

# Public Document Pack



West Devon  
Borough  
Council

## WEST DEVON COUNCIL - TUESDAY, 7TH OCTOBER, 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 - Appointment of Executive Director (Pages 5 - 10)
- b)    Item 11 - Torridge District Council and the Future Operating Model (Pages 11 - 24)
- c)    Item 12 - Forming a Local Authority Trading Company (Pages 25 - 58)
- d)    Item 13 - The proposed amalgamation of West Devon Homes with Devon and Cornwall Housing (Pages 59 - 66)
- e)    Item 14 - Business Rates Pooling (Pages 67 - 72)
- f)    Item 15 - Council Tax Reduction (Pages 73 - 90)
- g)    Item 16 - The Openness of Local Government Bodies Regulations 2014 (Pages 91 - 94)
- h)    Item 17 - Review of Polling Places and Polling Districts (Pages 95 - 110)
- i)    Item 18 - Dog Control Orders (Pages 111 - 116)

3.    **Minutes (Pages 117 - 126)**

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Please ask for: Tony Rose

Your ref:

Direct Line/Ext: 01822 813664

My ref: AAR/Council.07.10.2014

email: arose@westdevon.gov.uk

Date: 29<sup>th</sup> September 2014

## 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 7<sup>th</sup> day of **OCTOBER 2014** at **4.30 pm**.

Prior to the Meeting, the Reverend Graham Cotter 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 Summons, then please contact the Monitoring Officer in advance of the meeting.

### Page No.

3. To approve and adopt as a correct record the Minutes of the Meeting of the Council held on 22<sup>nd</sup> July 2014 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

Notice of Motion submitted by the Leader of the Council, Cllr P Sanders:

*"This Council calls upon the Secretary of State for Transport and the Chancellor of the Exchequer to support the future economic resilience of the South West Peninsula by investing in improved strategic road and rail transport links.*

*Our area is frequently cut off from the rest of the country because strategic transport links are adversely affected by severe weather, accidents or maintenance works. Efficient transport is critical to ensure essential services function and the economy can grow.*

*We ask the Government to invest in four key areas to help Devon's economy:*

- *Improvements to the A303/A30/A358 to create a reliable second strategic road link from London to the South West Peninsula.*
- *A resilient and reliable railway for the South West Peninsula.*
- *Faster rail journey times and better connections.*
- *Sufficient capacity and quality of our trains (both engines and carriages) to meet demand."*

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 22<sup>nd</sup> July 2014 7

Meeting held on 23<sup>rd</sup> September 2014 10

**Unstarred Minute to agree**

Members are recommended to agree:

**AC 19 Audit of the Annual Statement of Accounts 2013/2014**

**RESOLVED to RECOMMEND that:**

- (i) the Financial Statements and the Technical Appendix as given in Appendix A be approved and adopted; and,
- (ii) the wording of the Letter of Representation as given in Appendix B be also approved and signed by the Chairman and Head of Finance & Audit.

**AC 21 Treasury Management – Annual Report 2013/2014**

**RESOLVED to RECOMMEND that:**

- (i) the Treasury Management Report for 2013/2014 be received and noted;
- (ii) the actual prudential indicators for 2013/2014 as shown in Appendix A, be noted; and,
- (iii) the Minimum Revenue Provision Statement as detailed in paragraph 6.2 of the officer's report (page 148 to the Agenda) be also noted.

**AC 22 Internal Audit – Revision of and progress against the 2014/15 Plan**

**RESOLVED to RECOMMEND** that

- (i) the revisions being made to the 2014/2015 Internal Audit Plan and the progress being in achieving the aims of the Plan be noted; and,
- (ii) representations be sent to the Audit Commission which outline the Council's deep reservations regarding the recommendation to no longer appoint Grant Thornton as the Council's External Auditor.

**(ii) Community Services Committee**

Meeting held on 2<sup>nd</sup> September 2014

Meeting cancelled

**(iii) Planning & Licensing Committee**

Meeting held on 29<sup>th</sup> July 2014

14

Meeting held on 26<sup>th</sup> August 2014

22

Meeting held on 23<sup>rd</sup> September 2014

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10. To receive the report of the Leader of the Council on behalf of the Member Selection Panel on the appointment of Executive Director 41

**NOTE:** Appendix A contains exempt information through Paragraph 1 and 2 of Section 100 (A)(4) OF THE Local Government Act 1972.

11. To receive the report of the Executive Director (Resources) on Torridge District Council and the Future Operating Model 46

12. To receive the report of the Head of Environmental Health & Housing on forming a Local Authority Trading Company 57

13. To receive the report of the Head of Environmental Health & Housing on the proposed amalgamation of West Devon Homes with Devon and Cornwall Housing. 90

14. To receive the report of the Head of Finance & Audit on business rates pooling 97

15. To receive the report of the Customer Services Manager on Council Tax Reduction. (This report was considered by the Resources Committee earlier). 102

16. To receive the report of the Democratic Services Manager on the Openness of Local Government Bodies Regulations 2014 117

17. To receive the report of the Head of Corporate Services/Electoral Services Officer on a review of Polling Places and Polling Districts 121

18. To receive the report of the Street Scene Manager on Dog Control Orders 134

- 19.** 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 14<sup>th</sup> July 2014 to 26<sup>th</sup> September 2014. 139

Dated this 29<sup>th</sup> day of September 2014

A handwritten signature in black ink that reads "Alan Lawson". Below the signature is a horizontal line that tapers at both ends, serving as a decorative underline.

Executive Director (Communities) & Head of Paid Service

**NOT FOR PUBLICATION**

**Exempt information – Paragraph 1: Information relating to any individual and Paragraph 2: information which is likely to reveal the identity of an individual – applies to Appendix A.**

AGENDA  
ITEM

**10**

## WEST DEVON BOROUGH COUNCIL

AGENDA  
ITEM

**10**

<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>APPOINTMENT OF EXECUTIVE DIRECTOR</b>
<b>REPORT OF</b>	<b>Leader on behalf of the Member Selection Panel</b>
<b>WARDS AFFECTED</b>	<b>All</b>

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**Summary of report:**

To consider a report that recommends the appointment of the Executive Director - Service Delivery & Commercial Development.

**Financial implications:**

Members previously agreed a salary range of £88,000 to £96,000 for the Director posts and the recommended salary for the successful candidate is contained in Appendix A.

**RECOMMENDATION:**

That Council RESOLVES to agree the appointment of the recommended successful candidate for the position of Executive Director - Service Delivery & Commercial Development as detailed in Appendix A.

**Contact:**

Cllr Philip Sanders, Leader of West Devon Borough Council  
Telephone 01822 612265  
Email [cldr.philip.sanders@westdevon.gov.uk](mailto:cldr.philip.sanders@westdevon.gov.uk)

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**1. BACKGROUND**

- 1.1 During Autumn 2013 both Councils agreed to adopt the new T18 operating model in order to deliver services in a more efficient way. On 24<sup>th</sup> June Members resolved that an Executive Director model be operated with one Director responsible for Strategy and Commissioning and one for Service Delivery and Commercial Development, with the former also being the Head of Paid Service.

- 1.2 At its meeting on 24<sup>th</sup> June the Council also agreed that the appointment of the two Directors should be recommended by a Member Panel of six, three from West Devon and three from South Hams. As such a panel comprising Cllrs Sanders, Ridgers, Sampson, Tucker, Hicks and Ward was established.
- 1.3 Six candidates were shortlisted and all Members from both Councils had the opportunity to meet with them on Thursday 11<sup>th</sup> September as part of a rigorous selection process.
- 1.4 The process consisted of a range of assessments, a presentation and a formal interview. The Member Panel was supported by a Chief Executive from an authority outside of the south west area and an independent HR advisor.
- 1.5 On Friday 12 September the Selection Panel formally interviewed all six candidates and the recommendation for appointment is attached at Appendix A.
- 1.6 The panel is currently unable to recommend an appointment to the post of Executive Director - Strategy & Commissioning & Head of Paid Service. An offer was initially made to one of the candidates but for personal reasons the individual has declined.
- 1.7 The panel will now reconvene to discuss options and consider the way forward.

## **2. FINANCIAL IMPLICATIONS**

- 2.1 Members previously agreed a salary range of £88,000 to £96,000 for the Director posts and the recommended salary for the successful candidate is contained in Appendix A.

## **3. LEGAL IMPLICATIONS**

- 3.1 The reason the report is before Council is that the Constitution requires that Council appoints the Director.
- 3.2 There is sensitive information relating to an individual in this report, there are grounds for Appendix A of the report's publication to be restricted, and considered in Exempt session. Having applied the public interest test, it is felt that the public interest lies in non-disclosure due to the personal data contained in the Appendix. Accordingly Appendix A contains exempt information as defined in Paragraphs 1 and 2 of Schedule 12A to the Local Government Act 1972

## **4. RISK MANAGEMENT**

- 4.1 The risk management implications are shown at the end of this report in the Strategic Risk Template:

## **5. OTHER CONSIDERATIONS**

<b>Corporate priorities engaged:</b>	All
<b>Considerations of equality</b>	None directly arising from this report



<b>and human rights:</b>	
<b>Biodiversity considerations:</b>	None directly arising from this report
<b>Sustainability considerations:</b>	None directly arising from this report
<b>Crime and disorder implications:</b>	None directly arising from this report
<b>Background papers:</b>	Council Report and appendices 24 <sup>th</sup> June 2014
<b>Appendices:</b>	Appendix A – Appointment of Executive Director

## 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	Delay in agreeing the appointment of Executive Directors	Deferral or refusal to accept the recommended appointment may lead to delays in other elements of the T18 programme. The recruitment process has resulted in an increase in severance costs than was initially anticipated	4	3	12	↑	<p>Rigorous selection process with Member Panel and professional support from IESE ensures that suitable candidates are recommended</p> <p>Increased costs will be modelled in future updates of the T18 business case</p>	<p>Lead Members</p> <p>Lead Members Head of Paid Service</p>

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AGENDA ITEM <b>11</b>
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## WEST DEVON BOROUGH COUNCIL

AGENDA ITEM <b>11</b>
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<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>Torrige and the Future Operating Model</b>
<b>REPORT OF</b>	<b>Executive Director (Resources)</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:** This report brings the Council up to date on informal discussions that have been ongoing between West Devon Borough Council (WDBC), South Hams District Council (SHDC) and Torrige District Council (TDC) Leaders since Autumn 2013. It proposes that officers should carry out detailed work to determine the opportunities, financial benefits and risks of the three Councils forming a partnership to deliver the future operating model in a shared services relationship.

