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West Devon
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Council

WEST DEVON COUNCIL - TUESDAY, 22ND JULY, 2014

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. **Summons Letter** (Pages 1 - 4)

2. **Reports**

Reports to Council:

a) Item 10 - Forming a Local Authority Trading Company (Pages 5 - 16)

b) Item 11 - Updating the Council's Constitution (Pages 17 - 22)

c) Item 12 - The appointment of Substitute Members to the Audit Committee (Pages 23 - 26)

d) Item 13 - Overview and Scrutiny Annual Report (Pages 27 - 30)

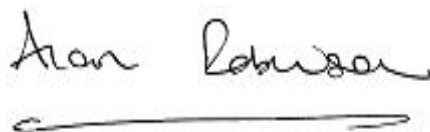
3. **Minutes** (Pages 31 - 36)

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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 10th June 2014 **23**
- Unstarred Minute to agree**
Members are recommended to agree:
- AC 5 Revision of the Contract Procedure Rules**
RECOMMENDED that, subject to the removal of paragraph 24 “Development Arrangements” (page 77 to the Audit Committee Agenda) for the time being, the proposed revised Contract Procedure Rules as set out in Appendix A be approved by Council and included within the Council’s Constitution and that a report on Development Agreements be presented to a future meeting of the Audit Committee.
- (ii) **Community Services Committee**
Meeting held on 17th June 2014 **28**
- Unstarred Minute to agree**
Members are recommended to agree:
- CS 4 Coach Parking in Mill Road Car Park, Okehampton**
RECOMMENDED that that the Council approves the provision of free coach parking in the Mill Road car park in Okehampton and that the Off-Street Car Parking Order be amended accordingly subject to public consultation.
- (iii) **Overview & Scrutiny Committee**
Meeting held on 24th June 2014 **32**
- (iv) **Planning & Licensing Committee**
Meeting held on 6th May 2014 **39**
- Meeting held on 3rd June 2014 **45**
- Meeting held on 1st July 2014 **51**
- (v) **Resources Committee**
Meeting held on 15th July 2014 **To follow**
- (vi) **Standards Committee**
Meeting scheduled for 15th July 2014 – **Cancelled**
10. To receive the report of the Head of Environmental Health & Housing on forming a Local Authority Trading Company **69**

11. To receive the report of the Democratic Service Manager updating the Council's Constitution. **79**
12. To receive the report of the Leader of the Council on the appointment of Substitute Members to the Audit Committee **84**
13. To receive the Overview and Scrutiny Annual Report **87**
14. 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 Monitoring Officer during the period from 6th May 2014 to 7th July 2014. **90**

Dated this 14th day of July 2014

A handwritten signature in black ink, appearing to read "Alan Lawson". The signature is written in a cursive style and is positioned above a horizontal line that serves as a separator or underline.

Executive Director (Communities) & Head of Paid Service

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NAME OF COMMITTEE	Council
DATE	24th June 2014
REPORT TITLE	Creating a Local Authority Trading Company
Report of	Head of Environmental Health & Housing
WARDS AFFECTED	All

Summary of report:

The purpose of this report is to request Council to approve the formation of a Local Authority Trading Company with the sole shareholders being West Devon Borough Council and South Hams District Council. The Company will be a Company Limited by Shares. The trading company will provide opportunities for the Councils to generate new income streams over and above current and proposed income generated through reviewing core service delivery, as well as capital and revenue from changing the way we use land and buildings. The company will be 100% owned by the two authorities and will have no private shareholders. All profits generated by the company will be reinvested back to the Councils based on relative trading activities.

Financial implications:

The direct financial costs associated with this report relate to the cost of registering a trading company and will be in the region of £100 plus officer time in preparing the necessary documentation and governance arrangements. It is not possible at the present time to ascertain the likely income relating to the establishment of this trading company. This will depend on the success of subsequent trading activities.

RECOMMENDATIONS:

It is recommended that Council agrees to:

- (i) create a wholly-owned Local Authority Trading Company with West Devon Borough Council and South Hams District Council having an equal shareholding, with profits being redistributed between the Councils based on relative trading activities;
- (ii) authorise the Head of Paid Service in consultation with the Leader and Deputy Leader of the two Councils to decide on the final company name and the date and details of incorporation of the trading company;
- (iii) authorise the Head of Paid Service in consultation with the Leader and Deputy Leader of the two Councils to determine the number and appointment of Directors to the trading company; and,

- (iv) pursue those priority areas identified by the Income Generation Working Group for income generation as outlined in Appendix 1 of this report and for officers to work up more detailed business cases where appropriate.

