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West Devon
Borough
Council

WEST DEVON COUNCIL - TUESDAY, 8TH OCTOBER, 2013

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. **Summons Letter** (Pages 1 - 6)

2. **Reports**

Reports to Council:

a) Item 4 - Urgent Item a - Political Composition (Pages 7 - 10)

b) Item 4 - Urgent Item b - DNPA Governance Review (Pages 11 - 14)

c) Item 10 - Focus Review (Pages 15 - 24)

d) Item 11 - Council Size Consultation Response (Pages 25 - 28)

e) Item 12 - Strategic Risk Assessment - Six Monthly Update (Pages 29 - 58)

3. **Minutes** (Pages 59 - 68)

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Agenda Item 1

Please ask for: Tony Rose

Your ref:

Direct Line/Ext: 01822 813664

My ref AAR/Council.08.10.2013

email: arose@westdevon.gov.uk

Date: 30th September 2013

COUNCIL SUMMONS

You are hereby summoned to attend a Meeting of the **WEST DEVON BOROUGH COUNCIL** to be held at the Council Chamber, Council Offices, Kilworthy Park, **TAVISTOCK** on **TUESDAY** the **8th** day of **OCTOBER 2013** at **4.30 pm**.

Prior to the Meeting, the Reverend Paul Seaton-Burn, Team Rector of the Whiddon Mission Community, has been invited to say prayers.

THE FOLLOWING BUSINESS IS PROPOSED TO BE TRANSACTED.

1. Apologies for absence
2. 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 Agenda, then please contact the Monitoring Officer in advance of the meeting.

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3. To approve and adopt as a correct record the Minutes of the Meeting of the Council held on 30th July 2013 1
4. To receive communications from the Mayor or person presiding
5. Business brought forward by or with the consent of the Mayor
6. To respond to any questions submitted by the public and to receive deputations or petitions under Council Procedure Rule 21
7. To consider motions of which notice has been submitted by Members of the Council in accordance with Council Procedure Rule 15
8. To consider questions submitted by Members under Council Procedure Rule 21
9. To receive the Minutes of the following Committees, to note the delegated decisions and to consider the adoption of those Minutes which require approval

- (i) **Audit Committee**
Meeting held on 23rd July 2013

6

Unstarred Minute to agree

Members are recommended to agree:

AC 8 System of Internal Control and Annual Governance Statement

RESOLVED to **RECOMMEND** that the draft Annual Governance Statement be presented to Council for approval.

AC 10 Treasury Management Strategy for 2013/14 to 2015/16, Minimum Revenue Policy Statement and Annual Investment Strategy for 2013/14

RESOLVED to **RECOMMEND** that Council approve each of the following key elements:

- (i) the Prudential Indicators and Limits for 2013/14 to 2015/16 contained within Appendix A;
- (ii) the Minimum Revenue Provision (MRP) Statement contained within Appendix A and which sets out the Council's policy on MRP;
- (iii) the Treasury Management Strategy 2013/14 to 2015/16 and the Treasury Prudential Indicators contained within Appendix B; and,
- (iv) the Investment Strategy 2013/14 contained in the Treasury Management Strategy (Appendix B) and the detailed criteria included within Appendix C.

AC 11 Treasury Management – Annual Report 2012/2013

RESOLVED to **RECOMMEND** that the Treasury Management – Annual Report for 2012/2013 be noted.

Meeting held on 17th September 2013

10

Unstarred Minute to agree

Members are recommended to agree:

AC 20 Audit of the Annual Statement of Accounts 2012/2013

RESOLVED to **RECOMMEND** that:

- (i) the ISA 260 Report – the Financial statements opinion and the Audit findings (Section 2) be noted;
- (ii) the Letter of Representation as shown in Appendix 2 be approved; and,
- (iii) the Financial Statements be approved.

(ii)	Community Services Committee Meeting held on 10 th September 2013	14
	Unstarred Minute to agree Members are recommended to agree:	
	CS 14 Rentplus – A New Model Of Affordable Housing FURTHER RESOLVED to RECOMMEND that Council:	
	(i) adopts RENTplus as part of its Section 106 agreement within the housing allocation policy; and,	
	(ii) that both Council and Devon Home Choice retain the Band E category as many applicants for the RENTplus scheme would come from this category.	
	CS 18 Operational Changes to the Off-Street Parking Places Order RESOLVED to RECOMMEND to Council that amendments be made to the Council’s Off-Street Parking Places Order to the effect that:	
	(i) a coach parking fee be added to the Bedford Sawmills car park to the Order of £10 for all day parking and £5.00 for four hours and that the fee charge display board clearly shows that the fee is for both coaches and minibuses;	
	(ii) the “grace” period currently afforded to motorists be retained at 10 minutes;	
	(iii) the area of land at Simmons Road, Okehampton as marked on the Land Registry map given at Appendix 1 to the report be added to the Order to enable effective enforcement to be undertaken;	
	(iv) the proposal to introduce a coach parking fee at the Bedford car park, Tavistock be deferred to enable suitable action to take place to encourage school bus operators to not use the dedicated coach parking area as a convenient place to park their coaches prior to the school contract runs and that a further report on the success of this be presented to a future meeting of this Committee; and,	
	(v) the Order be updated to allow for enforcement to be undertaken in respect of motorists who pay for their parking via RINGGO, the pay-by-phone facility.	
(iii)	Planning & Licensing Committee Meeting held on 6 th August 2013	19
	Meeting held on 3 rd September 2013	33
(v)	Resources Committee Meeting held on 23 rd July 2013	44

Meeting held on 17th September 2013

Unstarred Minute to agree

Members are recommended to agree:

RC10 Medium Term Financial Strategy 2014/15 To 2017/18

RESOLVED to RECOMMEND that:

- (i) the Financial Strategy be accepted as a foundation document for the Council's budget setting process;
- (ii) the minimum level of the Unearmarked General Fund Revenue Reserves be maintained to at least £750,000 (the current level stands at £1,030,000);
- (iii) Members provide a set of 'minded to' views in order to guide the 2014/15 budget process:-
 - (a) on the level of Council Tax Support Grant to be passed on to Parish and Town Councils (being the percentage reduction on the Council's government funding for 2014/15 – currently 13.66%)
 - (b) to increase Council Tax by 1.9%
- (iv) a letter be sent from West Devon Borough Council to the Secretary of State Mr Eric Pickles stating strong support for the letter previously sent to him by Devon County Council Leader Cllr John Hart dated 30 August 2013 and which sets out West Devon Borough Council's achievements in relation to shared services and confirms that we are facing the same problems of stringent cuts and the threat to our ability to continue to provide services for our community.

RC 13 Corporate Sponsorship Framework

RESOLVED to RECOMMEND to Council that:

- (i) The Framework document (presented as Appendix A to the report) to be used by Service areas in maximising sponsorship opportunities be approved; and
- (ii) Sponsorship opportunities below the value of £10,000 are agreed through use of the framework by the relevant Chairman and Vice Chairman in conjunction with the appropriate Head of Service, with larger opportunities being presented to the Resources Committee on a case by case basis.

RC 17 Five Year Land Supply Statement 2013

RESOLVED that Council be **RECOMMENDED** to agree that:

- (i) the Council has 5.4 years of housing land supply as evidenced in the Five Year Land Supply Statement 2013; and,
- (ii) the Five Year Housing Land Supply Statement 2013 be published on the Council's website.

- 10. Focus Review – to receive the report of the Focus Review Working Group 54
- 11. Council Size Consultation Response – to receive the report of the Political Structures Working Group 64
- 12. Strategic Risk Assessment – Six Monthly Update – to receive the report of the Corporate Director (AR) 73

PLEASE NOTE: Appendix 1 to this report is confidential under Paragraph 10 of the Local Government Act 1972. (78 – 95)

- 13. To Order the affixing of the Common Seal
For the information of Members, a list of documents sealed by the Council and witnessed by the Mayor and the Chief Executive during the period from 23rd July 2013 to 20th September 2013. 96

PART TWO – ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC ON THE GROUNDS THAT EXEMPT INFORMATION MAY BE DISCLOSED (if any).