**Financial implications:** Significant further detailed analysis needs to be undertaken. However at this stage the investment costs required by WDBC and SHDC are in the region of £335,000, generating annual recurring revenue savings for the two Councils of around £1.3 million. This is in addition to the current T18 Programme and its projected costs and savings.

**RECOMMENDATIONS:**

**That the Council agrees to:**

- (i) **Instruct officers to formally consider the option of working with Torrige District Council to implement a combined future operating model in order to bring a report back to Council in December for a final decision. In so doing officers will create a:**
  - a. **refined business case;**
  - b. **detailed analysis of the benefits and risks;**
  - c. **governance arrangements; and**
  - d. **timetable for implementation.**

**Officer contact:**

Tracy Winser: [tracy.winsler@swdevon.gov.uk](mailto:tracy.winsler@swdevon.gov.uk) Tel 01803 861389

## **1. BACKGROUND**

- 1.1 In November 2013 WDBC took the decision to adopt, in partnership with SHDC the T18 model comprising the commissioning/delivery model, transformed shared business process and ICT (APPENDIX A).
- 1.2 Since then officers have been working on the delivery of the new model and Phase 1a (Support Services) has now been implemented. The Programme is currently on time. Phase 1b, being the most significant part of the Programme, is due to go live in June 2015.
- 1.3 Our progress to date has attracted considerable interest from a number of Councils who are looking for new models of service delivery which will enhance the customer experience whilst reducing cost.
- 1.4 One of the earliest Councils wanting to learn more about the model is TDC who need to save £1.1 million by 2017. This is in addition to ongoing delivery of savings of £1.1 million which they will have delivered by March 2015.
- 1.5 This interest has led to a number of meetings being held between the Leaders with a meeting on the 9 September 2014 between the Chairs and Vice Chairs of WDBC, the Executive Members of SHDC and the Senior Leadership Group from TDC at which there was broad support for exploring a shared working relationship further.
- 1.6 Meanwhile TDC have been working with iESE Transformation Ltd and Ignite to develop a business case, one option being to create the model alone and the other in partnership with WDBC and SHDC. This option has been part of the blueprinting work carried out by the consultants for TDC and has been commissioned by them.

## **2. THE BUSINESS CASE**

- 2.1 The indicative savings of £1.3 million generated to WDBC and SHDC by TDC joining the partnership are largely delivered from a reduction in salary costs. The high level work undertaken so far suggests a total FTE reduction in the region of 72. The greater proportion of this reduction in posts would be made from the TDC establishment. However a smaller proportion of this reduction could potentially be spread across WDBC and SHDC but at this stage it is difficult to determine likely figures (APPENDIX B).
- 2.2 Work to date has concentrated on the feasibility of the proposition and therefore until a decision in principle is made to pursue this further it has not been possible to consult with staff or unions, although both are aware that discussions have been taking place. This would be part of next steps.
- 2.3 More detailed analysis would need to be undertaken over the next two months in order to be able to give an indication of these proportions.
- 2.4 The division of costs between TDC and the current partnership of WDBC and SHDC has been calculated at this moment in time using the relative population

figures. This approach, together with the principle of only sharing the additional costs incurred by Torridge as a result of the partnership and not the costs of implementing the future model alone has resulted in an estimated one off cost to be shared between WDBC and SHDC of £335,000.

- 2.5 This figure along with the savings estimates has been produced by the consultants. Engagement between the councils to date has largely been between Leaders and Senior Officers. Until a decision to progress further is made and the appropriate finance officers can work together to evaluate in more detail we need to treat these initial estimates with caution.

### **3. ISSUES FOR CONSIDERATION**

- 3.1 A similar report to this one will be taken to SHDC on 2 October 2014 and to TDC on 13 October 2014. However it should be noted that the report to TDC is likely to suggest that the Council also consider a further option known as “Plan B” which Torridge officers have been working on at the same time as the future operating model work. This plan would involve a reduction in posts at TDC but would not involve them working with other Councils to achieve this and would not include the implementation of the future operating model.
- 3.2 The figures contained within this report are indicative at this stage.
- 3.3 Should the Council approve the recommendation above, officers will need to invest time to develop a detailed business case, a comprehensive analysis of the benefits and risks, a timetable for implementation and an appropriate rationale for the sharing of costs and benefits.
- 3.4 In addition a suitable governance structure and a collaboration agreement will need to be developed in order to ensure that each council is able to retain its own sovereignty whilst creating an effective working partnership.
- 3.5 As there is no current Council position on the way forward there has been no consultation with staff or unions. If all three Councils agree that a shared approach is appropriate then appropriate discussions will be initiated.
- 3.6 The importance of maintaining the timetable for delivery of the T18 savings is of paramount importance. This is likely to mean that if all three Councils agree to create a new partnership TDC will need to act quickly to roll in to our current plans for recruitment into the new model. Alternatively they could wait until WDBC and SHDC have implemented Phase 1b by June 2015. The latter option may not deliver the required savings for TDC by April 2017 and so further discussions need to take place to look at other possible options.
- 3.7 Clearly there are potentially other benefits to the three Council partnership over and above the financial savings and at the Member meeting held on 9 September 2014 the benefits in APPENDIX C were identified.
- 3.8 However there are also significant risks, not least the capacity to deliver a future operating model to include TDC, at a point of significant change in personnel at all

three Councils. Detailed plans will need to be developed to ensure that there are sufficient appropriate resources in place and the issue of capacity will be an important consideration in relation to whether the proposal should proceed.

#### **4 LEGAL IMPLICATIONS AND STATUTORY POWERS**

4.1 This report sets out a proposal to examine in more detail the possibility of creating a shared partnership arrangement to pursue a new operating model. This will be a completely new way of working and requires approval of the Full Council.

#### **5. FINANCIAL IMPLICATIONS**

5.1 There are no direct financial consequences arising from this report and the work undertaken to date has been funded by Torridge District Council. However future agreement to a partnership to implement the future operating model with TDC will involve significant costs and significant savings. These will be quantified in the report to both Councils in December 2014.

5.2 At this stage the indicative costs to be shared between WDBC and SHDC are £335,000 with an annual recurring saving, again to be shared between the two Councils, of approximately £1.3 million. The sharing rationale of both these costs and savings will need to be agreed and an officer recommendation on this will form part of the future report.

#### **6. RISK MANAGEMENT**

6.1 A change of this size involves significant risk and whilst these have been captured at a high level at this stage if Members approve the recommendation within this report further detailed analysis will be required.

6.2 The risks identified at this stage and the proposed mitigating actions are set out in the strategic risk template attached to this report.

#### **7. OTHER CONSIDERATIONS**

<b>Corporate priorities engaged:</b>	This report relates to the future delivery of the Council's four corporate priorities during a period of increasing financial constraint.
<b>Considerations of equality and human rights:</b>	This report updates Members on the opportunity for developing improved access to a range of Council services and meeting a wide range of customer needs.
<b>Biodiversity considerations:</b>	None.
<b>Sustainability considerations:</b>	The emerging model is designed to ensure that both Councils are sustainable in the medium term. Greater agile working linked to better use of technology should reduce the Councils' carbon footprints.
<b>Crime and disorder implications:</b>	None.
<b>Background papers:</b>	1. Report to Special Council 4 November 2013 – Transformation Programme 2018



<b>Appendices attached:</b>	Appendix A – Operating Model Appendix B – Partnership Costs and Savings Appendix C – Benefits identified at three Council Member meeting 9 September 2014
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## STRATEGIC RISKS TEMPLATE