Officer contact:

Ian Bollans - 01803 861241 or e-mail ian.bollans@swdevon.gov.uk

1. BACKGROUND

- 1.1 The financial landscape for local authorities has changed significantly in recent years with continuing reductions to many of the Council's funding sources. The Council has responded over the years with a range of initiatives, particularly the shared services arrangements, and more recently with the implementation of the T18 programme. It is recognised that the times of austerity have not yet passed. Many local authorities are now looking to significantly increase the current range of income sources as a way of assisting service delivery. This approach is reflected in 'Our Purpose' document which clearly sets out that in order to achieve a secure financial future for the Council, we have to not only reduce our costs, but also secure additional income streams.
- 1.2 There are numerous legislative powers available for local authorities to 'trade'. Until relatively recently, the powers were generally restrictive in nature, only allowing local authorities to trade in certain functions. With the introduction of the Localism Act 2011, however, freedom was given to local authorities to trade in any business area they wished. Where that trading is to be undertaken for a 'commercial purpose' however, then that trading can only be done through a company type that is detailed in the Companies Act. Other types of trading, such as between public bodies, can be achieved without the need to go through a trading company.
- 1.3 Over the past few months the Council has explored ways to generate new income for both Councils. The Income Generation Task and Finish Group in South Hams and the Income Generation Working Group in West Devon has met on a number of occasions to look at ways of generating additional income for the Councils. It should be recognised that the Council already generates significant income from a number of sources and this will continue in the same manner in the future. In order to pursue some additional potential income opportunities, however, it would be necessary to create a 'trading company'. The Council on the 19 February 2014 approved an 'in principle' decision to create a Local Authority Trading Company. This report seeks Council approval to establish such a wholly-owned company with West Devon Borough Council and South Hams District Council as the sole shareholders.
- 1.4 It is important for the Council to progress with the trading element of its income generation work in order to:
 - Maintain front line services over the long term through reinvestment of any trading profits;

- Develop commercial acumen in tandem with transformation programme efficiencies. It will enable staff to develop new skills and abilities and enable them to apply a more commercial approach to their areas of work;
 - Ensure a culture of self-reliance is promoted which sends a positive message around the potential for growth of Council services;
 - Ensure that the Council is best placed to identify and pursue potential market opportunities by being able to bid for and secure contracts.
- 1.5 A number of local authorities are now actively pursuing income generation as a way of protecting front-line services and there are a number of notable success stories.

2. GOVERNANCE ARRANGEMENTS

- 2.1 It is proposed that the Trading Company will be a 'Company Limited by shares' and as such meets the requirements of the Localism Act 2011. The share issue will be two £1 ordinary shares with an equal shareholding between the two Councils. The Company will have its own legal identity and also have the benefit of limited liability. Consequently the debts of the Company stay within the company and any creditors would not have recourse to the Council or any of the Company Directors except in exceptional circumstances.
- 2.2 The Company will have a Board of Directors appointed. It is proposed that delegated authority is given to the Head of Paid Service in consultation with the Leader and Deputy Leader of both Councils to determine the most suitable number and type of Directors in due course. The Directors will not receive any remuneration.
- 2.3 The Directors of the company will have responsibility for managing the affairs of the company and ensuring a profitable trading environment. They would be responsible for the day to day management and for making recommendations to the shareholders as to the direction of company travel. They will be bound by the Shareholder's Agreement limiting their freedom to undertake certain actions.
- 2.4 All Directors will need to comply with their statutory duties under the Companies Act 2006 including a duty to act in the best interests of the Company and to avoid conflicts of interest. Council members and/or employees appointed as Directors will need to be aware that potential conflicts of interest may arise when carrying out their roles for the Councils and when acting as Directors for the Company. Member Directors will still also be bound by the Members' Code of Conduct, in so far as this Code does not conflict with their legal obligations as Directors. An outline of these duties, responsibilities and liabilities will be provided to the Directors as part of their letters of appointment.
- 2.5 As sole shareholders of the company, the Councils will have overall control of the company. It is often necessary in business to make rapid business decisions. Where those business decisions fall outside of the powers available to the Directors of the company, then those decisions will need to be referred to the appropriate decision-making body of the Council in an expedited fashion.

- 2.6 A scheme of delegations will be developed to clarify decisions that can be taken by staff and Directors.
- 2.7 The Company shall be bound by a Shareholder Agreement. This agreement will ensure that the Company cannot do certain things without the approval of the relevant Member body. It details the powers of the Board of the company and how and when the shareholders might influence the company. It will relate to issues such as production of business plans, regular reports to Council, consents for acquisition and disposal of assets, loans and distribution of profits. The shareholders agreement can be amended and developed as necessary to ensure that a proper balance of powers between the company and the Councils remain as the company grows.
- 2.8 Service Level Agreements will be completed with the Council regarding use of Council staff and resources.
- 2.9 It is proposed that the Company will initially use Council accommodation and resources in its operations and will reimburse the Council for doing so. The proposals should not have any direct implications for staff as it is not proposed that any staff will transfer to the Company. Staff may at times be working on Company business, but that time and resource will be charged to the company. In the longer term, the company may employ its own staff subject to the demands and prospects of its trading functions.
- 2.10 In order to protect commercial confidentiality, it is recommended that the final company name and trading styles are determined by the Head of Paid Service in consultation with the Leader and Deputy Leader of the Council. The Company will be purchased 'off the shelf' in order to facilitate the administrative process. The Company will have to abide by UK Company and taxation legislation including the filing of annual returns and accounts. The general administrative demands of the company can be met within existing expertise within the Councils.