If any, the Council is recommended to pass the following resolution:

“RESOLVED that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the Meeting for the undermentioned item of business on the grounds that exempt information may be disclosed as defined in Part I of Schedule 12(A) to the Act.”

Dated this 30th day of September 2013



Chief Executive

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WEST DEVON BOROUGH COUNCIL

NAME OF COMMITTEE	Council
DATE	8 October 2013
REPORT TITLE	Changes to the Political Composition of the Council
Report of	Democratic Services Manager
WARDS AFFECTED	All

Summary of report: To consider an urgent report which, in light of the recent changes to the political composition of the Council, seeks to make necessary revisions to the membership of Council Bodies for the remainder of the 2013/14 Municipal Year. The report also seeks approval to update the Council Constitution to ensure that any future amendments to the political composition of the Council be formally reported to the next Council meeting.

In addition, the report also wishes to highlight that the establishment of a fourth Political Group has implications upon the Scheme of Members' Allowances and will necessitate the need to reconvene the Independent Remuneration Panel.

Financial implications: There are no financial implications of note arising from this report at present. However, there may be financial implications following any future changes to the Scheme of Members' Allowances.

RECOMMENDATIONS:

It is recommended that:

1. with immediate effect, the membership of Council Bodies for 2013/14 be amended as outlined at paragraph 1.3 below;
2. the Council Constitution be amended to ensure that it is a requirement for any future amendments to the political composition of the Council to be formally reported to the next meeting of the Council; and
3. in light of the most recent amendments to the political composition of the Council, the need to reconvene the Independent Remuneration Panel be noted.

Officer contact: Darryl White, Democratic Services Manager
darryl.white@swdevon.gov.uk

1. BACKGROUND

Membership of Council Bodies 2013/14

- 1.1 A number of changes have arisen to the political composition of the Council since the appointments to Council Bodies were approved for 2013/14 at Annual Council on 21 May 2013 (Minute CM 15 refers).
- 1.2 The extent of the changes have now resulted in the membership of Council Bodies no longer being politically balanced.
- 1.3 As a consequence, Group Leaders have been consulted on the updated political balance table and the proposed changes to the membership are as follows:-
 - That Cllr Morse retains his seat on Community Services, but as an Independent Conservative (not a Conservative);
 - That the Independent Conservative Group gains a seat on the Audit Committee, in place of Cllr Wilde, who has resigned from this position. Cllr Morse has been nominated to fill this vacancy; and
 - Cllr Clish-Green is no longer able to be a named substitute for Cllr Wilde on either the Audit Committee or the Planning and Licensing Committee.

Political Composition of the Council

- 1.4 The current political composition of the Council is as follows:-

Conservative Group – 15 Members;
Independent Group – 10 Members;
Lib Dem Group – 2 Members;
Independent Conservative Group – 2 Members; and
Non-aligned – 2 Members.

- 1.5 A Member has suggested that it should now be a constitutional requirement for any future changes to the political composition to be formally reported to the next Council meeting for noting purposes.

Scheme of Members' Allowances

- 1.6 One of the implications of the establishment of an Independent Conservative Group is that the adopted Scheme of Members' Allowances currently only makes provision for the payment of a Special Responsibility Allowance to the Leader of the largest Group and two other Groups.
- 1.7 Therefore, it is worth the Council noting that it will be necessary to reconvene the Independent Remuneration Panel in due course to consider and make its recommendations to the Council on a revised Scheme.

2. LEGAL IMPLICATIONS

2.1 The Local Government and Housing Act 1989 requires that appointments to certain bodies must achieve a political balance.

2.2 The Council is also responsible for making and amending appointments to Council Bodies.

3. RISK MANAGEMENT

3.1 The risk management implications are shown at the end of this report in the strategic risks template.

Corporate priorities engaged:	All
Statutory powers:	Local Government and Housing Act 1989.
Considerations of equality and human rights:	Not affected by this report
Biodiversity considerations:	Not affected by this report
Sustainability considerations:	Not affected by this report
Crime and disorder implications:	Not affected by this report
Background papers:	Political Balance Table Council Constitution Annual Council Summons and Minutes – 21 May 2013 The Local Authorities (Members' Allowances)(England) Regulations 2003.
Appendices attached:	None

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Appointing Politically Balanced Committees	Failure to appoint politically balanced Committees will be in breach of the provisions outlined in the Local Government and Housing Act 1989.	3	1	3	↔	By the Council agreeing the revisions to the membership of Council Bodies will ensure political balance.	Head of Corporate Services

Direction of travel symbols ↓ ↑ ↔

NAME OF COMMITTEE	Council
DATE	8 October 2013
REPORT TITLE	National Park Governance Review
Report of	Head of Corporate Services
WARDS AFFECTED	All

Summary of report: To agree a suitable response to the Department for Environment Food and Rural Affairs (DEFRA) following their invitation to express our views on changes to composition and size of the proposed Dartmoor National Park Authority (DNPA) structure to take effect from April 2014.

This report has been deemed to be urgent in light of the deadline for responses being before the next scheduled meeting of Council.

Financial implications: There are no financial implications of note arising from this report.

RECOMMENDATIONS:

It is recommended that a response be sent to DEFRA as follows:

1. That West Devon Borough Council agree with the proposal to reduce membership from 22 to 19;
2. That West Devon Borough Council agree with the proposed mix of membership for Dartmoor National Park Authority; and
3. That West Devon Borough Council agree to the reduction of their members on the DNPA from three members to two members.

Officer contact: Jan Montague, Head of Corporate Services
jan.montague@swdevon.gov.uk

1. BACKGROUND

- 1.1 The background and issues for consideration are set out in the attached letter from DEFRA. The recommendations set out above mirror the responses requested from DEFRA.

2. LEGAL IMPLICATIONS

2.1 It is a Council responsibility to approve appointments to external organisations.

3. RISK MANAGEMENT

3.1 The risk management implications are shown at the end of this report in the strategic risks template.

Corporate priorities engaged:	All
Considerations of equality and human rights:	Not affected by this report
Biodiversity considerations:	Not affected by this report
Sustainability considerations:	Not affected by this report
Crime and disorder implications:	Not affected by this report
Background papers:	None
Appendices attached:	Appendix A: Letter from DEFRA re National Parks Governance Review

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1		Failure to respond in time to the consultation will result in the views of WDBC not being heard	1	1	1	↓	By taking the report as an urgent item to Council it will enable the views of WDBC to be included	Head of Corporate Services

Direction of travel symbols ↓ ↑ ↔

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Name of Committee	Full Council
Date	8th October 2013
Report Title	The Focus Review
Report of	The Focus Review Working Group

1. Background

A planning application allowing alterations to the building on the Focus Do-It-All site in Tavistock was granted in July 2011. Although the point does not seem to have been specifically considered, the application was granted on the basis of the conditions attached to the original permission would still apply to the new permission. Case law subsequently drawn to the Council's attention indicated that the conditions were not automatically attached opening up the possibility that the premises could be used for food retailing.

The next 9 months saw a protracted process involving the Planning and Legal departments and consultation of external legal parties in an attempt to resolve the situation. This concluded with a report to Full Council in April 2012 recommending legal proceedings. Following the production of the draft Retail Study, a further report was presented to Full Council in May 2012, again recommending the Judicial Review option. This was narrowly supported by the Council. Following the unsuccessful Judicial Review and consequent financial implications the Chief Executive presented a report to the April 2013 Full Council meeting recommending a Members' working group should be set up to identify what lessons could be learned from these proceedings. This proposal was accepted by the Council.