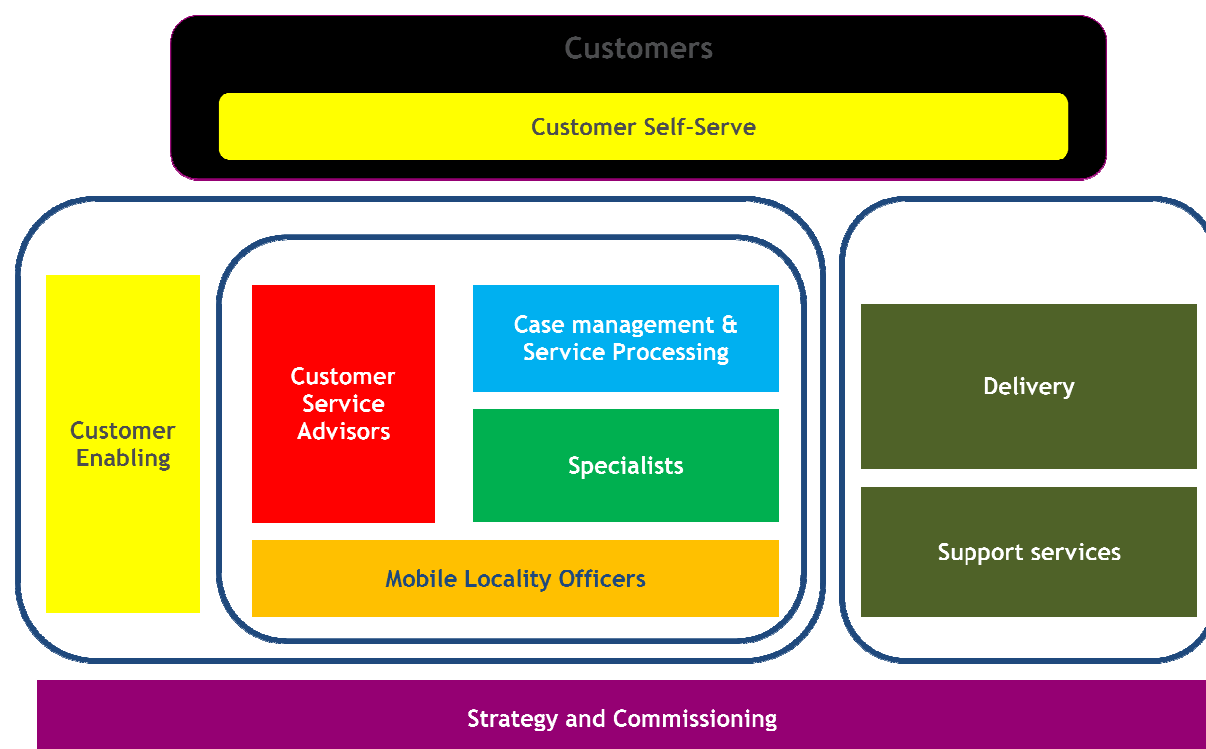
No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1.	Financial risk	Funding availability for initial investment to implement the Programme	5	2	10	↔	<ul style="list-style-type: none"> <li>Profile investment and the availability of resources in the context of a business plan</li> <li>Explore external funding opportunities</li> </ul>	Executive Directors and Section 151 Officer
2.	Financial risk	Higher than anticipated costs and/or lower than anticipated savings arising from the Programme. Key variable risk is the cost of staff redundancies.	4	3	12	↔	<ul style="list-style-type: none"> <li>Proof of concept work has demonstrated high level business case</li> <li>Detailed business case in place before committing to implementation of the Programme</li> <li>Sensitivity analysis undertaken</li> <li>Ongoing monitoring of costs and savings within the Programme</li> <li>In recognition of uncertainty of some costs, introduce contingency sum into detailed business plan</li> </ul>	Executive Directors and Section 151 Officer
3.	Financial risk	Unexpected events leading to a delay in delivery which could include delays in procurement or recruitment or external cost pressures which divert funding from the Programme.	3	3	9	↔	<ul style="list-style-type: none"> <li>Use of unearmarked reserves to fund a delay in delivery of the programme. Review the level of corporate priority of the Programme against any new cost pressure</li> </ul>	SMT

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			
4.	Management risk	Organisational resilience-ability to sustain significant change against a backdrop of the current change programme and its timetable	4	4	16	↔	<ul style="list-style-type: none"> <li>• Create a separate dedicated programme team with senior sponsorship without business as usual responsibilities.</li> <li>• Create an effective communication strategy to engage staff and members, public and unions</li> </ul>	SMT
5.	Management risk	Management capacity to deliver the Programme	4	3	12	↔	<ul style="list-style-type: none"> <li>• Programme identified as the key corporate priority</li> <li>• Commission external support as required to ensure the Programme is delivered in line with the timetable</li> </ul>	SMT
Page 17	Management risk	Maintaining the shared vision for the Programme during a period of significant changes	4	3	12	↔	<ul style="list-style-type: none"> <li>• Effective communication strategy to engage with Members, staff and other stakeholders embedded within the Programme</li> </ul>	SMT
	Management risk	Managing organisational transition to the new operating model, in particular reduction in customer satisfaction and/or drop in service standards	4	2	8	↔	<ul style="list-style-type: none"> <li>• Once decision taken to implement the future model create sufficient organisational capacity to achieve programme timeframes</li> <li>• Managing ongoing individual service performance</li> </ul>	SMT
8.	Management risk	Establishing an effective and robust programme management arrangement given the complexity of the task	4	2	8	↔	<ul style="list-style-type: none"> <li>• Establish appropriate member and officer Programme governance arrangements</li> <li>• Ensure key milestones and programme interdependencies identified</li> <li>• SMT collectively responsible for effective implementation of the Programme</li> </ul>	SMT

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			
11.	Political risk	Ongoing political commitment to ensure that the Future Operating Model is delivered despite external change and the inevitable challenges that will emerge during a major programme	4	2	8	↔	<ul style="list-style-type: none"> <li>• Ongoing liaison with Members to maintain shared vision</li> <li>• Ensure that the new model delivers and retains separate Council identities</li> <li>• Raise awareness of the scale of organisational change and the impact on existing arrangements for both Members and staff</li> <li>• Managing interest from potential partners in terms of securing critical project timescales and taking account of organisational capacity</li> </ul>	Executive Directors
Page 18	Staffing risk	Potential Union/staff response to elements of the changes	4	2	8	↔	<ul style="list-style-type: none"> <li>• Ongoing engagement with key staff stakeholder groups and develop corporate understanding of those issues which are essential to successful implementation of the Programme and therefore must be subject to change</li> <li>• Communicate potential staff benefits within the model such as developing skills and achieving better work/life balance through agile working</li> </ul>	Executive Directors

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## Future Operating Model



The future operating model shows the organisation being comprised of 4 essential parts:

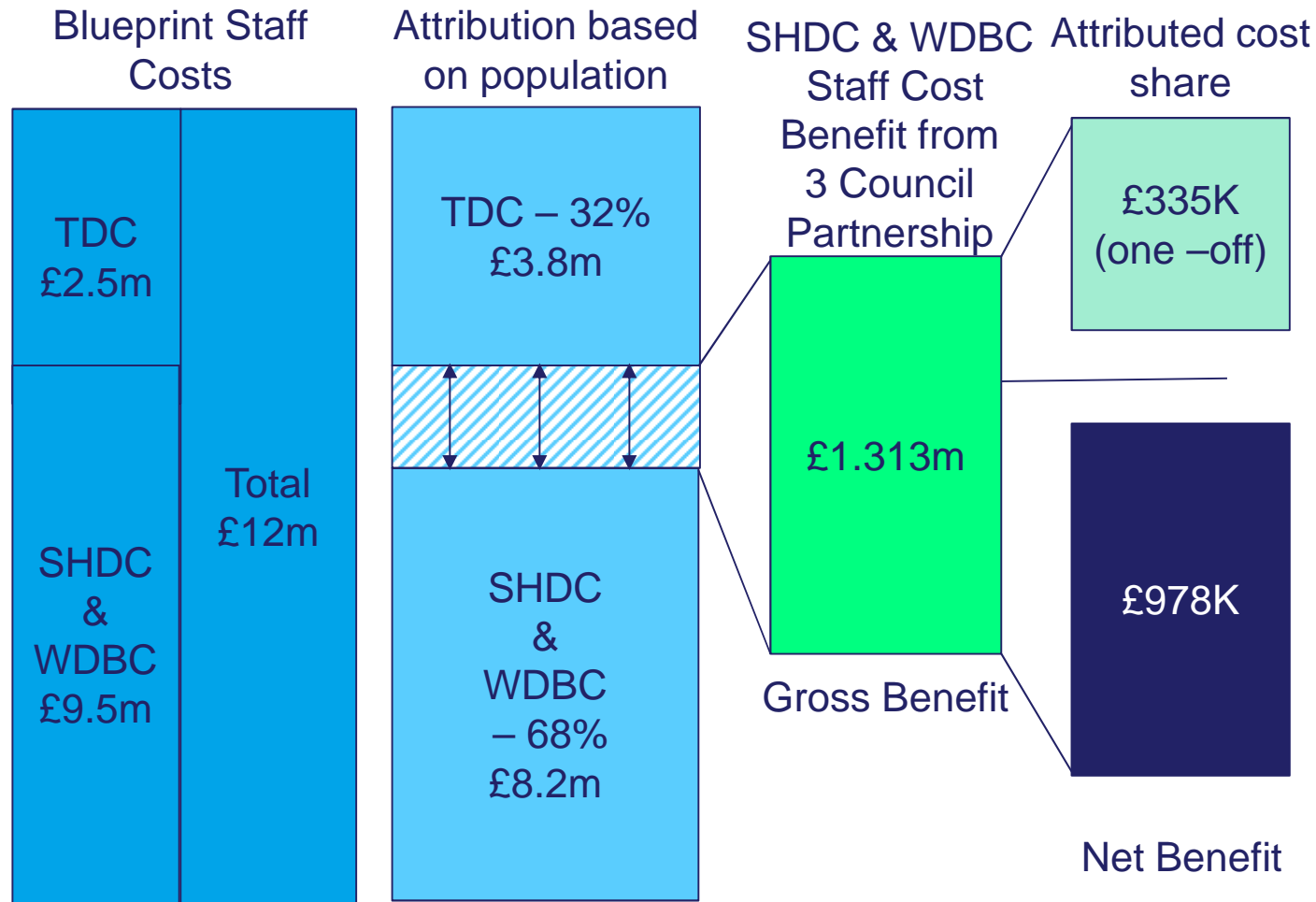
1. The Strategic Core – shown at the bottom of the diagram. The Strategic Core contains those activities and resources that ensure South Hams and West Devon Councils remain unique strong public authorities able to commission activities and strategies that deliver their individual priorities.
2. The Customer First services – (on the left hand side of the diagram). This will provide the primary point of contact for all customers. It will use technology and processes that will greatly increase our ability to resolve customer issues at the first point of contact, and where this is not possible it will be responsible for the creation and management of the customers "case" on an ongoing basis. The customer will be able to access our services through multiple channels (e.g. Face to face in our premises; face to face in their premises/premises of their choice; telephone; internet/self service) which will greatly improve their service experience.
3. Delivery – (on the right hand side of the diagram). This component relates to those services which are provided remotely and/or on a recurring basis. Currently, these services are, between the two councils, provided through a mix of means such as outsourced arrangements, shared service partnerships and direct provision by the Councils. This mixed economy is expected to continue and it is expected that there will be opportunities in the future to implement solutions under another options such as Alternative Service Delivery Models.
4. Support services – also on the right hand side of the diagram. This relates to the services and processes which the Council needs to have in order to continue to function as a modern organisation. As with Delivery above, they could be delivered in a variety of ways and could be particularly suited to sharing with a number of other public sector bodies.