3. TRADING AREAS

- 3.1 Members at both authorities have through their respective Income Generation Groups identified a number of areas where they wish to see an initial push on income generation. These areas are detailed in Appendix 1. It should be noted that not all of these initiatives may need to be undertaken through a trading company. In some instances it will be advantageous to use the company for trading, in other instances it may not. The exact route of trading will be taken on a case-by-case basis. The trading company will supplement the organisational design principles within the T18 model in that it will allow the Council to directly commission through the company if the business case determines that it is the most appropriate delivery arm. Having the trading company established, will enable the Councils to explore and rapidly exploit any opportunities that may arise.
- 3.2 No detailed business plans have yet been worked up in respect of those initial trading activities highlighted in the Appendix although these will be worked up in

the coming months. Once those Business Plans have been produced, then trading in those areas can only take place with the agreement of both Councils. If no agreement can be reached on the implementation of a Business Plan, then an individual Council will not be able to pursue that trading opportunity in isolation. This will avoid the situation where demand on officers from one authority to undertake trading could adversely impact on the operational activities of the other.

- 3.3 Other potential trading areas may well come to light in future months. Where opportunities arise, then subject to a suitable business case being in place and both Councils being in agreement, the Council will be in a position to exploit potential opportunities and new trading areas where they arise. It is not proposed at this stage that any Council Services be transferred to the company. It will be essential that any business proposed to be undertaken through the trading company has clarity about the cost of generating the income expected, so that the focus is on profit, including taxation, VAT and procurement costs which will be incurred.
- 3.4 It may be necessary to redistribute profits between the Councils based on relative trading activities. Protocols will be established to allow this to happen in a fair, consistent and transparent fashion.
- 3.5 It is likely that trading will be modest at the outset, especially in the first year of trading. Experience from other local authority trading companies reflects the need to allow the company time to expand and establish its presence in the market. There will be sufficient trading within the first trading year to cover any company administration and operating costs. As business plans are developed and business opportunities and trading expands and develops, it may be necessary to establish separate and/or subsidiary trading companies. Again the decision to take such a course of action will be supported by an appropriate Business Case.
- 3.6 Subject to approval by both Councils, the Trading Company will be established at a date agreed by the Head of Paid Service in consultation with the Leaders and Deputy Leaders at both Councils, in accordance with the administrative and governance arrangements as set out in this report.

4. LEGAL IMPLICATIONS

- 4.1 In order to 'trade for a commercial purpose' the Council must establish a trading vehicle such as a limited company. Operating a trading arm through a company vehicle such as a Limited Company will require that the Directors of the company operate in accordance with UK Company law. Although the company has limited liability, the Directors of that company may individually face claims for wrongful operation of the company. It is therefore recommended that the Council indemnify the Directors through appropriate Directors Liability Insurance both whilst acting as a director and for a period of six years following cessation as a company director.

- 4.2 Whilst some elements of commercial trading would require greater input from officers than others, this will be considered in detail as part of each individual business case. This will include the potential impact on day-to-day service provision and also impact on other previously agreed corporate priorities such as T18.

5. FINANCIAL IMPLICATIONS

- 5.1 This report looks to improve the financial position of the council for future budget years. Income generation will be dependent on specific decisions made on individual service and trading elements. It is not possible to determine the likely income and profits that will be generated, and will be dependent on the business cases that are agreed.
- 5.2 To ensure a level playing field with the rest of the private sector and to avoid breaching state aid rules, the Company will not be subsidised by this authority. The full costs of any borrowing, accommodation and services provided will be recovered by the Council. Suitable administrative and governance arrangements will be established to ensure this is the case.
- 5.3 The cost of creating a registered trading company in the first instance is approximately £100 and can be met from existing revenue funds. The ongoing costs will be dependent upon the amount of resources called upon to generate that income.
- 5.4 Officers have had informal preliminary discussions with the Councils external auditors about the principle of setting up a trading company. Grant Thornton were supportive in principle with the proposed approach and welcomed the innovation that the two Councils continue to promote to respond to the financial challenges. However the auditors also emphasised the importance of ensuring that the detailed arrangements are carefully considered to ensure that they are tax efficient. Prior to finalising the incorporation of the trading company there will be further discussion with Grant Thornton to ensure that the detailed arrangements are in the two Councils best interests in terms of both allowing us to exploit early income generation streams which cannot be developed without utilising a trading company, as well as enabling the Councils to maximise longer term opportunities potentially emerging from the T18 Programme.

6. RISK MANAGEMENT

- 6.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

7. CONCLUSION

- 7.1 It is recommended that the two Councils approve the creation of a wholly owned trading company as a further step to changing the culture of the organisations. The detailed arrangements of the company will be determined by the Head of Paid Service in consultation with the Leaders and Deputy Leaders of the two Councils. Any trading proposed to take place through the company will require an approved business plan. This initiative will not adversely affect income generation which can more appropriately take place through core service

activity, or through effective use of assets. Setting up the trading company however adds to the options available to improve the financial position. Establishing and subsequently modifying the trading company arrangement is relatively simple and it therefore enables us to learn from some initial low key, low risk opportunities, amending the approach based on the learning and development which will arise.