2. Working Group

The *Focus Review Working Group* was established with Cllrs Benson, Leech, Morse, Musgrave (Chair) and Sampson, being nominated by Group Leaders to serve on it. The Group was supported by the Chief Executive and the Member Services Manager working to the Terms of Reference as proposed in the Chief Executive's report and adopted by Full Council (CM89) outlined below.

- (i) Should officers have understood the implications of granting consent to divide the retail unit without requiring the re-imposition of conditions from the planning permission granted in 2007? If so, was the failure to understand the implications due to a matter of professional error or a system failure or some other cause;
- (ii) Why it took some 11 months after the grant of permission to make the application for Judicial Review and what, if anything should have been done to expedite matters;
- (iii) Why Members were not made fully aware of all the practical options available to them;
- (iv) The quality of the external legal advice received;
- (v) The involvement of elected Members before the matter was reported to Council in April 2012 and the role of local Ward Members in matters of this kind;

- (vi) Had the Council fully considered the planning merits of the permission when it was granted or when provided with Counsel's Opinion would it have drawn different conclusions on the impact of the potential food retail use.

The Working Group (WG) met on a near weekly basis through May and June. Members were provided with a substantial bundle of relevant legal papers and details of the extensive communications that took place between the various parties following the original planning application. This included the Chronology of events as per the attached Appendix A.

The WG also interviewed relevant officers still working for the Authority and also met with those Members who had indicated that they wished to provide information to be considered by the Group. These included the local Ward Member (Cllr. Mrs. Clish-Green), the Leader of the Council (in his capacity as Vice-Chair of the P&L Committee during the relevant period), Cllr Mrs Marsh as Chairman of the P&L Committee from May 2011 and Cllr. Mrs Ewings.

3. The Working Group's Findings

- 3.1 There was general acceptance by both the Planning Officers and the Planning Solicitor that a greater awareness of current planning legislation and case law could have avoided the legal loophole being exploited. (One of the objections to the application was that if granted it might permit food retailing but it was rejected without alerting the Council to give consideration to the possibility of granting permission for food retailing.) The representatives from both departments accepted that a greater scrutiny of legal planning issues was required on an ongoing basis. The Head of Service for Planning, Economy and Community however identified a number of recent case law incidents where other local authorities had to deal with similar legal proceedings as per the attached Appendix B.
- 3.2 As indicated above, the WG was provided with extensive records of all the communications particularly between the Planning and Legal departments. The WG found the 'paper trail' in the Legal Department more comprehensive than in the Planning Department which may be a reflection of different departmental practices but which should become consistent across the authority.
- 3.3 There was general acceptance that the protracted process and subsequent delay in the submission for Judicial Review was the major factor in the failed legal process. It was recognised that this was partially the result of the case being passed back and forth between the Planners and the Legal department. There was a clear need for all such cases to have a clear ownership by a specific party with full responsibility for such issues to be resolved within an acceptable timescale.
- 3.4 The WG was concerned that work pressures in both the Planning and Legal Depts. had contributed to the delays that occurred. However the Chief Executive and the Head of Service for Planning, Economy & Community expressed their belief that neither Dept experienced an *overload* of work.
- 3.5 In his Judgment, the Judge stated (para. 11.12) that "but for the delay and prejudice issues, it is likely that the Claimant [Cllr. Sanders] would have obtained permission for Judicial Review" (i.e. would have had the case heard but not necessarily granted).

The decision by Members to wait for the outcome of the Retail Study before deciding whether or not to pursue the Judicial Review option resulted in a further delay. It was noted that the court identified the findings of the Retail Study as irrelevant to the outcome of the legal proceedings (28.32). “It appears that no thought was given to asking for the consultant’s view, even if provisional, before or after that date” [Sept., 2011, the date since which the consultant had been working on the retail study].

- 3.6 The lifting of the Devon County Council covenant which restricted trading on the site to non-food retail clearly had an impact on the final outcome although not strictly a planning issue. There was concern that, the Council being unaware of the County Council’s negotiations for the release of the Covenant, it may have been regarded as a “safety net” and thus diminished the urgency of the matter.
- 3.7 As identified in the WG’s interim report to the June 2013 O&S Committee meeting, there was criticism that officers did not make Members fully aware of the option to revoke the planning permission although it was touched on briefly verbally in the Meeting. It is now accepted that this option should have been detailed in the report to Members. However it is fully accepted that this option was not considered to be relevant due to the unacceptable level of compensation costs that would have been incurred.
- 3.8 Likewise, it is felt that the “do nothing” options should have been given greater consideration in the report i.e. consequences of not making an application for Judicial Review and a secondly a fuller assessment of the planning merits in particular the impact of unrestricted retail use of the subdivided unit. This needed to be balanced against the legal issues of delay, prejudice and public interest and this probably led to too much weight being given to the outstanding retail study.
- 3.9 The need for prompt action, after the expiry of the three-month period, does not seem to have been fully appreciated by Members or officers. As they were involved with other Judicial Review applications for S.H.D.C., it may be assumed that our own lawyers were aware of the need for prompt action but were undermined by the lack of urgency apparent on the part of our external advisers (another aspect of lack of “ownership”).

Instructions to Counsel were issued on the 24th November, 2011, (seven weeks after the expiry of the three-month period, but three days after the Legal Dept had received the request to do so). The Instructions asked for an Opinion in seven days or an indication when Counsel would advise.

It is not clear if that was followed up as it is noted that Counsel’s Opinion is dated 12th January, 2012 but date stamped as received by the Council on 25th January.

Neither Instructions nor Opinion refer to any remedy, simply addressing the correctness or otherwise of the Opinions obtained by other parties.

A further Opinion was sought, instructions being acknowledged by Counsel on 5th March, 2012. An Opinion was emailed on 12th March making specific reference to the possibility of Judicial Review.

In the Opinion (paras. 4 & 5), Counsel advised a “pre-action” letter to Marchfield on the basis “we could backtrack” if Marchfield produced sufficient evidence of prejudice caused by the Application for J.R. This seems to imply that Counsel assumed that the Council would proceed immediately with its Application but the Opinion concludes “the decision about the pre-action letter must be taken speedily

and the letter written as soon as possible. Any further **great** delay would be fatal” (*our emphasis*).

The pre-action letter was sent on the 26th March and Marchfield’s reply was dated 2nd April.

The Council considered the recommendation for Judicial Review on 17th April, 2012, and it is difficult to dispute the Judge’s comment that “the Council saw neither any great urgency in dealing with the matter nor were particularly careful in considering their options or the consequences for the public interest generally”. The WG is of the view that some responsibility at least rests with the Council’s external advisers for not properly addressing the issue of timing and not reviewing the viability of the application with the passage of time. It is also apparent that the external solicitors acted as a ‘middle man’ rather than an advisor.

It is not clear if, in the context of “prejudice” (see Judgment para. 41. 45), Counsel considered Marchfield’s reply to the pre-action letter and the possibility of “back-tracking”. (Perhaps it was not referred to Counsel –“ownership”?)

The Judge was also clear in his comments (Paras. 49.59 et seq.) on the public interest ground of the application and the WG is not satisfied that the Council was properly advised on this aspect of the Application.

