRUSIVE SURVEILLANCE**

### **Covert Human Intelligence Sources**

The term Covert Human Intelligence Sources is used to describe people who are more commonly known as informants or officers working "undercover". Throughout this document these people are referred to as "Sources"

This does not include members of the public who volunteer information to the Council as part of their normal civic duties or to contact numbers set up to receive information.

A person is a Source if he/she:

- establishes or maintains a covert personal or other relationship for the purposes of:

- obtaining information; or
  - providing access to information to another person; or
- discloses information obtained by the use or existence of that covert relationship  
RIPA authorisation is required for using a Source.

There are special rules for using juvenile or vulnerable persons as sources, and only the Director (HoPS) can authorise such surveillance. Further advice should be sought from the Council's Legal Section in such cases.

### **Interception of Communications**

Local authorities can carry out interception of communications in a restricted number of circumstances.

These are:

#### **In the course of normal business practice**

The Councils are permitted without authorisation under RIPA to lawfully intercept its employees' e-mail or telephone communications and monitor their internet access for the purposes of prevention or detection of crime or the detection of unauthorised use of these systems.

The Councils' policies on use of the internet and e-mail are set out on the intranet site under Policies and Procedures/ICT policies.

The Council also has regard to the Employment Practices Data Protection Code – Part 3: Monitoring at Work produced by the Information Commissioner. A copy of this code and its supplementary guidance can be found at: [www.ico.org.uk](http://www.ico.org.uk)

#### **Interception with the consent of both parties.**

Such interception does not require RIPA authorisation, but should be properly recorded.

#### **Interception with the consent of only one of the parties.**

Such interception would require RIPA authorisation because it would fall within the definition of surveillance (either directed or using a Source). The main type of interception envisaged here is the recording of telephone calls where either the caller or the receiver has given consent to the recording.

Where as part of an already authorised Directed Surveillance or use of a Source a telephone conversation is to be recorded by the Officer or the Source then no special or additional authorisation is required.

#### **Interception without the consent of either of the parties**

The recording of telephone calls between two parties when neither party is aware of the recording **CANNOT BE UNDERTAKEN**, except under a Warrant granted by the Secretary of State under Part 1 of RIPA. Such warrants are only granted by the Secretary of State and it is not envisaged that such activity would fall within the remit of local authority investigations.

# Procedures

## What is the procedure for obtaining authorisation under RIPA?

Directed surveillance and the use of a Source can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation.

All directed surveillance and use of a Source operations shall be:

- Applied for in writing or verbally in cases of urgency
- Approved
- Monitored
- Renewed when necessary
- Cease when no longer authorised

All the above actions will be carried out in accordance with this document and the relevant Codes of Practice and will be recorded on the Standard Forms listed below:

The Standard Forms are available from the Home Office web-site [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

### Directed Surveillance

- Application for directed surveillance authorisation
- Review of directed surveillance authorisation
- Application for cancellation of directed surveillance authorisation
- Application for renewal of directed surveillance authorisation

### Use of a Source

- Application for conduct-use of a CHIS authorisation
- Review of use of a CHIS authorisation:
- Application for renewal of use of a CHIS authorisation
- Application for cancellation of conduct-use of a CHIS authorisation

Copies of all these documents will be retained and kept on the investigation file as part of the evidence to show that the information gained by directed surveillance or the use of a Source has been obtained legally.

This document provides guidance on the Procedures required to be undertaken by the Investigating Officer and the Authorising Officer for the different stages specified above.

## • **The Senior Responsible Officer's Duties**

### **Who is the Senior Responsible Officer?**

The Councils' Senior Responsible Officer is listed in the annex to this document.

### **What are my duties?**

In accordance with the recommendations of the Codes of Practice, you are responsible for the following areas:-

- the integrity of the process in place within the Council for the management of Covert Human Intelligence Sources and Directed Surveillance
- compliance with Part II of RIPA and the Codes of Practice
- oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors
- engagement with the OSC inspectors when they conduct their inspections
- oversight of the implementation of any post-inspection action plan approved by the relevant oversight Commissioner
- ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in the inspection reports by the Office of the Surveillance Commissioner



- **The Investigating Officer's Duties under RIPA.**

### The Application

The application for authorisation is the responsibility of the Investigating Officer

#### What do I need to do?

You will need to consider:

- Whether covert surveillance is needed
- Whether directed surveillance or use of a Source is needed
- Whether directed surveillance or use of a Source is necessary for statutory reasons
- Whether directed surveillance or use of a Source is proportionate
- The risk of collateral intrusion
- Safety and welfare arrangements (use of Source only)

These are discussed in more detail below.