8. RISK MANAGEMENT

Corporate priorities engaged:	Community well-being; Access to services; Customer first
Statutory powers:	<i>Localism Act 2011</i>
Considerations of equality and human rights:	There are no equality or human rights issues associated with this report. Any specific issues that arise from future company trading will need to be dealt with on a case-by-case basis. This will include the need to consult on any significant policy changes.
Biodiversity considerations:	N/a
Sustainability considerations:	N/a
Crime and disorder implications:	None
Background papers:	None
Appendices attached:	Appendix 1: Income Generation Ideas arising from South Hams Task and Finish Groups and West Devon Income Generation Working Group

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STRATEGIC RISKS TEMPLATE

Page 13

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 maximise opportunity by not acting	Budget gap cannot be met in future.	3	2	6	↔	If the Council does not take up opportunities to generate income through trading then the risk to the Council from reduced funding and increasing budgetary pressures is heightened.	All HoS/Members
2	Market failure	Market collapse on areas identified for trading potential.	2	2	4	↔	Individual schemes would need to be separately risk assessed before any trading was to be entered into.	As appropriate to scheme
3	Differential trading opportunities	There is likely to be differential trading opportunities that come to light between the Councils requiring reallocation of dividends between the Councils.	2	1	2	↔	The relative worth of each local authorities trading can easily be determined and a system of recharging (similar to shared services) be implemented.	Members Income Group and Directors of company
4	Diverging approach to Income Generation at each Council	A diverging strategy for income generation may mean that a single jointly owned company is not the best way forward.	2	4	8	↔	An appropriate 'exit strategy' will be included in the governance arrangements. Options could include winding up the company or allocation of shares to one shareholder. It is likely in the future that subsidiary trading arms are developed as part of a healthy	Members Income Group and Directors of company

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			
							growth and risk mitigation strategy.	
5	Liabilities	Liabilities can exist for both the company and directors.	4	2	8	↔	The liability of the company would be limited. Directors liability can be covered through appropriate insurance	Directors
6	Lack of trading	Company expenses could outweigh income generated.	2	2	4	↔	The expense of running a company would be minimal in the first instance. Expenses would initially be matched directly to trading activity with the company contracting with the Councils for the resources necessary only to complete that particular trading activity. Once the company is established then it	Members Income Group and Directors of company
7	Differing call on resources	That one Council may have a disproportionate demand on officer time and resources to pursue a trading opportunity.	4	1	4	↔	Joint approval of Business Cases will avoid this situation. The Company will not undertake any trading activities unless there is joint acceptance of a business case.	Directors and Members

Direction of travel symbols ↓ ↑ ↔

Income Generation Ideas arising from South Hams Task and Finish Groups and West Devon Income Generation Working Group

South Hams

- Food Hygiene
- Affordable Housing loans
- Enabling fees for Registered Providers
- Grounds maintenance
- Driver CPC Training
- Advertising
- Print and scan
- Asset development (through an accelerated Strategic Asset review Programme)
- Legal Services

West Devon

- Food Hygiene
- Affordable Housing Loans
- Enabling fees for Registered Providers
- Advertising
- Print and scan
- Mechanical sweeping
- DFG support
- Legal services
- Arbori-cultural services
- Asset development (through an accelerated Strategic Asset review Programme)

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NAME OF COMMITTEE	COUNCIL
DATE	22 July 2014
REPORT TITLE	Updates to the Council Constitution
Report of	The Democratic Services Manager
WARDS AFFECTED	All

Summary of report:

To consider a report that seeks to make amendments to the Council Constitution in relation to:-

- adopting a revised Members' Code of Conduct; and
- making changes to the Delegation Scheme and Financial Procedure Rules to ensure that approval of the Annual Governance Statement now becomes the responsibility of the Audit Committee and not the Council.

Financial implications:

None directly arising from this report.

RECOMMENDATION:

That the Council Constitution be amended in accordance with the proposals as outlined in paragraphs 2.1 and 2.2.2 of the presented agenda report.

Officer contact:

Darryl White, Democratic Services Manager (email: darryl.white@swdevon.gov.uk).

1. BACKGROUND

1.1 Code of Conduct

Unstarred Minute SC 7: 'Review of the Code of Conduct', which was considered by the Standards Committee at its meeting on 11 February (Appendix A refers) was inadvertently missed off of the Annual Council Summons.

As a consequence, Council approval is now sought to adopt a revised Code of Conduct.

1.2 **Annual Governance Statement**

The Accounts and Audit Regulations 2011 have resulted in it no longer being a statutory requirement for the Annual Governance Statement (AGS) to be approved by full Council.

It is therefore suggested that it would be more appropriate (and remove a tier from the decision making process in this regard) for the Audit Committee to assume responsibility for approval of the AGS.

2. **ISSUES FOR CONSIDERATION**

2.1 **Code of Conduct**

As indicated at Appendix A, the Standards Committee considered this matter in some detail before voting upon the following recommendation, for which Council is ultimately asked to approve:-

‘That Council be **RECOMMENDED** that the West Devon Members’ Code of Conduct be amended as shown highlighted in Appendix A of the agenda report, which was presented to the Standards Committee.’

2.2 **Annual Governance Statement**

2.2.1 In respect of the AGS, the Council Constitution currently states that:-

Part 3: Delegation Scheme

‘Audit Committee – to oversee the System of Internal Control and Annual Governance Statement.’