- 3.10 Members’ involvement prior to the report to the April 2012 Full Council was very limited. There was some initial contact with the Local Ward Member when the planning application was being considered but this contact was not maintained (presumably because no problem was perceived – see 3.1. above). Had the full implications of the application been known, all Tavistock Members should have been consulted as well as the Ward Member.
- 3.11 There was an informal “briefing” by the Head of Service for the Chair and Vice-Chair of the P&L committee on 23 February 2012. However there is no record of this briefing given by the Planning Officers and the details of the meeting are unclear. This is seen as an issue of some concern, i.e., when officers perceived a need to brief or consult Members on an issue evolving from operational to policy, there should be a record of the discussion.
- 3.12 At the time of the production of this report the Deputy Monitoring Officer reported that the primary concern as to whether the site can be lawfully used for food retail remains unclear. An application for a certificate of lawfulness is due to be determined by the Planning Inspectorate but all parties have agreed that this should be held in abeyance until the judgement of a case heard in the Court of Appeal is handed down.
- 3.13 It is anticipated by both parties and indeed the Judge in our own case that this decision may provide a clear ruling on the matter. The case raises important issues about the construction and effect of planning permissions. In assessing what has been granted planning permission, a more detailed analysis of the application and drawings may now be required. In addition, where planning permission is given for alterations whether this amounts to a material change of use of the site.

4. Conclusions

4.1 Planning / Legal training / awareness of statutory changes – Term of Reference

(i)

The WG recognises the problems of busy officers keeping “up to date”

This has been addressed by the officers in both the Planning and Legal depts. with a more structured process. The WG understand that arrangements are being put in place to assist working between the two departments. The WG have been advised that bi-monthly meetings will take place between the Head of Planning, Economy and Community and the Link Lawyer to enable a strategic overview of issues, and monthly meetings will take place between the Link Lawyer and the Development Manager. Training will be discussed and arranged as appropriate. It will be shared to ensure that best use is made of resources. In addition there will be training sessions for all relevant staff which will take place twice a year. Members may also be invited to training sessions on the same topics.

In terms of answering the Term of Reference (i), the answer is probably yes, but is noted that this continues to be an area of evolving case law.

4.2 Ownership / Timescales – Term of Reference (ii)

The interaction between the Planning and Legal Depts. and this ‘ping-pong’ effect resulted in unacceptable delays in dealing with the application. This has been addressed within the new structure of the Legal Dept which was recommended in their recent service review. There is a single Legal Link Officer meeting regularly with senior planning officers and the Head of Service to ensure current cases are properly managed, to discuss future demand and introduce systems to manage workflows and training requirements. The Link Lawyer will also take ownership for disseminating case law to planning officers and those officers will ensure that their knowledge is kept up to date.

Planning cases should be owned by the Planning Department, however the Head of Planning, Economy and Community has no control over legal resources so there must be regular meetings and working together. It is also apparent that different officers were at different starting points in terms of the level of their knowledge and assumptions were made about understanding. This must be addressed and common understanding ensured. Term of Reference (ii) has been addressed in para 3.3 and 3.9.

4.3 Members’ Involvement and The Role of the Local Ward Member and member’s involvement – Term of Reference (iii and v)

The informal briefing of the Chair and Vice-chair of the P&L committee on such a crucial issue is seen as unacceptable. It is recommended that such meetings (when officers have specifically invited Members to attend to discuss an issue or issues) are properly recorded on a more formal basis. As the application had previously been referred to the Ward Member, should she have been invited to the meeting? It is not clear what the purpose of the meeting was: to inform Members, to seek guidance or approval, to pass or share responsibility? If it was important enough to raise with Members, it must be important enough to have a note of the purpose and outcome of the ‘briefing’.

Term of Reference (iii)

The reports to Members should have included all of the options. An assumption was made that revocation was not realistic and the ‘do nothing’ option was not discussed. Again, assumptions may have been made about the level of Member’s understanding and all options should have been included and explained.

Term of Reference (iii) has been addressed in para 3.7, 3.8 and 3.10.

Term of Reference (v)

The local Ward Member was consulted at an early stage, but was not kept informed of how the case was progressing. Ward Members have a right to know about such important issues that are taking place within their Ward. The involvement of other Members, in this case the Chair and Vice Chair of Planning and Licensing Committee, took place informally at the conclusion of a Committee Briefing.

Term of Reference (v) has been addressed in para 3.10 and 3.11, and 4.3

4.4. Legal Guidance – Term of Reference (iv)

The internal lawyers should have given clearer instructions to Counsel and instead of asking ‘is this opinion correct’ should also have asked ‘and if so, what are our options’. Opinion was sought but no action taken in the meantime, again alluding to the lack of ownership. Whilst the second Counsel’s opinion was helpful, the first was not.

Term of Reference (iv) has been addressed in para 3.9

4.6 Planning Merits of the Planning Permission – Term of Reference (vi)

It is not possible to second guess if the decision of the Council would have been any different. The planning merits were raised in sufficient detail in the Committee Reports. Reliance was placed on the retail study but the WG notes the reasoning of the Judge

Term of Reference (vi) has been addressed in para 3.8

5 Recommendations:

In light of the conclusions above, the Working Group make the following recommendations:

5.1 A protocol should be put in place to guide working practices between the Legal Department and the Planning Department

5.2 Bi-monthly meetings with the Head of Planning, Economy and Community and the Link Lawyer, and monthly meetings with the Development Manager and the Link Lawyer, should be recorded/noted

5.3 In cases where JR or other serious litigation proceedings are contemplated by the Council or brought against the Council there needs to be an initial meeting of senior officers and regular face to face meetings to ensure that matters are dealt with promptly and all issues fully explored.

5.4 On any occasion where officers feel it necessary to brief Members on a significant issue which has legal, financial or reputational impact, a file note should be made and kept

5.5 Early consideration should be given by the Head of Planning Economy and Community to the public interest in these cases so that the Ward Members and other key Members are properly informed. Agreement can then be reached on the level of input required of Members

5.6 Reports to Members should include all options and an explanation of the potential impact and merits of each option.

FORMER FOCUS SITE, TAVISTOCK

CHRONOLOGY OF EVENTS

DATE	EVENT
2 April 2007	Planning Permission was granted for the Focus DIY store which permitted the use of the whole unit as a non-food retail warehouse (Class A1) A condition restricted the goods that could be sold from the store (eg to DIY/Hardware) and prohibited the sale of other goods (eg food and clothing) without the prior written permission of the Council.
11 July 2011	Planning Permission was granted to alter elevations, including a new shop front and associated works. This was normal practice as the application was for minor alterations and it was judged that the conditions on the original application remained applicable.
31 October 2011	A major food retailer, accompanied by the owner of the Focus Store, attended a meeting with Marion Playle and Jo Perry asserting that they had Counsel's opinion which confirmed that they could use the Focus Store for food retailing. Given the seriousness of the issue it was decided to seek our own legal opinion, rather than accept the fact on face value
21 November 2011	Legal were instructed to seek our own counsel opinion who themselves confirmed that case law now allowed food retail on the site.
Late November	An email was sent to Marion Playle from the major food retailer confirming that they were no longer interested in the site
23 December 2011	An application for a Certificate of Lawfulness for a Proposed Use or Development Application (CLOPD) was received from Marchfield Properties Limited for the proposed alteration and sub-division of the unit for unrestricted retail use (Class A1)
23 Feb 2012	Officers, with leading members, considered whether to issue the Certificate or not and decided to seek further legal advice as to whether a remedy was available
12 March 2012	Counsel advised that High Court Action to quash the July 2011 Planning permission was the only remedy available. Given the impact an out of town supermarket could have on the Town Centre of Tavistock it was decided to recommend such action to Council
17 April 2012	Council were presented with a report recommending High Court Action – the decision was deferred pending the results of the retail study
15 May 2012	A further report was presented to Council. A decision was

	taken to pursue High Court action to quash the planning permission and to seek an extension of time to do so
June 2012	The claim was made to the High Court
22 August 2012	Marchfield properties lodged an appeal with the Planning Inspectorate against non-determination of the Certificate of Lawfulness (CLOPD)
9 October 2012	The Judge ordered a hearing
22 January 2013	At the hearing the Judge refused an extension of time
28 January 2013	Marchfield made a request to the Planning Inspectorate to delay the appeal for non determination of the CLOPD until after September 2013. The Council and PINS agreed.
12 February 2013	A report was presented to Council noting the High Court decision to refuse the extension of time, and the current planning status of the site
16 April 2013	A further report was presented to Council seeking agreement to a review of the process and decisions that led to the High Court Judgement
7 May 2013	First meeting of the Focus Review Working Group was held and Terms of Reference were agreed
4 June 2013	Interim report of Focus Review Working Group presented to Overview and Scrutiny Committee, and agreement sought to present final report directly to Council

Chronology of relevant case law

1974 - Pilkington v SSE

Two planning permissions could not operate on the same land where the operation of a condition made the development of one incapable of implementation.