In addition customer self-serve is depicted on the diagram to illustrate that the model seeks to maximise growing public willingness to use self service to access council services.

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# Partnership Cost/Benefit Attribution

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*Note:*  
 Attributed cost share based on additional cost incurred by TDC as a result of partnership. The population has been used as the basis for this attribution. Other bases could be used such as Net Budget Requirement equating to 33% TDC and 67% SHDC & WDBC

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**Benefits identified at a meeting of Executive Members of SHDC, the Chairs and Vice Chairs of WDBC and the Senior Leadership Group from TDC on 9 September 2014**

- Chance to build our model around customer need
- Better service at less cost
- More focus on customer
- Exciting opportunities for staff – better life balance
- Securing our future
- Achieve strategic critical mass
- Locality working – benefit to residents
- Greater buying power
- Cross border working opportunities
- Better use of resources
- Build on existing experience & shared expertise
- Better services for residents
- Savings- economies of scale
- Added value – best practise
- Better communications
- Opportunities for staff development
- Resilience/ sustainability
- Better than salami slicing
- Long term strategic alliance/ resilience for our part of Devon
- Selling our approach
- Stronger to deliver priorities in rural communities- e.g. alliance to make more bids
- Equal “valued partnership in relationship
- Greater capacity re specialisms
- Increased income opportunities
- Shared knowledge & expertise e.g. bidding for grants
- Energise the Councils
- “masters of our own destiny”
- Strategic lobbying e.g. transport investment

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## WEST DEVON BOROUGH COUNCIL

<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>Creating a Local Authority Trading Company</b>
<b>REPORT OF</b>	<b>Head of Environmental Health and Housing</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**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.

**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.

There may be financial implications if it is decided at a future date to provide some form of remuneration for Directors. This will, however, be borne by the Company as opposed to the Council.

**RECOMMENDATIONS:**

It is recommended that:

1. Council agree to create a wholly-owned Local Authority Trading Company with West Devon Borough Council and South Hams District Council having an equal shareholding;
2. delegated authority is given to 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 including finalising the Articles of Association and the Shareholder's Agreement; and,

3. to 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.

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**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. ISSUES FOR CONSIDERATION**

### **Governance arrangements**

- 1.1 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.
- 1.2 The Company will have a Board of Directors appointed. It is proposed that there will be a board of five Directors; 2 Officers, 1 Member from each authority and an externally appointed Director who will act as chair of the Board. Each Director would have to go through a selection process to ensure their fitness for the role. They would be nominated at Annual Council and then subsequently appointed by the company for a period of two years. This may be extended by Council up to a maximum of 4 terms (8 years in total) and one further term in exceptional circumstances.
- 1.3 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 Articles of Association and the Shareholder’s Agreement limiting their freedom to undertake certain actions which are best reserved for shareholders to take.
- 1.4 The proposed draft Articles of Association are attached as Appendix 2 of this report.
- 1.5 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. An outline of these duties, responsibilities and liabilities will be provided to the Directors as part of their letters of appointment.

- 1.6 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.
- 1.7 A scheme of delegations will be developed to clarify decisions that can be taken by staff and Directors.
- 1.8 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 or 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.
- 1.9 Service Level Agreements will be completed with the Council regarding use of Council staff and resources.
- 1.10 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.
- 1.11 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 Councils. 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.

## **2. TRADING AREAS**

- 1.12 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.

- 1.13 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.
- 1.14 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 the Councils 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.
- 1.15 It may be necessary to redistribute profits between the Councils based on relative trading activities. A set of principles have been agreed to determine how profit will be shared:
  - As a starting point, profits will be shared on a 50:50 split;
  - Where investment is required, then profits will be based pro-rata on respective investment percentages;
  - Where trading relates to existing assets, then profits to remain with the respective Council;
  - Any sole trading profits will reside with the respective Council;
  - The above principles can be varied at any time by mutual agreement.
- 1.16 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.
- 1.17 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.

## **2. LEGAL IMPLICATIONS**

- 2.1 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 proposed that the Company 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.
- 2.2 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.

## **3. FINANCIAL IMPLICATIONS**

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 Officers have had informal preliminary discussions with the Councils external auditors about the principle of setting up a trading company. Grant Thornton was 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.



#### 4. CONCLUSION

- 4.1 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.

#### 5. RISK MANAGEMENT

<b>Corporate priorities engaged:</b>	Community well-being; Access to services; Customer first
<b>Statutory powers:</b>	<i>Localism Act 2011</i>
<b>Considerations of equality and human rights:</b>	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.
<b>Biodiversity considerations:</b>	N/a
<b>Sustainability considerations:</b>	N/a
<b>Crime and disorder implications:</b>	None
<b>Background papers:</b>	None
<b>Appendices attached:</b>	Appendix 1: Income Generation Ideas arising from South Hams Task and Finish Groups and West Devon Income Generation Working Group Appendix 2: Draft Articles of Association

## 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 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	↔	Principles have been agreed on the redistribution of profits .	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.	Members Income Group and Directors of company

Direction of travel symbols ↓ ↑ ↔

## **Appendix 1: 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)

### **Key**

- \* = Income areas to be pursued as a higher priority following member and Officer workshop

**APPENDIX 2: DRAFT ARTICLES OF ASSOCIATION  
THE COMPANIES ACT 2006  
PRIVATE COMPANIES LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**[ ] LIMITED**

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## PART 1

### INTERPRETATION AND OBJECTS

#### 1 Defined terms

1.1 In the Articles, unless the context requires otherwise—

“**Articles**” means the Company’s Articles of Association;

“**Bankruptcy**” includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of Bankruptcy;

“**Business Days**” means a day (other than a Saturday or Sunday) on which banks are open for business in London;

“**Companies Acts**” means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company;

“**Company**” means the Company governed by these Articles;

“**Councils**” means South Hams District Council and West Devon Borough Council and their statutory successors;

“**Conflict**” has the meaning given in Article 12;

“**Director**” means a Director of the Company, and includes any person occupying the position of Director, by whatever name called;

“**Document**” includes, unless otherwise specified, any Document in Hard Copy Form and any Document sent or supplied in Electronic Form;

“**Electronic Form**” has the meaning given in section 1168 of the Companies Act 2006;

“**Eligible Director**” means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter).

“**Fully Paid**” in relation to a Share, means that the nominal value and any premium to be Paid to the Company in respect of that Share have been Paid to the Company;

“**Group Company**” means, in relation to a Company, a Subsidiary undertaking or parent undertaking of the Company or a Subsidiary undertaking of any parent undertaking of the Company, provided that the definition of "undertaking" in

section 1161 of the Companies Act 2006 shall for these purposes also include any person (incorporated or unincorporated) created by statute;

**"Hard Copy form"** has the meaning given in section 1168 of the Companies Act 2006;

**"Holder"** in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares;

**"Ordinary Resolution"** has the meaning given in section 282 of the Companies Act 2006;

**"Paid"** means Paid or credited as Paid;

**"Participate"** in relation to a Directors' meeting, has the meaning given in Article 9;

**"Representative"** has the meaning given to it in Article 31;

**"Shareholder"** means a person who is the Holder of a Share;

**"Shares"** means Shares in the Company;

**"Special Resolution"** has the meaning given in section 283 of the Companies Act 2006;

**"Subsidiary"** has the meaning given in section 1159 of the Companies Act 2006;

**"Transfer Notice"** means an irrevocable notice in writing given by any Shareholder to the other Shareholder or Shareholders where the first Shareholder desires to transfer or offer for transfer (or enter into an agreement to transfer) and Shares;

**"Valuers"** means the auditors for the time being of the Company or, if they decline the instruction, an independent firm of accountants appointed by the Shareholders; and

**"Writing"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise.

1.2 No regulations or model Articles contained in any statute or subordinate legislation, including those contained in the model Articles for private companies limited by shares contained in Schedule 1 of the Companies Act (Model Articles) Regulations 2008, shall apply to the Company.

1.3 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Company.

## 2 Objects clause

- 2.1 The Company's objects are unrestricted save for the restrictions set out in Article 2.2.
- 2.2 The objects of the Company should not involve:
  - 2.2.1 the production and the sale of weaponry including firearms;
  - 2.2.2 the manufacture of tobacco, alcohol or pornography; or
  - 2.2.3 the support of the exploitation of vulnerable people.