Part 4: Financial Procedure Rules

Section 22:

Para 22.15 The Council will also be responsible for conducting a review at least once a year of the effectiveness of internal control and shall prepare a statement (the Annual Governance Statement), in accordance with proper practices, for publication with the Council’s published annual accounts.

Para 22.16 The Audit Committee will act as the nominated Member body to examine the draft statement and supporting evidence and recommend approval.

2.2.2 It is proposed that the Council Constitution be amended to read as follows:-

Part 3: Delegation Scheme

‘Audit Committee – to oversee the System of Internal Control and the process for producing the Annual Governance Statement (AGS) and approve the AGS on behalf of the Council with the annual Statement of Accounts.’

Part 4: Financial Procedure Rules

Section 22:

Para 22.15 The Council will also be responsible for conducting a review at least once a year of the effectiveness of internal control and shall prepare a statement (the Annual Governance Statement), in accordance with proper practices, for publication with the Council's published annual accounts.

Para 22.16 The Audit Committee will act as the nominated Member body to examine the draft statement and supporting evidence and approve the Annual Governance Statement on behalf of the Council, with the Statement of Accounts.

3. RISK MANAGEMENT

3.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

4. OTHER CONSIDERATIONS

Corporate priorities engaged:	All
Statutory powers:	Local Government Act 2000 The Localism Act 2011 The Accounts and Audit Regulations 2011
Considerations of equality and human rights:	None directly related to this report
Biodiversity considerations:	None directly related to this report
Sustainability considerations:	None directly related to this report
Crime and disorder implications:	None directly related to this report
Background papers:	The Council Constitution The Standards Committee agenda – 11 February 2014 meeting
Appendices attached:	A. Unstarred Minute SC 7: 'Review of the Code of Conduct'

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	Fit for purpose Constitution	Failure to review the Constitution and approve the changes could affect the decision-making processes of the organisation.	2	2	4	↔	The Constitution is regularly reviewed and updated by the Council to ensure that it is up to date and reflects current practice and law.	Democratic Services Manager / Monitoring Officer

Direction of travel symbols ↓ ↑ ↔

SC 7 REVIEW OF THE CODE OF CONDUCT

The Monitoring Officer presented a report (page 11 to the Agenda) on a review of the Council's Code of Conduct. The West Devon Members' Code of Conduct was adopted in June 2012 and Members were asked to review the Code in the light of experience.

There had been no major issues with the Code of Conduct since its adoption in June 2012, however, on the basis of feedback from Members and from the Monitoring Officer's perspective for clarity, a number of amendments were being proposed. These were highlighted in Appendix A presented with the report (page 15 to the Agenda) and were:

1. in "Definitions" (paragraph 2) the following clarifications were proposed:
 - (i) '**close associate**' includes someone you are in either regular or irregular contact with over a period of time who is more than just an acquaintance and who is someone a reasonable member of the public might think you would be prepared to favour or disadvantage;
 - (ii) '**family**' includes your parents; parent-in-law; son/daughter; brother/sister; son/daughter-in-law; stepson and stepdaughter; grandparent; grandchild; nephew/niece; uncle/aunt; or any of the above of a partner; any partners of these people.
2. in "Personal or other interests":
 - (i) 7.2 (c) the name and address of any person or body from whom you have received a gift or hospitality with an estimated value of at least £25.00;
 - (ii) 7.3 Where a matter arises at a Meeting which affects the wellbeing or financial interest or position of you, any relevant person, member of your family or close associate (other than a Disclosable Pecuniary Interest) more than it would affect the majority of people living within the ward or electoral division affected by the matter.
3. in "Declaration of Interests etc":
 - (i) 8.1 (d) where you have an interest under **Paragraph 7.3** you shall not take part in the discussion or vote on that matter save that you may speak on the matter before withdrawing from the Meeting room if members of the public are also allowed to speak at the Meeting.

It was **RESOLVED** to **RECOMMEND** to Council that the West Devon Members' Code of Conduct be amended as shown highlighted in Appendix A to the report.

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NAME OF COMMITTEE	COUNCIL
DATE	22 July 2014
REPORT TITLE	Audit Committee – Appointment of Substitute Members
Report of	The Leader of Council
WARDS AFFECTED	All

Summary of report:

To consider a report that seeks to appoint Cllrs Moyse and Sheldon to be named substitutes for the Audit Committee for the remainder of the 2014/15 Municipal Year

Financial implications:

None directly arising from this report.

RECOMMENDATION:

That Cllrs Moyse and Sheldon be appointed to serve as named substitutes for the Audit Committee for the remainder of the 2014/15 Municipal Year.

Officer contact:

Darryl White, Democratic Services Manager (email: darryl.white@swdevon.gov.uk).

Lead Member contact:

Cllr Philip Sanders, Leader of Council (email: cllr.philip.sanders@westdevon.gov.uk).

1. BACKGROUND

- 1.1 Currently, there is no provision for any substitute Members to be appointed to serve on the Audit Committee from within the membership of the Conservative Group.

- 1.2 To minimise the risk of not being quorate for any meeting of the Committee, the Leader of Council has been consulted and Cllrs Moyse and Sheldon have been nominated.