1981 – Newbury DC v SSE

Considered the circumstances in which the existing permitted use rights may be lost. Difficult to establish the creation of a new planning unit or a new chapter where permission purports only a change of use but circumstances can arise.

1982 - Jennings Motors Ltd v SSE

Case concerning whether there was a change which constituted a new chapter in planning history – question of fact and degree

2009 – Barnett v SSCLG

Relevance of plans describing building works in determining what was permitted by a permission

2010 – Stevenage BC v SSCLG

A permission did not have primacy over the plans.

Ultimately the question for the planning inspector was, having regard to the application for planning permission and the plan that accompanied it, whether sub-division of the retail unit could be seen as part of the overall package of works in respect of which planning permission had been granted. Whilst the plan showed internal works and so differed from the notice of application for planning permission that it accompanied, that did not mean that the plan was inconsistent with the notice or that it could be said that the words of the notice had primacy, *Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476, [2010] 1 P. & C.R. 8* applied and *Barnett v Secretary of State for Communities and Local Government [2008] EWHC 1601 (Admin), [2009] 1 P. & C.R. 24* followed. In the instant case, whilst other possibilities were theoretically open, the inference from the plan had to be that sub-division had been intended to be done at the same time as external works to the retail units. The fact that the plan showed that "shop internals" had not been surveyed did not militate against the inclusion of the sub-division in the works. The lack of such details did not mean that the planning application and permission could not have encompassed the main structural item, namely the internal wall, rather than matters of fitting out. The internal sub-division objectively formed part of the proposed works for permission on the plans and, in the circumstances, that conclusion was not ousted by a lack of reference to them in the planning permission notice. Accordingly, the planning inspector had been correct in concluding that the grant of planning permission for works on the retail unit encompassed internal sub-division works and in granting an LDC to G.

2010 – R v Prudential Ass Co Ltd v Sunderland CC

In accordance with cl.3, the s.52 agreement could not be interpreted as prohibiting or limiting the right of any person to develop the land in any way which was authorised by a planning permission granted subsequent to the conclusion of the agreement. It was not possible to interpret cl.3 as prohibiting or limiting the use of the land if a planning permission was granted subsequent to the execution of the agreement which authorised a use prohibited or limited by the agreement. To conclude otherwise would be to re-write the clear words of cl.3. However, that conclusion was reached with reluctance. It was clear that the officer of the local authority who granted permission for the conversion of unit 1 into two units simply did not consider the possibility that the terms of the planning permission granted to P had the effect of releasing the two units authorised by the permission from the constraints imposed by the s.52 agreement. However, it did not seem that the subjective state of mind of the officer could have had any relevance to the proper interpretation of the planning permission and the relationship of that permission to the s.52 agreement. Likewise, no extrinsic material was properly admissible to interpret the planning permission so as to achieve an interpretation of the planning permission which meant that use of the two units was subject to the s.52 agreement. That conclusion was reached quite independently of the decision of HHJ Waksman QC in *Stevenage BC v Secretary of State for Communities and Local Government [2010] EWHC 1289 (Admin)*. Nonetheless his conclusions in that case were entirely consistent with the instant court's conclusions, *Stevenage* considered.

2010 cases - Planning permission granted for the creation of two shops by external alterations and internal subdivision of one existing unit will supplant previously permitted use and conditions imposed.

2012 – Peel Land and Property Inv Co v Hyndburn BC – case currently being appealed.

Planning permissions obtained by the owner of a retail park did not have the effect of releasing it from obligations restricting the type of goods that could be sold in certain units; the local planning authority had therefore been entitled to refuse to grant certificates of lawful development to allow unrestricted A1 retail use at the retail park.

WEST DEVON BOROUGH COUNCIL

NAME OF COMMITTEE	Council
DATE	8 October 2013
REPORT TITLE	Electoral Review of West Devon – Consultation Exercise on Council Size
Report of	Political Structures Working Group
WARDS AFFECTED	All

Summary of report: To consider a report which asks the Council to submit a response to the Local Government Boundary Commission for England (LGBCE) during the public consultation exercise on its initial views on Council Size (e.g. number of Members elected) to serve on West Devon Borough Council from the May 2015 Local Elections.

Financial implications: In the event that there is no significant variation in Council size, then there will be no financial implications of note arising from this report.

RECOMMENDATIONS:

It is recommended that:

1. Council supports the initial views of the Local Government Boundary Commission for England whereby the Council Size for West Devon Borough Council should be retained at 31; and
2. based upon this decision on Council size, delegated authority be granted to the Head of Corporate Services to respond on behalf of the Council to the Local Government Boundary Commission for England before the deadline of Monday, 14 October 2013.

Officer contact: Darryl White, Democratic Services Manager
darryl.white@swdevon.gov.uk

Member contact: Cllr McInnes, Chairman of the Political Structures Working Group
jamesmcinnes@westdevon.gov.uk

1. BACKGROUND

- 1.1 At a special meeting of Council held on 1 July 2013, the Council endorsed an evidence-based submission being sent to the LGBCE on Council Size before its deadline of 5 July 2013.

- 1.2 Members will recall that the submission stated that 'when looking at the roles which need to be discharged by the Borough Council, there is not a rational argument for any significant variation in Council Size'.
- 1.3 On 3 September 2013, the Chief Executive received correspondence from the LGBCE (attached at Appendix A), which informed of the intention of the Commission to initially consult on a proposal for a council size for West Devon of 31 councillors.
- 1.4 The consultation period expires on 14 October 2013 and the Political Structures Working Group met on 16 September 2013 to discuss the correspondence and make its recommendations to the Council.

2. ISSUES FOR CONSIDERATION

Views of the Working Group

- 2.1 In considering the matter, the Working Group welcomed the fact that the initial views of the LGBCE were in line with that of the Council and therefore wished to support the proposal to retain the Council Size at 31.
- 2.2 In particular, the Working Group was pleased to note that this suggested that the LGBCE recognised that the representational role of being a Member outweighed that of the number of Members required to run the authority.

Next Steps

- 2.3 After 14 October 2013 deadline has expired, the LGBCE will consider all of the representations it receives during the public consultation and will then take a provisional decision on Council Size.
- 2.4 Once this decision has been made, the LGBCE will then begin a public consultation exercise on warding arrangements from 26 November 2013 to 3 February 2014.
- 2.5 It is worth reiterating at this stage that even if the provisional decision on Council Size is 31, the current imbalances within the existing warding arrangements will still exist and will therefore necessitate the production of a revised pattern of wards.
- 2.6 Notwithstanding the provisional decision on Council Size, Members are also informed that the LGBCE will work on the basis that there is sufficient leeway in the process to ensure that, when the pattern of warding arrangements is being established, the Council Size may need to be slightly adjusted to make it best fit to ensure equality of democratic representation.

3. LEGAL IMPLICATIONS

3.1 There is provision within the Local Democracy, Economic Development and Construction Act 2009, which established the ability for the LGBCE to conduct an Electoral Review.