## **PART 2**

### **DIRECTORS**

#### **DIRECTORS' POWERS AND RESPONSIBILITIES**

### **3 Directors' general authority**

- 3.1 Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

### **4 Powers of Directors**

- 4.1 The Directors shall have no power or authority to approve any of the matters listed below unless the relevant matter has first been approved by the Shareholders in the Company's annual business plan or by way of Special Resolution:
  - 4.1.1 varying in any respect the Articles or the rights attaching to any Shares in the Company;
  - 4.1.2 passing any resolution for the Company's winding up or presenting any petition for its administration (unless it has become insolvent);
  - 4.1.3 adopting or amending the Company's annual business plan;
  - 4.1.4 amalgamating or merging with any other company or business undertaking;
  - 4.1.5 passing any resolution to admit new Shareholders or allot further Shares;

- 4.1.6 purchasing, leasing or otherwise acquiring assets, or any interest in assets, which exceed the value of £TBA
- 4.1.7 entering into any contract, transaction or other arrangement of a value exceeding £TBA
- 4.1.8 Borrowing any money in excess of £TBA, or creating any mortgage, debenture, pledge, lien or other encumbrances over the undertaking or assets of the Company;
- 4.1.9 Giving any guarantee, making any payment or incurring any obligation or acting as surety otherwise than in connection with the ordinary business of the Company for the time being;
- 4.1.10 Removing any Director appointed by a Shareholder;
- 4.1.11 Changing the Company's name.

## **5 Shareholders' reserve power**

- 5.1 The Shareholders may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.
- 5.2 No such Special Resolution invalidates anything which the Directors have done before the passing of the resolution.

## **DECISION-MAKING BY DIRECTORS**

### **6 Directors to take decisions collectively**

- 6.1 Each Director shall have one (1) vote.
- 6.2 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 7.

### **7 Unanimous decisions**

- 7.1 A decision of the Directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.

- 7.2 Such a decision may take the form of a resolution in Writing where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in Writing.
- 7.3 A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

## **8 Calling a Directors' meeting**

- 8.1 Directors meetings shall be held a minimum of four times a year.
- 8.2 Any Director may call a Directors' meeting by giving not less than seven (7) Business Days' notice of the meeting (or such lesser notice as all the Directors may agree) to the Directors or by authorising the Company secretary to give such notice.
- 8.3 Notice of any Directors' meeting must indicate:
- 8.3.1 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting;
  - 8.3.2 copies of any papers to be discussed at the meeting or the committee meeting;
  - 8.3.3 its proposed date and time;
  - 8.3.4 where it is to take place; and
  - 8.3.5 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 8.4 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of Directors unless all the Directors present agree.
- 8.5 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than seven (7) days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

## **9 Participation in Directors' meetings**

- 9.1 Subject to the Articles, Directors Participate in a Directors' meeting, or part of a Directors' meeting, when:
- 9.1.1 the meeting has been called and takes place in accordance with the Articles; and

9.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

9.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.

9.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them are.

## **10 Quorum for Directors' meetings**

10.1 Subject to Article 10.2, the minimum quorum for Directors' meetings will be any three (3) Eligible Directors.

10.2 For the purposes of any meeting held pursuant to Article 12 to authorise a Director's conflict, if there is only one Eligible Director in office other than the conflicted Director(s), the quorum for such a meeting shall be one Eligible Director.

10.3 If the total number of Directors in office for the time being is less than the quorum required, the Directors must not take any decision other than a decision to call a general meeting so as to enable the Shareholders to appoint further Directors in accordance with Article 16 below.

## **11 Chairing of Director's meetings**

11.1 The externally appointed Director shall chair Director's meetings and shall be known as the chairman.

11.2 If the chairman is not participating in a Director's meeting within ten minutes of the time at which it was to start, the participating Directors must appoint one of themselves to chair it.

11.3 The chairman shall not have a casting vote.

## **12 Conflicts of interest – transactions or other arrangements with the Company**

12.1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Companies

Act and provided he has declared the nature and extent of his interest in accordance with

the requirements of the Companies Acts, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

- 12.1.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
- 12.1.2 shall be an Eligible Director for the purposes of any proposed decision of the Directors in respect of such existing or proposed transaction or arrangement in which he is interested;
- 12.1.3 shall be entitled to vote at a meeting of Directors or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
- 12.1.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- 12.1.5 may be a Director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- 12.1.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Companies Act.

12.2 For the purposes of this Article 12, a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an officer, member or employee of any Shareholder of the Company.

### **13 Conflicts of interest requiring Directors' authorisation**

13.1 The Directors may, in accordance with the requirements set out in this Article, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an **Interested Director**) breaching his duty under section 175 of the Companies Act to avoid conflicts of interest (**Conflict**).

13.2 Any authorisation under this Article 13 will be effective only if:

13.2.1 to the extent permitted by the Companies Act, the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of these Articles or in such other manner as the Directors may determine;

- 13.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other interested director; and,
  - 13.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other interested director's vote had not been counted.
- 13.3 A Conflict in relation to a Director arising solely as a result of him being a officer, member or employee of any Shareholder of the Company shall be deemed to have been authorised for the purposes of this Article 13 and section 175 of the Companies Act.
- 13.4 Any authorisation or deemed authorisation of a Conflict under this Article 13 may (whether at the time of giving the authorisation or subsequently):
- 13.4.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - 13.4.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
  - 13.4.3 provide that the Interested Director shall or shall not be an Eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;
  - 13.4.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
  - 13.4.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
  - 13.4.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 13.5 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the Directors in relation to the Conflict.



- 13.6 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.
- 13.7 A Director is not required, by reason of being a Director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

#### **14 Records of decisions to be kept**

- 14.1 The Directors must ensure that the Company keeps a record, in Writing, for at least ten (10) years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

#### **15 Directors' discretion to make further rules**

- 15.1 Subject to the Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

### **APPOINTMENT OF DIRECTORS**

#### **16 Methods of appointing Directors**

- 16.1 Any person who is willing to act as a Director and is permitted by law to do so, may be appointed to be a Director.
- 16.2 There shall be five (5) Directors or such other number as may otherwise be determined from time to time by Ordinary Resolution of the Company.
- 16.3 The Directors shall be appointed by the Shareholders at their Annual Council Meeting for an initial term of two (2) years and shall be eligible for reappointment for up to three (3) further terms of two (2) years up to a maximum term of eight (8) years except in exceptional circumstances (to be determined by the appointing Shareholder) when the Director may be appointed for a fifth term of two (2) years.
- 16.4 The two (2) Shareholders shall each have the right to appoint two (2) Directors consisting of one (1) elected member of the Shareholder and one (1) officer of the Shareholder.
- 16.5 The Shareholders shall also jointly appoint a fifth externally appointed Director.

## **17 Termination of Director's appointment**

- 17.1 A person ceases to be a Director automatically at the end of their two year term of appointment unless reappointed in accordance with Articles 16.3 or as soon as:
- 17.1.1 in the case of an employee of the Shareholder, that person ceases to be employed by the Shareholder;
  - 17.1.2 in the case of an elected member, that person ceases to be an elected member for the Shareholder or becomes disqualified for membership of a local authority;
  - 17.1.3 the Shareholders decide by majority vote to remove the Director;
  - 17.1.4 the Shareholder who appointed the Director ceases to be a Shareholder in the Company;
  - 17.1.5 that person resigns by written notice to the Directors and to the Shareholder who appointed the Director and such resignation has taken effect in accordance with its terms;
  - 17.1.6 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
  - 17.1.7 a Bankruptcy order is made against that person;
  - 17.1.8 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 17.1.9 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months.

### **PART 3**

## **SHAREHOLDERS, SHARES & DISTRIBUTIONS**

### **SHARES**

## **18 Shareholders**

- 18.1 The first Shareholders of the Company are the Councils.
- 18.2 No person shall be admitted as a Shareholder of the Company unless they are approved by ordinary resolution of the Shareholders.
- 18.3 The Directors must keep a register of names and addresses of the Shareholders

## **19 Liability of Shareholders**

19.1 The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them.

## **20 All Shares to be Fully Paid up**

20.1 No Share is to be issued for less than the aggregate of its nominal value and any premium Paid to the Company in consideration for its issue.

20.2 This does not apply to Shares taken on the formation of the Company by the subscribers to the Company's memorandum.

## **21 Further issues of Shares: Authority**

21.1 Save to the extent authorised by these Articles, or authorised from time to time by an Ordinary Resolution of the Shareholders, the Directors shall not exercise any power to allot Shares or to grant rights to subscribe for, or to convert any security into, any Shares in the Company.

## **22 Further issue of Shares: disapplication of pre-emption rights**

22.1 In accordance with sections 567(1) of the Companies Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Companies Act) made by the Company.

## **23 Power to issue different classes of Share**

23.1 Subject to the Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares with such rights or restrictions as may be determined by Ordinary Resolution.

23.2 The Company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the Holder, and the Directors may determine the terms, conditions and manner of redemption of any such Shares.

## **24 Company not bound by less than absolute interests**

24.1 Except as required by law, no person is to be recognised by the Company as holding any Share upon any trust, and except as otherwise required by law or the Articles, the Company is not in any way to be bound by or recognise any interest in a Share other than the Shareholder's absolute ownership of it and all the rights attached to it.

## **25 Share Certificate**

25.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.

25.2 Every certificate must specify:

25.2.1 in respect of how many Shares, of what class, it is issued;

25.2.2 the nominal value of those Shares;

25.2.3 that the Shares are Fully Paid; and

25.2.4 any distinguishing numbers assigned to them.

25.3 No certificate may be issued in respect of Shares of more than one class.

25.4 If more than one person holds a Share, only one certificate may be issued in respect of it.

25.5 Certificates must be executed in accordance with the Companies Acts.

## **26 Share Transfers: General**

26.1 No Shareholder shall transfer any Share except:

26.1.1 with the prior written consent of all Shareholders for the time being, or

26.1.2 in accordance with the procedure set out in Article 27.

26.2 Subject to the above, Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor.

26.3 No fee may be charged for registering any instrument of transfer or other document relating to or affecting title to any Share.

26.4 The Company may retain any instrument of transfer which is registered.

26.5 The transferor remains the Shareholder of the Share until the transferee's name is entered in the register of Shareholders as Holder of it.