- 1.3 The Council will be aware that Council Procedure Rule 10(4) states that: *'In the case of substitution to the Audit Committee, the substitute must be of a Member*

agreed by the Head of Finance & Audit to be qualified by training or experience to take part in the committee's work.'

- 1.4 If the Council approves the recommendation, officers will ensure that Cllrs Moyse and Sheldon both receive the required training before they are able to be substituted on to the Committee.

2. RISK MANAGEMENT

- 2.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

3. OTHER CONSIDERATIONS

Corporate priorities engaged:	All
Statutory powers:	Local Government Act 2000
Considerations of equality and human rights:	None directly related to this report
Biodiversity considerations:	None directly related to this report
Sustainability considerations:	None directly related to this report
Crime and disorder implications:	None directly related to this report
Background papers:	The Council Constitution The Annual Council Summons and Minutes
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	Ensuring a Quorum	In the event of a meeting being declared inquorate, it would need to be cancelled and date constrained agenda items (e.g. Annual Governance Statement and Statement of Accounts) may not therefore be considered before prescribed statutory deadlines.	3	1	3	↓	By increasing the number of named substitutes who can serve on the Audit Committee will help to reduce the potential for a meeting being declared inquorate.	Democratic Services Manager

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Direction of travel symbols ↓ ↑ ⇄

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ANNUAL REPORT FROM THE OVERVIEW & SCRUTINY COMMITTEE TO FULL COUNCIL

2013 – 2014

BACKGROUND

Arising out of the Local Government Act 2000, the Council has had in place an Overview & Scrutiny Committee since May 2002.

MEMBERSHIP

The following Councillors served on the Committee during the Council Year 2013/2014:

Cllr Mandy Ewings (Chairman)
Cllr Diana Moyse (Vice Chairman)
Cllr Alison Clish Green
Cllr Christine Hall
Cllr John Hockridge
Cllr Donald Horn
Cllr Jeff Moody
Cllr Debo Sellis
Cllr John Sheldon
Cllr David Whitcomb

(Note: other Members also served on the Committee during the course of the year in a substitute capacity).

MEETINGS

Meetings of the Committee have been held on the following dates:

Tuesday 4 June 2013
Tuesday 29 October 2013
Tuesday 14 January 2014
Tuesday 18 March 2014

TASK & FINISH GROUPS (TFG)

- **Rural Broadband**
(Membership: Cllrs K Ball, A Clish-Green, D W Cloke, J B Moody and J Sheldon)

The Rural Broadband Task and Finish Group now meet independently (having originally been set up as a joint Group with South Hams District Council). The Group continues to report progress to the Committee.

- **Locality and Commissioning Task and Finish Group**

(Membership: Cllrs Cllr Mandy Ewings; Diana Moyse; Donald Horn, Robin Musgrave, Terry Pearce and John Sheldon)

A Task and Finish Group of Members was set up to investigate Locality and Commissioning Models across other authorities as part of the Transformation Programme T18.

CALL-IN

- There were no Call Ins during the 2013/14 year.

OTHER TOPICS COVERED DURING THE YEAR

- **Performance Indicators**

Performance indicators were monitored during the course of the year and appropriate action responses requested where performance fell short of target.

- **Service Level Agreement Monitoring**

The Committee received a monitoring report in relation to the service level agreements with West Devon Community and Voluntary Services and the Citizens Advice Bureau. In addition, presentations were received from both organisations.

- **Health and Wellbeing**

Following changes in legislation that altered the way that Health and Wellbeing would be delivered to residents, the Committee took an active role in Health and Wellbeing and received a presentation from the District Council Representative on the Devon County Council Health and Wellbeing Board. The Committee also received a presentation from Mr David Rogers OBE, a representative of Healthwatch.

- **Community Safety Partnership**

The Committee received a report from the Head of Environmental Health and Housing that gave the opportunity to scrutinise the work of the Community Safety Partnership. In addition, Superintendent Michelle Slevin attended to discuss the crime data that had been included within the report.

- **Review of the Process and Decisions that led to the Judicial Review judgement relating to the former Focus DIY Store, Tavistock Retail Park**

The Committee received a progress report from the Working Group that had been set up to review the decision in relation to the Focus DIY Store. A subsequent report with recommendations was taken directly to Council.

- **Use of Agency Staff**

The Committee requested a further report into the use of Agency Staff by the Council. It was agreed that SMT continue to monitor the use of Agency Staff.

- **Transformation Programme T18**

The Committee received a number of updates in relation to Transformation Programme and it was agreed that the O&S Committee would be the appropriate forum for T18 progress to be monitored.

- **Impact of Welfare Reforms**

The Committee specifically requested information on the impact of Welfare Reforms on the Council. The Head of ICT and Customer Services presented a detailed report and also updated Members on the Local Discretionary Welfare Support Fund and how it was being used. Members also raised concerns about the reception area and requested a survey be undertaken. This took place and the Customer Services manager was able to report a satisfactory response.

- **Review of Connect Partnership and related Delivery Arrangements**

The Committee received a report in relation to a suggested way forward for the Connect Partnership and related delivery arrangements, following a review undertaken by the Connect Partnership Board and officers, and prompted by Member feedback, the outcome of the Peer Review and reducing staff and financial capacity within the Council and partner agencies.