4. RISK MANAGEMENT

4.1 The risk management implications are shown at the end of this report in the strategic risks template.

Corporate priorities engaged:	All
Statutory powers:	Local Democracy, Economic Development and Construction Act 2009.
Considerations of equality and human rights:	Not affected by this report
Biodiversity considerations:	Not affected by this report
Sustainability considerations:	Not affected by this report
Crime and disorder implications:	Not affected by this report
Background papers:	Council Constitution LGBCE presentation to Informal Council on 16 April 2013 Special Council report and minutes – 1 July 2013 meeting
Appendices attached:	Appendix A: Response to the Chief Executive from the LGBCE dated 3 September 2013.

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Fairness and Equity of Democratic Representation.	Failure to ensure electoral representation is fair and equitable restricts the Councils ability to deliver services reflective of local need, demand and community identity.	3	2	6	↓	By supporting the initial views of the LGBCE will ensure that the Council also recognises the importance of ensuring fair and equitable electoral representation.	Head of Corporate Services

Direction of travel symbols ↓ ↑ ↔
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WEST BOROUGH DEVON COUNCIL

NAME OF COMMITTEE	Council
DATE	8 October 2013
REPORT TITLE	Strategic Risk Assessment - Six Monthly Update
Report of	Corporate Director (Alan Robinson)
WARDS AFFECTED	All

Summary of report:

To consider a report which, in accordance with the Joint Risk Management Policy adopted by South Hams District Council on 10 May 2012 and by West Devon Borough Council on 17 May 2012 provides the required six monthly update to Members.

The report includes the current corporate strategic risk assessment and a summary of the management and mitigation actions to address the identified risks.

A version of this report was also considered by the Audit Committee at its meeting on 17 September 2013

Financial implications:

There are no direct financial implications arising from the report, although effective corporate risk management may help protect the Council from future losses.

RECOMMENDATIONS:

That the Council reviews the strategic risks and has the opportunity to determine whether any further action should be taken with the objective of improving corporate risk management.

Officer contact: Alan Robinson - alan.robinson@swdevon.gov.uk or by telephone on 01822 813629

1. BACKGROUND

- 1.1 Following the recommendation of the Audit Committee on 3 April 2012, the Council at its meeting on 17 May 2012 resolved to adopt the Joint Risk Management Policy.
- 1.2 The Joint Risk Management Policy requires the Senior Management Team to undertake reviews of the Corporate Risk Tables on a monthly 'light touch' basis and more comprehensively on a quarterly basis. It also stipulates that a

Corporate Director will provide update reports to the Audit Committee on a six monthly basis.

- 1.3 Audit Committee have been undertaking a risk review on a regular basis in line with adopted policy. To increase wider awareness of the nature of the strategic risks and the actions being taken, the Audit Committee endorsed the suggestion of the Leader that there would be a benefit in this matter also being considered by Council.

2. STRATEGIC RISK REGISTER

- 2.1 The risks currently monitored by SMT are set out in five tables (Appendix 1) as follows:

- Table 1 - Strategic Political Risks
- Table 2 - Strategic Management Risks
- Table 3 - Strategic Staffing Risks
- Table 4 - Strategic Financial and Asset Risks
- Table 5 - Corporate Issues Risks.

- 2.2 The tables include a summary of mitigating and management actions undertaken or proposed, to manage the identified risks. Monitoring requires both a proactive approach to assessing potential risk, as well as carrying out retrospective reviews to improve learning from risk and embedding it across the two Councils. The risk tables refer to both shared risks as well as risks affecting only one Council, on the basis that there is a benefit in understanding risks faced across the two organisations and an opportunity to share learning from managing those risks. Appended to the risk tables is a Risk Scoring Matrix which has been used to identify risk status. A risk rating is developed by assessing risk impact/severity and multiplying it by the likelihood/probability of the risk occurring. The risk score identified is the assessment based on the mitigation being successful.

- 2.3 The final attachment within Appendix 1 summarises the strategic risks, identifying the key risks at the point of the review. The tables are living documents and will regularly change in response to issues arising. Members should note that while risk is assessed collectively within SMT, the judgments in relation to the scores are inevitably subjective and Member challenge of the officer conclusions is therefore welcomed.

- 2.4 It is suggested that Member attention is focussed on those risks with the highest score i.e. the risks with a score above 16. While members are invited to focus on the key risks, members are welcome to review any of the risks identified, including questioning whether the risk is appropriately scored, or whether further mitigating actions are required.

3. HIGH RISK ISSUES IDENTIFIED BY SMT

- 3.1 Based on SMT's review of the attached risk tables, the high level risks are as follows (i.e. those with a risk score of 16 and above. For more detail please refer to the confidential risk tables attached):

Strategic Financial and Asset Risks

FA04 (16) – The robustness of the medium term financial strategy and related service blue-prints;

FA06 (16) – Funding of the future capital programme.

Strategic Management Risks

MT07 (16) - Management capacity to respond to the level of external demand which is generated by a combination of national policy changes as well as customer/community requirements. This risk also relates to the capacity of staff as identified in ST01 (see below).

Strategic Staffing Risks

ST01 (20) - Officer capacity to implement the Connect Strategy/associated delivery plans and the Transformation Programme, in tandem with service-based policy development, ongoing project implementation and day-to-day delivery.

ST02 (16) – The potential loss of staff morale, including key staff leaving, coupled with the risk of inadequate provision of resources for training and re-skilling during an ongoing period of significant change.

Corporate Issues Risks

CI07 (16) - Meeting community expectations in relation to Localism, particularly within the planning process.

CI17 (16) – Recycling of leaf sweepings and potential waste reclassification resulting in an adverse impact on recycling performance and costs.

CI23 (16) – Compost Protocol changes and the potential impact on recycling performance and costs.

CI24 (16) – Anticipated supermarket applications in West Devon and the potential impact on the viability of town centres.

Resolved Risks

- 3.2 At both Councils' Audit Committees in the spring of 2013, the external auditors suggested that it would be helpful if the Councils kept a register of all the risks that had been judged to have been resolved. Previously the Councils deleted the risk from the register once the risk had been addressed. The report now includes a 'Resolved Risks' table (Table 6) where the risk has either been significantly reduced but is difficult to completely overcome (risk score of 6 or below), or the risk has been addressed, since the last report to the Committees.

- 3.3 Members may also wish to note that the strategic political risks associated with major organisational change to embed shared services are now judged by SMT to have largely been mitigated. Therefore the risks in this part of the register are deemed to be low or resolved.

New Emerging Risks

- 3.4 The emerging new Transformation Programme potentially addresses many of the strategic risks facing both the Councils; however a large scale change programme also generates significant risks for the Councils. The potential risks and actions that could be taken within the programme are still being developed but can be summarised as follows:

Finance and Asset Risks

- 3.5 Funding availability for initial investment to implement the programme; higher than anticipated costs and/or lower than anticipated savings arising from the programme; and unexpected external cost pressures which diverts funding from T18.
- 3.6 An integrated ICT solution proves less successful than anticipated.

Management Risks

- 3.7 Management capacity to deliver the programme in tandem with other key corporate projects; maintaining a shared vision for T18 during a period of significant change; managing organisational transition to the new operating model; and establishing an effective and robust programme management arrangement given the complexity of T18.

Political Risks

- 3.8 Ongoing political commitment to ensure that the programme is delivered despite the inevitable challenges that will emerge during such a major organisational change; potential change in corporate direction arising from national/local elections in 2015; and securing joint agreement for the most cost effective accommodation strategy.

Staffing Risks

- 3.9 Ensuring sufficient officer capacity and retaining morale during significant corporate change; and securing successful implementation of major cultural change in relation to new skills and work styles within the new operating model.
- 3.10 Further work on identifying and managing the risks in relation to the Transformation Programme is currently being undertaken.