#### What do I need to consider?

- **Consideration: Whether covert surveillance is needed**

Consideration must be given as to whether covert surveillance is needed. You are advised to discuss the need to undertake directed surveillance or the use of a Source with your line manager before seeking authorisation. All options for the use of overt means **must** be fully explored. Remember: if the investigation can be carried out by overt means, then covert surveillance is not necessary.

- **Consideration: Whether directed surveillance or use of a Source is needed**

You must establish which type of "surveillance" is required for the investigation or operation having regard to the guidance contained in this document. The type of surveillance you require affects which application forms you need to complete. Additional considerations are needed for using a Source. Further detail is found below. Combined authorisations for both directed surveillance and the use of a Source may be applied for where appropriate.

- **Consideration: Whether directed surveillance or use of a Source is necessary for the statutory reason**

Authorisation may only be granted if it is necessary for the reason permitted by RIPA. For local authorities the only statutory reason is **for the purposes of preventing or detecting a criminal offence where that offence is punishable (whether on summary or indictment) by a minimum term of at least 6 months imprisonment.**

This means that directed surveillance cannot be used for minor offences.

You must set out this ground in your application form and provide details of the reasons why it is necessary to use covert surveillance.

- **Consideration: Whether directed surveillance or use of a Source is proportionate**

You must consider why it is proportionate to use covert methods to collect evidence. Please see the definitions set out on page 2 “what is proportionate?” Remember, the use of covert methods must do no more than meet your objective. The proportionality test will also require you to consider whether there are any other appropriate means of obtaining the information and whether there is a risk of collateral intrusion (see consideration below). The least intrusive method will be proportionate. The following aspects of proportionality must be considered and evidenced:-

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence
- explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result
- evidencing, as far as reasonably practicable, what other methods have been considered and why these were not implemented.

- **Consideration: The risk of collateral intrusion**

Collateral intrusion is the risk of intrusion into the privacy of persons other than the target. You are required to assess the risk of collateral intrusion. Details of any potential collateral intrusion should be specified. Measures must be taken wherever practicable to avoid or minimise collateral intrusion and a plan should be included in your application specifying how the potential for collateral intrusions will be minimised. You should give as much detail as possible, insufficient information may lead to the rejection of the application.

- **Consideration: Surveillance from private premises**

It is preferable for surveillance to be carried out from a public place, such as a public highway. However, there may be circumstances where private premises may be required for the carrying out of surveillance. In which case, it is essential that you obtain the consent of the owner and/or occupier of the premises prior to authorisation being sought. You should seek further guidance from the Council’s Legal Section on this point.

- **Consideration: safety and welfare arrangements – use of a Source**

You must provide a risk assessment as to the likely risks to be faced by an officer or other person both during the conduct of the investigation and after the cancellation of the authorisation. Details must also be included setting out the arrangements for the safety of the Source, this should include:

- the name of the Officer who has day to day responsibility for:
  - Dealing with the Source
  - Directing the day to day activities of the Source
  - Recording the information supplied by the Source

- The Source's security and welfare
- The name of the Officer responsible for recording and monitoring the use made of the Source
- Arrangements for ensuring the security of the records which identify the Source
- Records relating to the Source meet the requirements of the Statutory Instrument: The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000 No. 2725) – please see either the Home Office website: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) or the Office of Public Sector Information website: [www.opsi.gov.uk](http://www.opsi.gov.uk)

## How do I apply?

All applications must be made in writing on the standard forms as set out in this document. The relevant forms are:

- An application for directed surveillance authorisation, and/or
- An application for use of a Source

The considerations set out above, form part of the application form.

The application form must be fully completed and passed to the Authorising Officer. The annex to this document contains details of the Council's Authorising Officers.

**NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.**

## What if authorisation is urgent?

The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency.

NB. Urgent authorisation may not be necessary if, under section 26(2) of the Act, an officer suddenly sees something relevant to his duties and takes an immediate note, observation of follow-up activity (within reason).

## Monitoring

### How long will an authorisation last for?

The authorisation for Directed Surveillance will last for **three months** from the date of authorisation unless renewed.

The authorisation for use of a Source will last for **12 months** from the date of authorisation (i.e. date of Magistrates' Order) unless renewed.

Review dates for the authorisation will be set by the Authorising Officer.

## **I now have my authority for surveillance, is there anything else I should be aware of?**

It will be the responsibility of the Investigating Officer to ensure that any Directed Surveillance or use of a Source is only undertaken under an appropriate and valid authorisation.

During the surveillance, you should ensure:

- Surveillance is carried out in accordance with the approval
- Collateral intrusion is minimised as far as possible
- Intrusive surveillance is not carried out
- All information obtained is recorded contemporaneously or as soon as possible thereafter

During the use of a Source, you should also ensure:

- That the source is aware that:
  - Only the tasks authorised are carried out
  - Third party collateral intrusion is minimised as far as possible
  - Intrusive surveillance is not carried out
  - Entrapment is not committed
  - They must regularly report to you

You should also be mindful of the date when authorisations and renewals will cease to have effect. Please see the notes on Renewals and Cancellation below.

## **What do I do if circumstances change during the investigation?**

You must inform the Authorising Officer if the investigation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation or if there is another change in circumstances usually brought about by unforeseen action.

When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised (for minor amendments only) or whether it should be cancelled and a new authorisation obtained. The relevant forms should be used.

Particular care should be taken when using a Source to ensure that authorisation is sufficient. It is difficult to predict what might occur each time a meeting with a Source takes place. If unforeseen action takes place, the occurrence should be recorded as soon as possible after the event and the sufficiency of the authorisation must be considered.

You must bring to the attention of the Authorising Officer any concerns about the personal circumstances of the Source in relation to: the validity of the risk assessment; the conduct of the source; the safety and welfare of the Source.

## **Renewals**

## **Why are renewals important?**

Once the authorisation expires, surveillance must cease unless a renewal has been applied for and approved. Renewals must be authorised prior to the expiry of the original authorisation but will run from the date and time of expiry of the original authorisation.

## **What should I do?**

If it appears that the directed surveillance or use of a Source is needed beyond the authorisation date, you must seek a renewal of the authorisation.

You must consider whether covert methods are still necessary and proportionate.

An application for renewal for either Directed Surveillance and/or use of Source should be made on the relevant form and passed to the Authorising Officer for consideration.

Authorisation for renewal may be sought verbally, but only in exceptional circumstances.

**NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.**

## **Cancellations**

### **Why are cancellations important?**

All authorisations, including renewals, must be cancelled if the reason why Directed Surveillance or use of a Source was required no longer exists or is no longer proportionate. This will occur in most instances when the purpose for which surveillance was required has been achieved and officers must be mindful of the need to cancel any authorisation which has been issued. A cancellation should be issued at the expiry date if not before.

### **How do I cancel an authorisation?**

To cancel an authorisation, you should complete the Cancellation of Authorisation form and submit it to the Authorising Officer for endorsement.

# Authorising Officer Responsibilities under RIPA

## The Approval

### Who are the Authorising Officers?

The Council's Authorising Officers are listed in the annex to this document.

If the investigation may involve the acquisition of confidential or religious material, or require an authorisation for using juveniles or vulnerable persons as sources, the Authorising Officer is, by law, the Chief Executive (or in his absence one of the Corporate Directors).

Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved. If this is the case, the application form for authorisation should be noted to this effect.

**NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.**

### What are my responsibilities?

Responsibility for authorising the carrying out of directed surveillance or using a Source rests with the Authorising Officer and requires the personal authority of the Authorising Officer.

You must be satisfied that a defensible case can be made for surveillance. Authorisation is a safeguard against the abuse of power by public authorities. Full consideration of necessity and proportionality will make the action less vulnerable to challenge under the Human Rights Act 1998.