- **Devon Home Choice**

The Committee received a report from the Housing Team Manager that provided members with a recommendation that no changes be made to the agreed Devon Home Choice Policy.

BUDGET

No expenditure was incurred in the financial year 2013/14 against the budget of £1,500.

FORTHCOMING WORK PROGRAMME

- Continue monitoring of Performance Indicators
- Receive a presentation from West Devon Community Voluntary Services
- Monitor Service Level Agreements with WD CVS and CAB
- Monitor Health and Wellbeing on behalf of the residents of the Borough
- Monitor progress of the Transformation Programme T18, to include progressing the Locality and Commissioning Task and Finish Group
- Respond, as appropriate, to issues relating to the work of the Council and to the West Devon area in general
- Invite representatives of any service organisation when issues arise which disadvantage residents
- Scrutinise the local crime and disorder partnership – Community Safety Partnership
- Continue to monitor the Council's policy on the Regulation of Investigatory Powers Act

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Agenda Item 3

At the Special Meeting of the **WEST DEVON BOROUGH COUNCIL** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK** on **TUESDAY** the **22nd** day of **JULY 2014** at **4.30 pm** pursuant to Notice given and Summons duly served.

Present Cllr C M Marsh – The Mayor (In the Chair)

Cllr S C Bailey Cllr R E Baldwin
Cllr K Ball Cllr M J R Benson
Cllr W G Cann OBE Cllr A Clish-Green
Cllr D W Cloke Cllr T J Hill
Cllr D M Horn Cllr A F Leech
Cllr D E Moyse Cllr C R Musgrave
Cllr T G Pearce Cllr P J Ridgers
Cllr R F D Sampson Cllr P R Sanders
Cllr D K A Sellis Cllr E H Sherrell
Cllr D Whitcomb

Head of Paid Service
Head of Environmental Health and Housing
Monitoring Officer
Democratic Services Manager

CM 28 APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllrs M V L Ewings, C Hall, L J G Hockridge, J R McInnes, J B Moody, N Morgan, M E Morse, R J Oxborough, L B Rose, J Sheldon and D M Wilde.

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 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 Special meetings held on 1 May 2014, 24 June 2014 and 15 July 2014 and the minutes of the Annual meeting held on 13 May 2014 as a true record”.

CM 31 COMMUNICATIONS FROM THE MAYOR

The Mayor had no communications to bring forward.

CM 32 PETITION

In accordance with Council Procedure Rule 21, the Mayor invited Mrs J Coulthard and Mrs J Rushall to formally present to her a petition which contained 1,816 signatures. The petition wished to protest at the suggested closure of the Meadowlands swimming pool.

In expressing her thanks, the Mayor advised that, in accordance with the Petition Scheme, a response would be sent to the petition organiser within ten working days. It was also agreed that this response would be sent to all Members for their information.

CM 33

MINUTES OF COMMITTEES

a. **Audit Committee – 10 June 2014**

It was moved by Cllr D K A Sellis, 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 10 June 2014 meeting be received and noted, with the exception of Unstarred Minute AC 5”.

In respect of the Unstarred Minute:

i. **AC 5 – Revision of the Contract Procedure Rules**

It was moved by Cllr D K A Sellis, seconded by Cllr T J Hill and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that, subject to the removal of paragraph 24 ‘Development Arrangements’ (page 77 of the Audit Committee Agenda refers) for the time being, the proposed revised Contract Procedure Rules (as set out in Appendix A of the presented agenda report) be approved and included within the Council’s Constitution and that a report on Development Agreements be presented to a future meeting of the Audit Committee.”

b. **Community Services Committee – 17 June 2014**

It was moved by Cllr R F D Sampson, seconded by Cllr K Ball and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that the Minutes of the 17 June 2014 meeting be received and noted, with the exception of Unstarred Minute CS 5”.

In respect of the Unstarred Minute:

i. **CS 5 – Coach Parking in Mill Road Car Park, Okehampton**

It was moved by Cllr R F D Sampson, seconded by Cllr K Ball and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that approval be given to the provision of free coach parking in the Mill Road Car Park in Okehampton and that the Off-Street Car Parking Order be amended accordingly, subject to public consultation.”

c. **Overview and Scrutiny Committee – 24 June 2014**

It was moved by Cllr D E Moyse, seconded by Cllr D Whitcomb and upon being submitted to the Meeting was declared to be **CARRIED** and **“RESOLVED** that the Minutes of the 24 June 2014 meeting be received and noted.”

d. Planning and Licensing Committee – 6 May 2014, 3 June 2014 and 1 July 2014

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 May 2014, 3 June 2014 and 1 July 2014 meeting be received and noted”.

e. Resources Committee – 15 July 2014

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 15 July 2014 meeting be received and noted, with the exception of Unstarred Minutes RC 4, RC 5 and RC 6”.