4. LEGAL IMPLICATIONS

- 4.1 The Audit Committee has a role in keeping under review and recommending to Council improvements in relation to effective risk management.
- 4.2 There are no direct legal implications arising from the report although a strategic focus on risk management is good practice.
- 4.3 An assessment has been carried out as to whether the public interest in withholding the information in Appendix 1 outweighs the public interest in disclosing it. For most parts of the Risk Register, the public interest lies in non-disclosure due to the potential commercial/financial/legal nature of some of the risks identified.

5. FINANCIAL IMPLICATIONS

- 5.1 There are no direct financial implications of the report, although effective corporate risk management may help protect the Council from future losses.

6. OTHER CONSIDERATIONS

Corporate priorities engaged:	All
Statutory powers:	None specifically identified.
Considerations of equality and human rights:	Factored into individual risk assessments where appropriate. Equalities Impact Review of the Risk Management Policy in place.
Biodiversity considerations:	Factored into individual risk assessments where appropriate.
Sustainability considerations:	Factored into individual risk assessments where appropriate.
Crime and disorder implications:	Factored into individual risk assessments where appropriate.
Background papers:	Joint Risk Management Policy.
Appendices attached:	APPENDIX 1 – EXEMPT INFORMATION <ul style="list-style-type: none">• Table 1 - Strategic Political Risk• Table 2 - Strategic Management Risks• Table 3 - Strategic Staffing Risk• Table 4 - Strategic Financial and Asset Risks• Table 5 - Corporate Issues Risks• Table 6 – Resolved Risks• Summary of Corporate Risk Matrix

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Agenda Item 3

At the Meeting of the **WEST DEVON BOROUGH COUNCIL** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK** on **TUESDAY** the **8th** day of **OCTOBER 2013** at **4.30pm** pursuant to Notice given and Summons duly served.

Present Cllr W G Cann OBE – The Mayor (In the Chair)

Cllr S C Bailey	Cllr R E Baldwin
Cllr K Ball	Cllr M J R Benson
Cllr A Clish-Green	Cllr D W Cloke
Cllr M V L Ewings	Cllr C Hall
Cllr T J Hill	Cllr L J G Hockridge
Cllr D M Horn	Cllr A F Leech
Cllr C M Marsh	Cllr J R McInnes
Cllr J B Moody	Cllr N Morgan
Cllr M E Morse	Cllr D E Moyse
Cllr C R Musgrave	Cllr R J Oxborough
Cllr T G Pearce	Cllr P J Ridgers
Cllr L B Rose	Cllr R F D Sampson
Cllr P R Sanders	Cllr J Sheldon
Cllr E H Sherrell	Cllr D Whitcomb

Chief Executive
Corporate Director (AR)
Head of Corporate Services
Monitoring Officer
Democratic Services Manager

- CM 36 APOLOGIES FOR ABSENCE**
Apologies for absence were received from Cllrs D K A Sellis and D M Wilde.
- CM 37 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 38 CONFIRMATION OF MINUTES**
It was moved by Cllr P R Sanders, seconded by Cllr R E Baldwin 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 of Council held on 30 July 2013 as a true record.
- CM 39 COMMUNICATIONS FROM THE MAYOR**
The Mayor made reference to his raffle tickets having now been printed and being on sale. The intention of the raffle was to raise monies for his chosen charities: Leukaemia & Lymphoma Research and North Dartmoor Hospiscare, with the draw taking place at the Annual Council meeting on 13 May 2014.

BUSINESS BROUGHT FORWARD BY THE MAYOR

The Mayor informed that he had agreed for two urgent items to be raised at this meeting. These items were entitled: 'Changes to the Political Composition of the Council' and 'National Park Governance Review' and both were considered to be urgent in light of the need to consider these matters before the next scheduled Council meeting.

(a) Changes to the Political Composition of the Council

A report was subsequently considered which sought to make necessary revisions to the membership of Council Committees for the remainder of the 2013/14 Municipal Year. In addition, the report also sought approval to update the Council Constitution to ensure that any future amendments to the political composition of the Council be formally reported to the next Council meeting.

Finally, the report also wished to highlight that the establishment of a fourth political group had implications upon the Scheme of Members' Allowances, which would necessitate the need to reconvene the Independent Remuneration Panel.

In discussion, the following points were raised:-

- A Member who had recently changed his political composition made a statement to the Council to explain his reasoning behind this decision; and
- The importance of the Independent Remuneration Panel looking at every aspect of the current Scheme of Members' Allowances was recognised.

It was then moved by Cllr P R Sanders, seconded by Cllr R E Baldwin and upon being submitted to the Meeting was declared to be **CARRIED** and "**RESOLVED** that:

1. with immediate effect, the membership of Council Committees for 2013/14 be amended as outlined at paragraph 1.3 of the presented agenda report;
2. the Council Constitution be amended to ensure that it is a requirement for any future amendments to the political composition of the Council to be formally reported to the next meeting of the Council; and
3. in light of the most recent amendments to the political composition of the Council, the need to reconvene the Independent Remuneration Panel be noted".

(b) National Park Governance Review

Members considered a report that sought Council agreement to a suitable response to the Department for Environment Food and Rural Affairs (DEFRA) following their invitation to express views on changes to composition and size of the proposed Dartmoor National Park Authority (DNPA) structure to take effect from April 2014.

In discussion, it became apparent that a number of Members were very concerned that, despite West Devon having both the largest geographical area and population in the Dartmoor National Park area, the consultation paper was suggesting that the number of Borough Council Member representatives on the DNPA should be reduced from three to two.

As a consequence, it was moved by Cllr A Clish-Green, seconded by Cllr R F D Sampson and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that:

1. West Devon Borough Council agree with the proposal to reduce the membership of the Dartmoor National Park Authority from 22 to 19;
2. West Devon Borough Council agree with the proposed mix of membership for Dartmoor National Park Authority; and
3. In light of 45% of the West Devon Borough being located within the Dartmoor National Park area and 16,897 residents (approximately 31.5% of the total population of the Borough according to the 2011 census) living within the Dartmoor National Park area, West Devon Borough Council strongly objects to the proposal to reduce the number of our Members appointed on to the Dartmoor National Park Authority from three Members to two Members.”

CM 41

MINUTES OF COMMITTEES

a. Audit Committee – 23 July 2013

It was moved by Cllr J B Moody, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that the Minutes of the 23 July 2013 meeting be received and noted, with the exception of Minutes AC 8, AC 10 and AC 11”.

In respect of the Unstarred Minutes:

i. AC 8 – System of Internal Control and Annual Governance Statement

It was moved by Cllr J B Moody, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that the draft Annual Governance Statement be approved”.

ii. **AC 10 – Treasury Management Strategy for 2013/14 to 2015/16, Minimum Revenue Policy Statement and Annual Investment Strategy for 2013/14**

It was moved by Cllr J B Moody, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that each of the following key elements be approved:-

- The Prudential Indicators and Limits for 2013/14 to 2015/16 contained within Appendix A of the presented agenda report;
- The Minimum Revenue Provision (MRP) Statement contained within Appendix A and which sets out the Council’s policy on MRP;
- The Treasury Management Strategy 2013/14 to 2015/16 and the Treasury Prudential Indicators contained within Appendix B of the presented agenda report; and
- The Investment Strategy 2013/14 contained in the Treasury Management Strategy (Appendix B refers) and the detailed criteria included within Appendix C of the presented agenda report.”

iii. **AC 11 – Treasury Management – Annual Report 2012/13**

It was moved by Cllr J B Moody, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Treasury Management – Annual Report for 2012/13 be noted.”

b. **Audit Committee – 17 September 2013**

It was moved by Cllr J B Moody, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 17 September 2013 meeting be received and noted, with the exception of Unstarred Minute AC 20.”