### What do I need to consider?

You are required to consider the application for authorisation in relation to the following:

#### **Consideration: Is the directed surveillance or use of a Source necessary?**

**Firstly**, you must consider whether it is necessary to carry out the investigation by covert methods. This is an important consideration and must be recorded on the form. Please see "what is meant by necessary?" on Pages 1 and 2 of the Policy.

**Secondly**, as authorisation may only be granted if it is necessary for the reason permitted by RIPA. You should consider, having regard to the outline of the case provided by the Investigating Officer, whether authorisation is necessary for the purposes of preventing and detecting crime or of preventing disorder

### **Consideration: Is the directed surveillance or use of a Source proportionate?**

This involves balancing the intrusiveness of the activity on the target and others who may be affected by it (see “consideration: risk of collateral intrusion” below) against the need for the activity in operational terms. Please refer to “what is proportionate?” on page 2 of this Policy.

### **Consideration: The risk of collateral intrusion**

You must take into account the risk of interfering with the privacy of persons other than the target (collateral intrusion). Full details of potential collateral intrusion and the steps to be taken to minimise such intrusion must be included in the form. If there are insufficient details further information should be sought. Collateral intrusion forms part of the proportionality test and is therefore very important. Remember: the least intrusive method should be chosen otherwise the surveillance activity will not be proportionate.

### **Consideration: confidential material**

In cases where through the use of directed surveillance or the use of a Source it is likely that knowledge of confidential information will be acquired, authorisation may only be granted by the Chief Executive.

Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material.

Authorisation involving the acquisition of confidential information should only be given in exceptional and compelling circumstances having full regard to the proportionality issues involved.

Further details about the type of information covered under this category are to be found in the Chapter 3 of the relevant Code of Practice. Further advice may be sought from the Council’s Legal Section.

### **Consideration: Safety and welfare arrangements of a Source**

When authorising the conduct or use of a Source, you must be satisfied:

- That the conduct and/or use of the Source is proportionate to what is sought to be achieved;
- That arrangements exist for the management and oversight of the Source, particularly the health and safety of the Source including:
  - Identifying the person who will have day to day responsibility for dealing with the Source
  - Security and welfare arrangements of the Source both during and after the investigation/operation.
  - Monitoring and recording the information supplied by the Source
  - Ensuring records disclosing the identity of the Source will not be made available to persons except where there is a need for access to them

- Records relating to the Source meet the requirements of the Statutory Instrument: The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000 No. 2725) – please see either the Home Office website: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) or the Office of Public Sector Information website: [www.opsi.gov.uk](http://www.opsi.gov.uk)

### **Consideration: local community**

You should consider whether there any particular sensitivities in the local community where surveillance will be taking place.

**Having taken all these factors into consideration, you may either approve the application or refuse it.**

### **What do I do if I have refused the application?**

You must complete the form and give your reasons for refusal. Then follow the procedures below (“I have completed the form what do I do with it?”)

### **What do I do if I have approved the application?**

You need to follow the rest of the procedure set out below.

Regular review should be undertaken to assess the need for surveillance or use of a Source to continue and whether it is still proportionate. Where the surveillance or use of a Source provides access to confidential information or involves collateral intrusion, review should be more frequent.

You will therefore need to consider a Review Date(s). Both types of authorisation require you to specify a date when the authorisation should be reviewed (the Review Date) and the frequency of the review thereafter. This must be stated on the form.

### **What do I do if the authorisation is urgent?**

The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency. NB. Urgent authorisation may not be necessary if, under section 26(2) of the Act, an officer suddenly sees something relevant to his duties and takes an immediate note, observation of follow-up activity (within reason).

### **What do I do with the completed form?**

You must send the completed application form(s) to the RIPA Co-ordinating Officer as soon as you are able. This includes any forms in which you have refused authorisation. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

### **Monitoring**



## **How long will an authorisation last for?**

The authorisation for **Directed Surveillance** will last for **three months** from the date of authorisation unless renewed.

The authorisation for use of a **Source** will last for **12 months** from the date of authorisation unless renewed.