## **27 Pre-emption rights on the Transfer of Shares**

27.1 A Shareholder (**Seller**) wishing to transfer its shares (**Sale Shares**) must give a Transfer Notice to the other Shareholder (**Continuing Shareholder**) giving details of the proposed transfer.

- 27.2 Following service of a Transfer Notice under Article 27.1, the Seller and Continuing Shareholder shall endeavour to agree a price for the Sale Shares. If they cannot agree a price within twenty (20) Business Days of the Continuing Shareholder's receipt of the Transfer Notice, either the Seller or the Continuing Shareholder shall instruct the Valuers to determine the fair value of each Sale Share.
- 27.3 Within 20 Business Days of receipt of the Valuer's determination of fair value, the Continuing Shareholder shall give notice in writing to the Seller stating whether the Continuing Shareholder wishes to purchase the Sale Shares at their fair value as determined by the Valuers.
- 27.4 If the Continuing Shareholder gives notice that it does not want to buy the Sale Shares or, fails to provide any written notice within the 20 Business Days or, the Sale Shares are not transferred within two (2) months of expiry of the written notice specified in Article 27.2, the Shareholders agree that proceedings will be commenced to wind the Company up.

## **DIVIDENDS**

### **28 Procedure for declaring dividends**

- 28.1 The Company may by Special Resolution declare dividends and the Directors may decide to pay interim dividends.
- 28.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
- 28.3 Unless the Shareholders' resolution to declare, specifies otherwise, it must be Paid by reference to each Shareholder's holding of Shares on the date of the resolution or decision to declare or pay it.
- 28.4 If the Company's Share capital is divided into different classes, no interim dividend may be paid on Shares carrying deferred or non-preferred rights if, at the time of payment, any preferred dividend is in arrears.
- 28.5 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 28.6 If the Directors act in good faith, they do not incur any liability to the Shareholder conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on Shares with deferred or non-preferred rights.

## **29 Payment of Dividends**

- 29.1 Where a dividend or other sum which is a distribution is payable in respect of a Share, it must be paid by such means as is agreed by the respective Shareholder.

## **30 No interest on distributions**

- 30.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share

# **PART 4 DECISION MAKING BY SHAREHOLDERS ORGANISATION OF GENERAL MEETINGS**

## **31 Representatives of Shareholders**

- 31.1 A Shareholder may be represented at any general meeting of the Company by any authorised Representative for the time being of the Shareholder as notified by the Shareholder in question to the Company (a "Representative").
- 31.2 A Representative shall be deemed to have full authority to act on behalf of a Shareholder in relation to any discussion or vote at a general meeting.

## **32 Attendance and speaking at general meetings**

- 32.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 32.2 A person is able to exercise the right to vote at a general meeting when:
- 32.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 32.2.2 that person's vote can be taken into account in determining whether or not such;
- resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 32.3 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 32.4 In determining attendance at a general meeting, it is immaterial whether any two (2) or more Shareholders attending it are in the same place as each other.

32.5 Two (2) or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **33 Quorum for general meetings**

33.1 No business is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

33.2 There is a quorum at a general meeting if all of the Shareholders entitled to attend and vote at that meeting are present in person or through their Representatives.

33.3 If within 15 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting will be adjourned to such other day and at such time as the Board may determine.

### **34 Chairing general meetings**

34.1 The Directors present or (if no Directors are present), the meeting must appoint a Director (if present) or Shareholder to chair the meeting, and the appointment of the chairman of that meeting must be the first business of the meeting.

34.2 The person chairing a meeting in accordance with this Article is referred to as “the chairman of the meeting”

### **35 Attendance and speaking by Directors and non-Shareholders**

35.1 Directors may attend and speak at general meetings.

35.2 The chairman of the meeting may permit other persons who are not Shareholders of the Company to attend and speak at general meetings.

## **VOTING AT GENERAL MEETINGS**

### **36 Voting: general**

36.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

### **37 Errors and disputes**

37.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

37.2 Any such objection must be referred to the chairman of the meeting whose decision is final.

### **38 Poll votes**

38.1 A poll on a resolution may be demanded:

38.1.1 in advance of the general meeting where it is to be put to the vote; or

38.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

38.2 A poll may be demanded by:

38.2.1 the chairman of the meeting;

38.2.2 the Directors;

38.2.3 two (2) or more persons having the right to vote on the resolution; or

38.2.4 a person or persons representing not less than one tenth (1/10<sup>th</sup>) of the total voting rights of all the Shareholders having the right to vote on the resolution.

38.3 A demand for a poll may be withdrawn if:

38.3.1 the poll has not yet been taken, and

38.3.2 the chairman of the meeting consents to the withdrawal.

38.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### **39 Amendments to resolutions**

39.1 An Ordinary Resolution to be proposed at a general meeting may be amended by Ordinary Resolution if:

39.1.1 notice of the proposed amendment is given to the Company in Writing by a person entitled to vote at the general meeting at which it is to be proposed not less than forty eight (48) hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

39.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

39.2 A Special Resolution to be proposed at a general meeting may be amended by Ordinary Resolution, if:



- 39.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
- 39.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 39.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

## **PART 5**

### **ADMINISTRATIVE ARRANGEMENTS**

#### **40 Means of communication to be used**

- 40.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 40.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 40.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty eight (48) hours.

#### **41 Company Secretary**

- 41.1 The Directors may appoint any person who is willing to act as the secretary for such term and upon such conditions as they may think it and from time to time remove such person and, if the Directors so decide, appoint a replacement.

### **DIRECTORS' INDEMNITY AND INSURANCE**

#### **42 Indemnity**

- 42.1 Subject to Article 42.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
- 42.1.1 Each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

- (i) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
- (ii) in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

42.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 42.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

42.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

42.3 In this Article:

42.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

42.3.2 a "relevant officer" means any director or secretary or former director or secretary of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act).

## **43 Insurance**

43.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

43.2 In this Article:-

43.2.1 a "relevant officer" means any Director or secretary or former director or former secretary of the Company or an associated company.

43.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company, and

43.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate,

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<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>Proposed amalgamation of West Devon Homes with Devon and Cornwall Housing</b>
<b>REPORT OF</b>	<b>Head of Environmental Health and Housing</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

The purpose of this report is to advise Members of the proposed restructure of West Devon Homes (WDH) within the Devon and Cornwall Housing (DCH) Group and to seek approval for the amalgamation of the two organisations.

**Financial implications:**

There are no direct financial implications for the Council arising from this report. There are, however, significant potential financial benefits arising from the merger that will be directed at improving services to current and future residents of existing West Devon Homes' properties.

**RECOMMENDATIONS:**

1. That Council approve the conversion of WDH from a company limited by guarantee to a community benefit society and its subsequent amalgamation as a community benefit society with DCH.
  
2. To authorise the Head of Environmental Health and Housing to act on behalf of the Council and to exercise the Council's vote in support of the conversion of WDH to a community benefit society and its amalgamation with DCH at special general meetings of WDH set up for these purposes.
  
3. To vary the Transfer Agreement dated 22 February 1999 between the Council and WDH as set out in this report and to authorise the Head of Environmental Health and Housing to complete the Deed of Variation.

**Officer contact:**

Ian Bollans - [ian.bollans@swdevon.gov.uk](mailto:ian.bollans@swdevon.gov.uk) - 01822 813711

## **1. BACKGROUND**

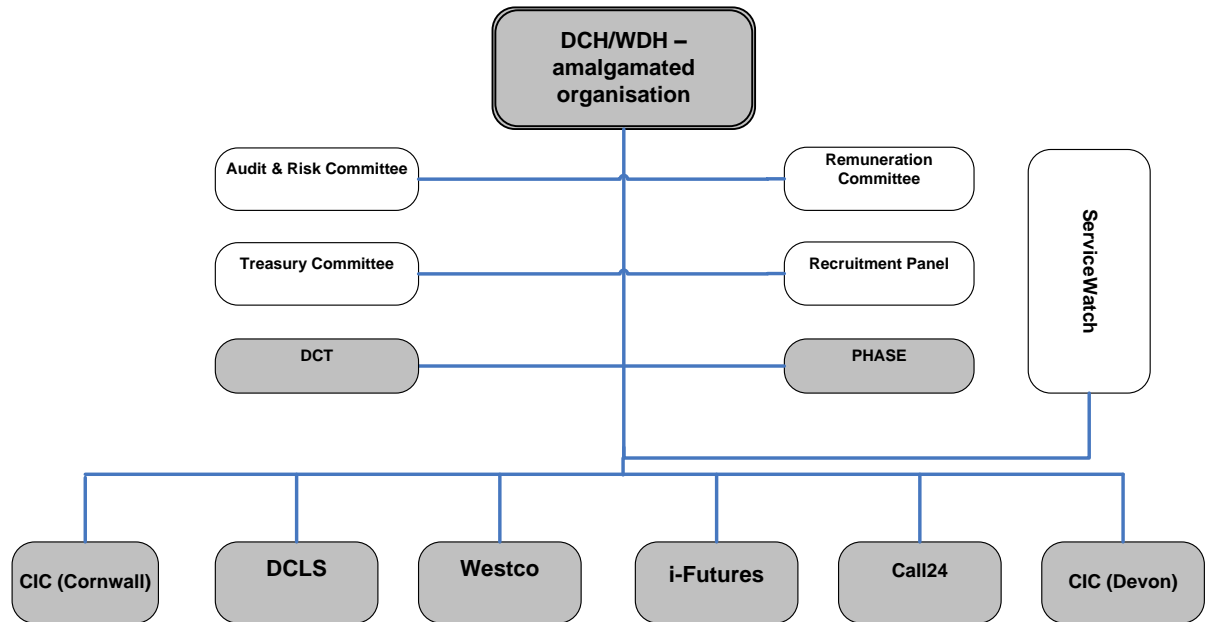
- 1.1 Members will be aware of the transfer of the Councils Housing stock to West Devon Homes in 1999. The organisation is an independent, charitable company limited by guarantee and is a Registered Provider regulated by the Homes and Communities Agency. Its main purpose is to provide affordable housing for rent for local people on low incomes. As at August 2014, it owns a social housing stock of 1,565 homes across West Devon and North Cornwall. WDH also owns and manages 15 shared ownership properties, four commercial rented properties and 255 garages.
- 1.2 WDH currently has seven members on its board comprising four independent and three tenant representative members. The company also employs 52 staff. There are 95 company members of WDH comprising 90 WDH tenants, the 4 independent members of the WDH board and West Devon Borough Council.
- 1.3 WDH is a relatively small Registered Provider of social housing and has for a number of years formed a strategic alliance with DCH including a shared management team. Following the success of this alliance, it is now the intention of WDH and DCH to formally amalgamate.
- 1.4 West Devon Borough Council (WDBC) is a company member of WDH and its agreement and approval to the amalgamation is therefore sought to enable this to happen.
- 1.5 This paper provides background information about the two organisations, outlines the legal process to be followed for amalgamation and explains the proposed governance structure of the amalgamated organisation.
- 1.6 The proposed amalgamation is supported by a business case which supports the proposals recognising the strategic need for a partnering of the two organisations to ensure adequacy for investment in existing housing, the ability to build more new affordable homes and to ensure high levels of customer service.
- 1.7 The consent of the Homes & Communities Agency is also required for the two stages of the amalgamation and meetings of the Registration Advisory Committee of the Homes & Community Agency (HCA) have been scheduled in September and November for this purpose.
- 1.8 The DCH/WDH amalgamated organisation will be a registered provider with the HCA.