In respect of the Unstarred Minute:-

i. **AC 20 – Audit of the Annual Statement of Accounts 2012/13**

It was moved by Cllr J B Moody, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

- The ISA 260 Report – the Financial statements opinion and the Audit findings (as outlined at Section 2) be noted;
- The Letter of Representation as shown in Appendix 2 of the presented agenda report be approved; and
- The Financial Statements be approved.”

c. Community Services Committee – 10 September 2013

It was moved by Cllr R J Oxborough, seconded by Cllr R F D Sampson and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 10 September 2013 meeting be received and noted, with the exception of Unstarred Minutes CS 14 and CS 18”.

In respect of the Unstarred Minutes:

i. CS 14 – RENTplus – A New Model of Affordable Housing

It was moved by Cllr R J Oxborough, seconded by Cllr R F D Sampson and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

- The Council adopts RENTplus as part of its Section 106 Agreement within the Housing Allocation Policy; and
- Both the Council and Devon Home Choice retain the Band E Category as many applicants for the RENTplus scheme would come into this category”.

ii. CS 18 – Operational Changes to the Off-Street Parking Places Order

It was moved by Cllr R J Oxborough, seconded by Cllr R F D Sampson and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that amendments be made to the Council’s Off-Street Parking Places Order to be effect that:

- A coach parking fee be added to the Bedford Sawmills car park to the Order of £10 for all day parking and £5 for four hours and that the fee charge display board clearly shows that the fee is for both coaches and minibuses;
- The ‘grace’ period currently afforded to motorists be retained at 10 minutes;
- The area of land at Mill Road, Okehampton (as marked on the Land Registry map given at Appendix 1 of the presented agenda report) be added to the Order to enable for effective enforcement to be undertaken;
- The proposal to introduce a coach parking fee at the Bedford car park, Tavistock be deferred to enable suitable action to take place to encourage school bus operators to not use the dedicated coach parking area as a convenient place to park their coaches prior to the school contract runs and that a further report on the success of this be presented to a future meeting of the Community Services Committee; and
- The Order be updated to allow for enforcement to be undertaken in respect of motorists who pay for their parking via RINGGO, the pay by phone facility”.

- c. **Planning and Licensing Committee – 6 August 2013 and 3 September 2013**
It was moved by Cllr C M Marsh, seconded by Cllr M J R Benson and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 6 August 2013 and 3 September 2013 meetings be received and noted”.
- d. **Resources Committee – 23 July 2013**
It was moved by Cllr P R Sanders, seconded by Cllr R E Baldwin and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 23 July 2013 meeting be received and noted”.
- e. **Resources Committee – 17 September 2013**
It was moved by Cllr P R Sanders, seconded by Cllr R E Baldwin and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 17 September 2013 meeting be received and noted, with the exception of Unstarred Minutes RC 10, RC 13 and RC 17”.
- i. **RC 10 – Medium Term Financial Strategy 2014/15 to 2017/18**
It was moved by Cllr P R Sanders, seconded by Cllr R E Baldwin and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:
- (1) The Financial Strategy be accepted as a foundation document for the Council’s budget setting process;
 - (2) The minimum level of the Unearmarked General Fund Revenue Reserves be maintained to at least £750,000 (the current level stands at £1,030,000);
 - (3) Members have provided a set of ‘minded to’ views in order to guide the 2014/15 budget process:-
 - (a) On the level of Council Tax Support Grant to be passed on to Parish and Town Councils (being the percentage reduction on the Council’s government funding for 2014/15 – currently 13.66%); and
 - (b) To increase Council Tax by 1.9%.
 - (4) A letter be sent from the Borough Council to the Secretary of State Mr Eric Pickles following receipt of the Minister’s decision on the Transformation Grant Fund stating strong support for the letter previously sent to him by Devon County Council Leader Cllr John Hart dated 30 August 2013 and which sets out West Devon Borough Council’s achievements in relation to shared services and confirms that we are facing the same problems of stringent cuts and the threat to our ability to continue to provide services for our community, either individually or in combination with other Devon districts.”

ii. **RC 13 – Corporate Sponsorship Framework**

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

- (i) The Framework document be approved (as presented as Appendix A to the report) to be used by Service areas in maximising sponsorship opportunities;
- (ii) Sponsorship opportunities below the value of £10,000 be agreed through use of the Framework by the relevant Chairman and Vice-Chairman in conjunction with the appropriate Head of Service, with larger opportunities being presented to the Resources Committee on a case by case basis.

iii. **RC 17 – Five Year Land Supply Statement 2013**

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

- (a) The Council has 5.4 years of housing land supply as evidenced in the Five Year Land Supply Statement 2013; and
- (b) The Five Year Housing Land Supply Statement 2013 be published on the Council’s website.

CM 42

THE FOCUS REVIEW

A report was considered which presented the findings of the Focus Review Working Group.

In discussion, the following points were raised:-

- (a) A number of Members stated that they wholeheartedly supported the recommendations of the Working Group. In so doing, a number of Members also wished to put on record their thanks for all the hard work undertaken by the Working Group and the Member Services Manager;
- (b) The view was expressed that, out of courtesy, local ward Members and Committee Chairmen should be informed when key meetings were taking place;
- (c) As a general point, a Member requested that the Retail Study be subject to a review in the near future.

It was then moved by Cllr C R Musgrave, seconded by Cllr R F D Sampson and upon the motion being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

1. A protocol be put in place to guide working practices between the Legal and Planning Departments;
2. Bi-monthly meetings between the Head of Planning, Economy and Community and the Link Lawyer, and monthly meetings between the Development Manager and the Link Lawyer should be recorded/noted;
3. In cases where Judicial Review (or other serious litigation proceedings) are contemplated by the Council, or brought against the Council, there needs to be an initial meeting of senior officers and regular face-to-face meetings to ensure that matters are dealt with promptly and all issues fully explored;
4. On any occasion where officers feel it necessary to brief Members on a significant issue which has legal, financial or reputational impact, a file note should be made and kept;
5. Early consideration should be given by the Head of Planning, Economy and Community to the public interest in these cases, so that the local Ward Member(s) and other key Members are properly informed. Agreement can then be reached on the level of input required of Members;
6. Reports presented to Members should include all options and an explanation of the potential impact and merits of each option.”

CM 43

ELECTORAL REVIEW OF WEST DEVON – CONSULTATION EXERCISE ON COUNCIL SIZE

Members considered a report which asked the Council to submit a response to the Local Government Boundary Commission for England (LGBCE) during the public consultation exercise on its initial views on Council size (e.g. number of Members elected) to serve on West Devon Borough Council from the May 2015 Local Elections.

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

1. The Council supports the initial views of the Local Government Boundary Commission for England whereby the Council Size for West Devon Borough Council should be retained at 31; and
2. Based upon this decision on Council Size, delegated authority be granted to the Head of Corporate Services to respond on behalf of the Council to the Local Government Boundary Commission for England before the deadline of Monday, 14 October 2013”.

CM 44**STRATEGIC RISK ASSESSMENT – SIX MONTHLY UPDATE**

The Council considered a report which provided an update on the Risk Management Policy. Such was the importance of adequate risk consideration, a version of this report had previously been considered by the Audit Committee, which had resolved that the matter should also be presented to the Council (Minute AC 17 refers).

It was then moved by Cllr P R Sanders, seconded by Cllr R E Baldwin and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the strategic risks have been reviewed and the Council has been given the opportunity to determine whether any further action should be taken, with the objective of improving corporate risk management.”

CM 45**COMMON SEAL**

A copy of the documents signed by the Mayor during the period 23 July 2013 to 20 September 2013 was attached to the agenda (page 96 refers) and noted by the Meeting.

It was subsequently moved by Cllr M V L Ewings, seconded by Cllr R F D Sampson and upon the motion being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Mayor and the Chief Executive (or deputies appointed by them) be authorised to witness the fixing of the seal on any documents for the forthcoming year”.

(The Meeting terminated at 5.45 pm)

Mayor

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