It is important to set a review date which gives the opportunity to cancel if the authorisation is no longer required. If the surveillance is still required, set another review date (see below)

## **I have now given the authority for surveillance, what should I do next?**

After authorisation the Authorising Officer is responsible for continuing to oversee the progress of the investigation. You must ensure that whatever was authorised does actually happen, and that actions do not exceed the boundaries of the authorisation.

Progress of the investigation or operation should be reviewed in accordance with the review dates set by the authorisation using the relevant review form. In any case, as soon as the investigation or operation objectives have been achieved the authority should be cancelled.

You will regularly monitor the surveillance to ensure:

- Surveillance is being carried out in accordance with the authority given
- There is still a need for the approved surveillance or use of the Source
- The surveillance is achieving the intended results
- The risks of collateral intrusion are still minimal
- The risks associated with the surveillance or use of the Source are within an acceptable level
- The security and/or welfare of the Source has not been jeopardised. You must consider any concerns raised by the Investigating Officer relating to the personal circumstances of the Source.

You should record the outcome of such monitoring and take whatever action is appropriate.

## **Renewals**

### **Why are renewals important?**

Once the authorisation expires, surveillance must cease unless a renewal has been applied for and approved.

**NB.** All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.

**What are my responsibilities in respect of renewals?**

You may renew an authorisation before it expires if it is necessary for the authorisation to continue for the purpose for which it was given.

You must consider the application for renewal in relation to the original purpose for which authorisation was granted, taking into account any change in circumstances. You should be satisfied that:

- There is a need to renew the authorisation (applying the test of necessity)
- That such a renewal is likely to contribute to the investigation or operation (it is proportionate to the aim)
- That the information could not be reasonably obtained by other less intrusive means.
- The risk of collateral intrusion is minimal – you should consider what collateral intrusion has occurred
- The risks associated with the use of a Source have not increased beyond an acceptable level

The outcome of a consideration for renewal may lead to:

- Approval
- A new application
- Refusal

### **Approval**

If you decide to approve a renewal you will need to provide details of why in your opinion you believe the renewal is justified, and state the date and time when the renewed authorisation will commence and expire on the application form.

The maximum time that renewal of authorisation can be approved for, is three months at a time for directed surveillance and 12 months for the use of a Source, but you may consider shorter periods if this is more appropriate to the circumstances.

You should also set Review Dates and continue to monitor the progress of the investigation or operation.

### **A new application for authorisation**

If the reason for requiring the authorisation has changed from the purpose for which it was originally granted, then the outstanding authorisation should be cancelled and new authorisation sought by way of a new application. You will need to note the refusal to renew the application on the renewal form setting out the reasons for your decision. You will also need to follow the procedures for cancellation see below and advise the Investigating Officer to seek new authorisation.

### **Refusal**

If in your opinion surveillance is no longer required, or justified, or proportionate, the renewal should be refused and the authorisation cancelled. See the paragraph on cancellation below. You will need to note on the renewal form your reasons for refusal.

### **What do I do with the completed form?**

You must send the completed renewal form to the RIPA Co-ordinating Officer as soon as you are able. This includes forms where you have refused a renewal. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

## **Cancellations**

### **Why are cancellations important?**

All authorisations, including renewals, must be cancelled if the reason why directed surveillance or use of a Source was required no longer exists or is no longer proportionate. This will occur in most instances when the purpose for which surveillance was required has been achieved and officers must be mindful of the need to cancel any authorisation which has been issued. A cancellation should be issued at the expiry date if not before.

### **What are my responsibilities in respect of cancellations?**

The responsibility to ensure that authorisations are cancelled rests with the Authorising Officer. If you think cancellation should have been applied for, then you should make enquiries of the Investigating Officer as part of your monitoring of the authorisation. On receipt of the cancellation form from the Investigating Officer, you must consider the reasons for cancellation and if acceptable endorse the form.

As soon as the decision is taken that directed surveillance or use of a Source should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject. The date and time when such an instruction was given should be recorded on the cancellation form.

Where necessary the safety and welfare of the Source should continue to be taken into account after the authorisation has been cancelled.