In respect of the Unstarred Minutes:

i. RC 4 – Transformation Programme

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 progress to date on the Transformation Programme 2018 be noted; and
2. the release of the funding for key programme expenditure milestones two and three (totalling £1,302,200) be authorised, as shown in Appendix A of the presented agenda report.”

ii. RC 5 – Connect Strategy And Priority Action Plan Update 2014-15

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 Connect Strategy annual update for 2014-15 be approved and adopted.”

iii. RC 6 – Local Government Pension Scheme Discretions Policy

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 discretions as set out in the Policy (as outlined in Appendix A of the presented agenda report to the Committee) be agreed;
2. any decision taken under the Policy with a financial cost of more than £10,000 be delegated to the Resources Committee; and

3. that a decision taken under the Policy with a financial cost of less than £10,000 be delegated to the Head of Paid Service in consultation with the Leader of Council.”

CM 34 FORMING A LOCAL AUTHORITY TRADING COMPANY

A report was considered that sought Council approval to the formation of a Local Authority Trading Company, with the sole shareholders being West Devon Borough Council and South Hams District Council.

In introducing the report, Cllr P R Sanders proposed that the report be deferred for consideration at a future meeting. This proposal was subsequently seconded by Cllr E H Sherrell.

In discussion, reference was made to:-

- (a) a wish for more clarification on certain aspects of the report. In supporting the proposal to defer this matter, some Members made reference to aspects for which they would appreciate more input and information. Such aspects included: the Director roles (e.g. number, period of term of office and appointment process); a formulaic approach to profit sharing between the two councils and labour costs allocated to income generation;
- (b) consulting with Members prior to re-consideration by the Council. Whilst it was recognised that there were a number of options that could be pursued, on balance it was felt that an informal Member Briefing should be held before the matter was re-considered at a future Council meeting;
- (c) some concerns at the proposal. Some Members expressed their regret at the last minute nature of this proposal and had received sufficient assurances from both the officer report and informal discussions with the lead officer to be able to support the report recommendation. In further making the point, these Members also highlighted the need to progress quickly with the income generation work stream. In reply, other Members did not believe that a relatively short term deferral would preclude income generation opportunities or prevent business plans from being prepared;
- (d) an amendment was proposed by Cllr W G Cann OBE and seconded by Cllr T G Pearce as follows:

“That the matter be deferred to a future Council meeting, with a Member Briefing being convened at 2.00pm on Tuesday, 29 July.”

In support of the amendment, Members felt that this would ensure that the issue was considered in a timely manner and, since the Planning and Licensing Committee was meeting on the morning of 29 July, a number of Members would already be in the offices. In contrast, some other Members felt that this would not provide sufficient notice for Members or officers to prepare. When put to the vote, the amendment was declared **LOST**.

- (e) an alternative motion was proposed by Cllr A Clish-Green and seconded by Cllr C R Musgrave as follows:
- (i) "That a wholly-owned Local Authority Trading Company be created with West Devon Borough Council and South Hams District Council having an equal shareholding;
 - (ii) That those priority areas identified by the Income Generation Working Group for income generation be pursued (as outlined in Appendix 1 of the presented agenda report), with officers being tasked to work up more detailed business cases where appropriate; and
 - (iii) That the details regarding the way in which the profits are distributed and the details of the Director roles appointments be dealt with separately."

In support of this proposal, Members felt that this would provide a signal of intent that the Council was committed to income generation whilst not losing sight of the main concerns which had been raised. On the advice of officers, the Mayor ruled that since the initial proposal for deferral was seconded first, then this vote would be taken now.

When put to the vote, it was then declared to be **CARRIED** and **"RESOLVED** that the report be deferred for consideration at a future meeting."

CM 35

UPDATES TO THE COUNCIL CONSTITUTION

A report was considered that sought to make amendments to the Council Constitution in relation to:-

- adopting a revised Members' Code of Conduct; and
- making changes to the Delegation Scheme and Financial Procedure Rules to ensure that approval of the Annual Governance Statement now became the responsibility of the Audit Committee.

It was then proposed by Cllr R F D Sampson, seconded by Cllr P R Sanders and upon being submitted to the Meeting was declared to be **CARRIED** and **"RESOLVED** that the Council Constitution be amended in accordance with the proposals as outlined in paragraphs 2.1 and 2.2.2 of the presented agenda report."

CM 36 AUDIT COMMITTEE – APPOINTMENT OF SUBSTITUTE MEMBERS

The Council considered a report that sought to appoint Cllrs Moyse and Sheldon to be named substitutes for the Audit Committee for the remainder of the 2014/15 Municipal Year.

It was then proposed 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 Cllrs Moyse and Sheldon be appointed to serve as named substitutes for the Conservative Group on the Audit Committee for the remainder of the 2014/15 Municipal Year.”

CM 37 THE OVERVIEW AND SCRUTINY COMMITTEE ANNUAL REPORT

The Council considered the 2013/14 annual report of the Overview and Scrutiny Committee.

It was then proposed by Cllr D E Moyse, seconded by Cllr D Whitcomb and upon being submitted to the Meeting was declared to be **CARRIED** and **”RESOLVED** that the report be noted.”

CM 38 COMMON SEAL

A copy of the documents signed by the Mayor during the period 6 May 2014 to 7 July 2014 was attached to the agenda (page 90 refers) and noted by the Meeting.

It was moved by Cllr E H Sherrell, 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 Monitoring Officer (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 5.35 pm)

Mayor