## **2. ISSUES FOR CONSIDERATION**

### **Background to the proposed merger**

- 2.1 DCH is a registered society with charitable objectives and was formed in 2012 following the amalgamation of four charitable registered providers (Devon and Cornwall Housing Trust, Devon and Cornwall Housing Association, Penwith Housing Association and Tor Homes) into one charitable registered provider.

- 2.2 As at August 2014, DCH manages 20,450 homes across Devon and Cornwall, employing 834 members of staff across the group.
- 2.3 DCH has a board of ten members, comprising eight non-executive directors, the Group Chief Executive and the Group Director of Finance. The eight non-executive directors are also the shareholders of DCH.
- 2.4 The process of amalgamation is complex and requires a number of stages and various approvals for this to happen. The first step is for WDH to form a 'Community Benefit Society'. This will require the approval of the Homes and Communities Agency, Financial Control Authority, the Charity Commission and West Devon Borough Council. Once the Community Benefit Society has been formed then both WDH and DCH can begin the merger process. Council approval as a shareholder is required for this to happen and will require voting on two separate occasions. Once these votes have been taken, then WDH and DCH will be formally merged.
- 2.5 There are a number of compelling reasons for the two organisations to merge but primarily centre around the need to ensure the long-term financial viability of WDH. In particular, in recent years Government funding for Affordable Housing has decreased significantly and grants from the Homes and Communities Agency to help subsidise developments are now extremely restricted. Registered Providers are now expected to fund investment in Affordable Housing through borrowing money and the new Affordable Rent Model. Smaller providers will find access to competitive financing more difficult. Without ready access to competitive funding, investment in new affordable housing schemes would soon cease especially as the reserves of WDH are limited. DCH are proposing that over the next five years they will be committed to working with the Council to secure approximately 200 new affordable homes in West Devon, through the investment power of the DCH Group.
- 2.6 The amalgamated organisation will be the asset-owning parent and employer of the combined group of WDH and DCH companies. The proposed group structure is outlined below.



### The proposed changes

- 2.7 There are a number of variations that are requested to the original LSVT agreement signed between West Devon Borough Council and West Devon Homes. These are set out below.
- 2.8 Currently there is a clause that requires WDH to use all rental income and property sales receipts from the properties acquired from within West Devon in the management and maintenance of those properties and otherwise for the provision of social housing and related services primarily in the Borough of West Devon. As the finances of WDH will be merged with DCH, it is proposed that this clause in the original agreement is removed. This is because one of the benefits of the proposed amalgamation is the enhanced financial strength of the amalgamated entity such that surpluses generated by DCH in the rest of Devon or Cornwall could be applied to West Devon schemes. In this context, it is considered to be inappropriate to restrict the flow of funds in the other direction.
- 2.9 To reflect the changes to board and shareholding membership it is proposed to delete the provision which requires the Council's consent to any changes to the WDH articles relating to tenant or local authority representation. This will be necessary to avoid the restriction carrying on into the amalgamated organisations.
- 2.10 Members will recall that Council agreed to forego the right to nominate members to the WDH Board at its meeting of 18 May 2010 (Minute CM27 refers). The original agreement was, however, never amended and therefore this clause will now be removed from the agreement.
- 2.11 In respect of residents on the boards of the amalgamated group, it should be noted that although there will be no place reserved for a tenant per se on the



amalgamated parent board, tenants of WDH and DCH will be eligible to apply for board membership. The boards of WDH and DCH consider it important to have residents as part of the formal governance structure of the amalgamated group, to ensure that the needs and wishes of its residents are taken into account in its decision-making. Thus, more than one-third of the places on the amalgamated group's community interest company board (the CICs board) will be reserved for its residents, which will include WDH tenants.

2.12 It is proposed to delete the clause that provides WDBC with shareholding rights in WDH. Future shareholding arrangements will reflect the existing DCH arrangements. The Council will no longer be able to attend and vote at general meetings.

2.13 There is a current requirement on WDH to take account of the Councils representations (if any) in the event of merger with another Registered Provider. This clause is being specifically fulfilled by this report and on amalgamation is no longer applicable and should therefore be deleted.

**3. LEGAL IMPLICATIONS**

3.1 There are various covenants placed upon West Devon Homes contained within the original stock transfer agreement. A number of these which are outlined above will require amendment or deletion in order for the amalgamation to take place. The rest of the original agreement remains valid and there are no plans to change these. Provisions relating to provision of offices and clawback arrangements on right to buy, nomination rights for tenants etc. remain in force.

3.2 Subject to appropriate legal arrangements and documents being put in place to record that confirmation and understanding, the proposed amalgamation should not otherwise affect the legal position of the Council. Once the votes for amalgamation have been agreed, the WDBC will no longer have any voting rights in the amalgamated organisation.

**4. FINANCIAL IMPLICATIONS**

4.1 Although there are no direct financial implications for the Council contained in this report, access to DCH Group finances will allow WDH greater opportunities to improve existing homes within West Devon and enable them to be in a better position to invest in new affordable homes.

**5. RISK MANAGEMENT**

<b>Corporate priorities engaged:</b>	Housing
<b>Statutory powers:</b>	Various
<b>Considerations of equality and human rights:</b>	The Council would have conferred various benefits to the tenants on transfer of its housing stock in 1999. Those benefits would largely continue under the proposed arrangements. It is therefore unlikely that any Human Rights issues would arise as a

	result of the proposed amalgamation.
<b>Biodiversity considerations:</b>	N/a
<b>Sustainability considerations:</b>	N/a
<b>Crime and disorder implications:</b>	None
<b>Background papers:</b>	None
<b>Appendices attached:</b>	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	Non-merger	WDH and DCH do not merge – WDH investment in new homes is limited in future.	3	3	9	↔	Council agrees to amalgamation process	Head of EH&H
2	Merger	The proposal will allow WDH to continue to take a proactive approach to housing management and development within West Devon	1	2	2	↔	WDBC will still retain certain benefits such as offices remaining within the Borough, income from right-to-buy and nomination rights for tenants etc.	Head of EH&H

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Direction of travel symbols ↓ ↑ ↔



## WEST DEVON BOROUGH COUNCIL

<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>Business Rates Pooling in Devon</b>
<b>Report of</b>	<b>Head of Finance &amp; Audit</b>
<b>WARDS AFFECTED</b>	<b>All</b>

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**Summary of report:**

This report recommends that West Devon Borough Council remains in the membership of the Devon Business Rates Pool for the financial year 2015/16.

**Financial implications:**

The first year (2013/14) has been very successful and the pooling gain achieved has equated to £1.502 million which has been shared between all of the Devon Authorities in accordance with the Governance agreement. West Devon Borough Council's share of the pooling gain was £24,447. This has enabled £1.502 million to be retained within the local Devon economy rather than this money going back to Central Government, generating additional income for all the Devon Councils within the Pool.

**RECOMMENDATION:**

It is recommended that West Devon Borough Council remains in the Devon Business Rates Pool for the financial year 2015/16.

**Officer contact:**

Lisa Buckle, Head of Finance and Audit  
01822 813644 [lisa.buckle@swdevon.gov.uk](mailto:lisa.buckle@swdevon.gov.uk)

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**1. BACKGROUND OF THE BUSINESS RATE RETENTION SCHEME**

- 1.1 The way that Councils receive income from Business Rates changed from 1 April 2013. Business Rates retention was introduced to enable authorities to be able to retain a share of any growth that is generated in Business Rates revenue in their areas.
  
- 1.2 The reality is that some authorities earn more in business rates than they used to receive from the previous formula grant, while there are other authorities who earn much less. So the Government has levelled the playing field through a mixture of "top-ups" and "tariffs". At the beginning of each year, the government will carry out calculations to ensure that Councils with more business rates income than their current baseline funding level will make a tariff payment to

government. Similarly, where Council's have greater needs than their business rates income, they will receive a top-up payment from the government. West Devon Borough Council and other Devon Districts are Tariff Authorities. Devon County Council, Plymouth and Torbay are 'Top Up' Authorities.