### **What do I do with the completed form?**

You must send the completed renewal form to the RIPA Co-ordinating Officer as soon as you are able. This includes forms where you have refused a renewal. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

## **Working with or through other Agencies**

### **What do I do if I want to instruct another organisation to carry out surveillance?**

When some other agency has been instructed on behalf of the Council to undertake some action under RIPA, this Document and the forms in it, must be used in the normal way and the agency advised as necessary of the various requirements. They must be made aware explicitly what they are authorised to do.

### **What do I do if I want to carry out an investigation with another organisation?**

It is possible for two public authorities to carry out a joint directed surveillance investigation or use of a Source. It must be decided which of the authorities is to take the lead role. The Authorising Officer from the lead organisation must make the decisions on the necessity and proportionality of the surveillance or use of a Source. The Investigating Officer must make it clear on the application form that it is a joint investigation and provide details of Officers involved from both authorities.

Where joint surveillance is authorised by the lead organisation, it is good practice for the Investigating Officer of the other organisation to advise their Authorising Officer of the surveillance activity. It is important for each organisation's Authorising Officer to be aware of all surveillance activity being undertaken by their own Investigating Officers, regardless of which organisation authorised the activity.

# Record-Keeping

## What records must I keep?

The Council must keep a detailed record of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all these forms will be maintained and monitored by the RIPA Co-ordinating Officer.

In all cases, the relevant department should maintain the following documentation:

- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- The Magistrates' Order
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the Authorising Officer.
- A record of the use made of any Source

## How long must I keep these records?

The Council will retain records in accordance with the Council's Record Management Policy. Retention of a record will therefore depend on an assessment of the need to retain the record.

## How should the records relating to a Source be maintained?

Records kept relating to an investigation or operation using a Source should be maintained in such a way as to preserve the confidentiality of the Source and the information provided by the Source. Regard should be had to the Council's Record Management Policy.

## **Material obtained from Directed Surveillance and/or use of a Source operations**

### **How should material be handled and stored?**

Material, or product, such as: written records (including notebook records); video and audio tape; photographs and negatives; and electronic files, obtained under authorisation for Directed Surveillance or use of a Source investigations or operations should be handled, stored and disseminated according to the following guidance and with regard to the Council's Records Management Policy, which is available on the intranet.

Where material obtained during the course of an investigation may be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with the established disclosure requirements having regard to the Criminal Procedure and Investigations Act 1996 and Civil Procedure Rules.

Where material is obtained which is not related to a criminal or other investigation, or to any person who is the subject of the investigation, and there is no reason to suspect that it will be relevant to any future civil or criminal proceedings, it should be assessed for retention or destruction under the Council's Record Management Policy.

Material may be used in investigations other than the one which authorisation was issued for. However, use of such material outside the Local Authority or the Courts should only be considered in exceptional circumstances.

### **What about confidential material?**

This is privileged information from, for example, lawyers, doctors, priests etc. Where such persons are involved, and there is a possibility that you maybe obtaining confidential material, then further additional precautions must be taken. If this is the case, please seek appropriate advice from the Legal Section or from the statutory RIPA Code of Practice.

(Lord Coleville advised that reference only to confidential material is needed, as we are very unlikely to ever use these provisions.)

## **Complaints**

The Regulation of Investigatory Powers Act has established an Independent Tribunal. This Tribunal is made up of senior members of the judiciary and the legal profession and is independent of the Government. The Tribunal has full powers to investigate and decide any cases within its jurisdiction. It also has the power to award compensation.

Details of the relevant complaints procedure can be obtained from the following address:

Investigatory Powers Tribunal  
PO Box 33220  
London  
SW1H 9ZQ

Other actions that could be taken against the Council for failing to meet the requirements of RIPA are civil proceedings under the Human Rights Act 1998 or a complaint to the Ombudsman.

## **Annex**

### **AUTHORISING OFFICERS**

The following Officers shall be designated Authorising Officers on behalf of West Devon Borough Council and South Hams District Council under the Regulation of Investigatory Powers Act 2000.

**EXECUTIVE DIRECTOR (Service Delivery & Commercial Development) –**

**Sophie Hosking**

**COMMERCIAL SERVICES GROUP MANAGER – Helen Dobby**

**CUSTOMER FIRST & SUPPORT SERVICES GROUP MANAGER – Steve**

**Mullineaux**

**BUSINESS SUPPORT GROUP MANAGER – Darren Arulvasagam**

NB. Only the Executive Director has the authority to grant authorisation for the acquisition of confidential information or where the authorisation would involve juvenile or vulnerable CHIS.

### **SENIOR RESPONSIBLE OFFICER**

The following Officer shall be designated Senior Responsible Officer on behalf of the Councils' under the Codes of Practice.

**EXECUTIVE DIRECTOR (Strategy & Commissioning) - Steve Jordan**

### **RIPA CO-ORDINATING OFFICER**

**Legal Specialist – Becky Fowlds**



## **ANNEX B to RIPA Policy**

### **Guidance on the use of Social Networking Sites for investigations**

It is recognised that the use of the internet and, in particular, social networking sites, can provide useful information for South Hams District Council and West Devon Borough Council staff carrying out investigations. These investigations may relate to the various enforcement roles within the council – for example Fraud, Planning Enforcement, Licensing or Environmental Health, but will equally apply to some non-enforcement teams, such as Debt Collection or Housing. The use of the internet and social networking sites may fall within the definition of covert directed surveillance. This is likely to result in the breaching of an individual's Article 8 rights under the Human Rights Act (the right to privacy).

#### **Social Networking Sites**

There is a fine line between general observation, systematic observation and research and it is unwise to rely on a perception of a person's reasonable expectations or their ability to control their personal data.' The Councils' policy in relation to the use of social media for the gathering of evidence to assist in its enforcement activities is set out below:

- Officers of South Hams and West Devon must not 'friend' individuals on social networks as part of undertaking their roles and should not use their own private social networking accounts to view the social networking accounts of other individuals as part of their professional role
- officers viewing an individual's profile on a social networking site should do so only once in order to obtain evidence to support or refute their investigation
- further viewing of open profiles on social networking sites to gather evidence or to monitor an individual's status, must only take place once RIPA authorisation has been granted and approved by a Magistrate
- officers should be aware that it may not be possible to verify the accuracy of information on social networking sites and, if such information is to be used as evidence, steps must be taken to ensure its validity.

The **purpose** of this guidance note is to provide clarity on the Councils' position:

1. It is not possible to provide a definitive list of social networking sites, so this should be taken to mean any site which involves individuals creating a profile which contains personal information and is viewable by others, whether accepted as 'friends' or otherwise. This might include sites such as 'Facebook' and 'LinkedIn'
2. As the definition of 'private information' under RIPA includes:

'any information relating to a person's private or family life and should be taken generally to include any aspect of a person's private or personal relationship with others, including family and professional or business relationships'

Sites used to advertise goods and services should be included within the definition. Although there is likely to be a reduced expectation of privacy with this type of site, there is still the possibility of obtaining private information which may be subsequently used in any enforcement proceedings.

3. If an allegation is received or, as part of an investigation into an individual, it is necessary to view their social networking site, officers may access the main page of the individual's profile once in order to take an initial view as to whether there is any substance to the allegation or matter being investigated.

4. The initial viewing must be reasonable – for example, it would not be reasonable to spend any significant amount of time searching through various pages of the individual's profile or to print out several pages just in case they may reveal something useful.

5. In some cases where, for example, a link to a site is provided by a complainant, it may be relevant for the receiving officer to view the link before passing it onto the investigating officer to also view. This would count as one viewing. However, it would not be reasonable for each officer in a team to view the site in turn so that they may each gather some information.

6. Each single viewing of an individual's social networking site must be recorded on the log maintained by Legal Services (RIPA Co-ordinating Officer). This is to enable the reporting of the number of viewings to the Overview & Scrutiny Committee of each Council.

7. If it is considered that there is a need to monitor an individual's social networking site, authorisation must be obtained from an Authorising Officer.

8. If the offence being investigated falls under RIPA, a formal RIPA application must be completed, authorised by one of the Councils' Authorising Officers and then approved by a Magistrate.

9. If the offence being investigated falls outside of RIPA (for example if the offence does not carry a custodial sentence of at least 6 months imprisonment or is not a core function of the council) a non-RIPA form must be completed. General guidance on RIPA and appropriate forms can be found on the Councils' Intranet and in the main RIPA Policy document.