## **2. BUSINESS RATES POOLING IN DEVON**

- 2.1 The business rate retention scheme allows authorities to voluntarily form a business rates retention pool. Local authorities within a pool are treated as a single authority, with all tariffs and all top ups being combined and a single levy rate being applied. At an early stage the Government encouraged Councils to 'pool'.
- 2.2 In 2013/2014, all eight Devon District Councils and Devon County Council, Plymouth Unitary and Torbay Unitary agreed to be part of a Devonwide pooling arrangement. The first year (2013/14) has been very successful and the pooling gain achieved has equated to £1.502 million which has been shared between all of the Devon Authorities in accordance with the Governance agreement. West Devon Borough Council's share of the pooling gain was £24,447.
- 2.3 This has enable £1.502 million to be retained within the local Devon economy rather than this money going back to Central Government, generating additional income for all the Devon Councils within the Pool.
- 2.4 The 'Devon Pool' distributes pooled funds using a "no worse off" basis. Funds are distributed to each member authority to a position no worse than it would have been had the pool not existed. Clearly this is only possible if the pooling arrangements result in an aggregate financial position that is no worse than would have been the case had the pool not existed.
- 2.5 Where pooling generates a net gain, the additional resources (above and beyond the 'no worse off' basis) are distributed in the following proportions:-  
50% of the gain is distributed using each authority's baseline funding level and 50% of the gain is distributed using Non Domestic Rate (NDR )baseline.
- 2.6 The same proportion is used if pooling generates a net loss.

## **3 CONSIDERATION OF THE POOLING POSITION FOR 2015-16**

- 3.1 All Devon Authorities have committed to the Pool for 2014-15 and arrangements are now being put in place to consider the pooling position for 2015-16. The Governance agreement sets out that annually the pool members will consider the continuation or discontinuation of the Pool.
- 3.2 As part of the annual review, the pooling partners monitor high risk developments in terms of business closures and business rate appeals.
- 3.3 South Hams District Council has some significant business rates appeals outstanding and the Council has had to include a reasonable provision within its 2013/14 Accounts for these.

- 3.4 Members of South Hams District Council will consider at their meeting on 2<sup>nd</sup> October a report from the Head of Finance and Audit which recommends that South Hams District Council withdraws from the Pool for 2015/2016. The Devon Business Rates Pool could be re-constituted for 2015/2016 in its own right, without South Hams District Council.
- 3.5 The risks of staying in the Pool for 2015/16 for South Hams are deemed to be too high in relation to the possible pooling gains achievable in 2015/16. An assessment would need to be made on an annual basis about whether South Hams could rejoin the pool in later financial years based on local factors.
- 3.6 There are two critical timescales with any pooling decision:-
- i) End of October 2014 An Authority can withdraw from the pool for 2015-16 without collapsing the pool. The remaining pool members can re-apply to become a new pool for 2015-16 in their own right by 31<sup>st</sup> October 2014.
  - ii) January 2015 following the Finance Settlement – If a Council leaves a pool at this stage, it collapses the pool for 2015-16 and the pool cannot reform until 2016-17.
- 3.7 The recommendation from the Head of Finance and Audit is that West Devon Borough Council remains in the Pool's membership for 2015/2016.

#### **4. LEGAL IMPLICATIONS**

- 4.1 As per Article 4 of the Council's Constitution, Council is responsible for approving the policy framework and the budget. As funding from Business Rates is a significant part of the funding for the Council's overall revenue budget, any decision on Pooling must be taken by Full Council.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 The first year (2013/14) has been very successful and the pooling gain achieved has equated to £1.502 million which has been shared between all of the Devon Authorities in accordance with the Governance agreement. West Devon Borough Council's share of the pooling gain was £24,447. It is recommended that West Devon remains in the Pool's membership for 2015/16. There is no known reason why West Devon should not remain in the Pool.

#### **6 OTHER CONSIDERATIONS**

Corporate priorities engaged:	All
Statutory powers:	Business Rates Retention Scheme
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:	Council – 11 December 2012 Council – 17 December 2013

	DCLG Business Rates Retention – Pooling Prospectus 2015-16
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	Risk of significant business rates appeals impacting detrimentally on the Pool	The full risks associated with business rates appeals will be annually assessed by all Pooling partners.	5	3	15	↔	Careful analysis annually to be carried out of the financial impact of being in the pool and of being independent.	H of F&A Other Local Authorities
2	Future funding levels (if the Council is exposed to business rates income volatility)	A significant drop in overall funding could have a detrimental impact on reserve levels.	4	2	8	↔	Close monitoring of the changes in business rates throughout the year. Maintaining a healthy level of reserves to mitigate any potential drop in funding.	H of F & A,
3	Assumptions used for modelling the effects of business rates pooling	Risk of assumptions used for modelling scenarios for pooling turning out to be significantly different to what happens in reality.	5	2	10	↔	Close monitoring of the assumptions used. These have been based on historical patterns of business rates income and predicted growth from informed knowledge.	H of F&A Other Local Authorities

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Direction of travel symbols ↓ ↑ ↔

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## WEST DEVON BOROUGH COUNCIL

<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>Tuesday 7<sup>th</sup> October 2014</b>
<b>REPORT TITLE</b>	<b>Council Tax Reduction</b>
<b>Report of</b>	<b>Customer Service Manager</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

The Council is required to consider the Council Tax Reduction Scheme for 2015/16 by 31 January 2015. On the basis we are only half way through the first year of operation, it's still too early to measure the full customer and financial impact and therefore it is considered appropriate to continue with our existing scheme. This approach is in-line with the other Devon Authorities.

**Financial implications:**

The Government funding (Settlement Funding Assessment, SFA) received from Central Government will be reduced by over 15.37% for 2015/16. Council Tax Reduction funding is included within the SFA. The scheme is designed to be cost neutral and covers the shortfall in funding of approximately £442,000.

**RECOMMENDATIONS:**

To recommend to Council:

1. To agree to continue with the existing Council Tax Reduction scheme for 2015/16; and,
2. For delegated authority to be given to the Head of Finance and Audit, in consultation with the Leader, to make amendments to the policy document to take account of any further changes in law, government guidance or policy that require urgent amendment.

**Officer contact:** [kate.hamp@swdevon.gov.uk](mailto:kate.hamp@swdevon.gov.uk), 01803 861104

**1. BACKGROUND**

- 1.1 As part of the wider Welfare Reform agenda Council Tax Benefit was abolished from April 2013. It is now the responsibility of the billing authorities to design and agree their own local schemes on an annual basis. The local scheme is called

Council Tax Reduction (CTR) and is classed as a council tax discount rather than a state welfare benefit.

- 1.2 In 2014/15 the Council took the decision to adopt a cost neutral scheme meaning that all claimants were required to pay a contribution towards their Council Tax. The scheme introduced:
- **80% maximum liability restriction** meaning that working age claimants paid a minimum of 20% towards their Council Tax bill.
  - **A property valuation band D restriction** meaning that working age claimants living in larger properties did not receive greater levels of support than those living in small properties
  - **An exceptional hardship fund** to help those claimants experiencing severe financial difficulties
- 1.3 Pensioners continue to be protected from receiving any reduction to their current entitlement and will remain under a national scheme as prescribed by legislation for 2015/16.
- 1.4 Any changes to the scheme for 2015/16 would mean having to go out to consultation at a time when the full impact of our existing scheme is not known.
- 1.5 Any risk associated with the local schemes is shared by all the major precepting authorities through the impact on the Council Tax Base.

<b>Share of the Council Tax bill for 2014/15</b>	<b>% 2014/15</b>
West Devon Borough Council	12.4%
Devon County Council	69.3%
Police and Crime Commissioner	10.1%
Devon & Somerset Fire & Rescue	4.7%
Town & Parishes	3.5%

## **2. THE CUSTOMER JOURNEY SO FAR**

- 2.1 In February 2014 we sent personalised letters and a leaflet to all the working age customers affected by the changes. This also provided an indicative figure of the amount they would need to pay from 1 April 2014. This letter also encouraged customers to contact us to discuss an instalment plan and payment options.
- 2.2 The recruitment of a Recovery Officer on a fixed term contract, funded by all the major preceptors as a result of a successful business case, allowed us to act proactively and follow up the letter with a phone call. Here we explained anything that the customers may be unsure about and set up a Direct Debit if the customer was agreeable.
- 2.3 The business case also allowed us to increase the independent money advice service provided by Encompass in order to support customers affected by these changes and in turn protect the Council Tax collection fund.

- 2.4 In March 2014, Council Tax bills and Council Tax Reduction letters were sent to all customers.
- 2.5 All Customer Service Officers were trained to provide basic guidance and sign-posting to customers if they contacted us over the phone. Further information was also provided to customers on our website.
- 2.6 Those customers who told us that they were unable to pay were referred to Encompass for money advice specific to their circumstances by carrying out an income and expenditure exercise. This information then allowed us to consider if the customer was eligible for the Exceptional Hardship Fund.
- 2.7 The Exceptional Hardship Fund forms part of the scheme and provides a safety net for those customers most in need. The fund is financed through the collection fund so it is paid for proportionately by all major preceptors.
- 2.8 Situation as at the end of August 2014:
- 35% of our working age customers receiving Council Tax Reduction are paying their bill by Direct Debit
  - We have made 2162 outbound proactive calls and sent 496 letters to customers to provide advice and to chase payment. We have attempted to make telephone contact with all customers prior to any formal recovery action being made.
  - We have issued 197 summonses for non-payment of Council Tax to customers receiving CTR. Of these 43 have set up a special arrangement to clear the debt and 15 have paid in full.
  - We have received 174 applications for Exceptional Hardship. Of these 23 have received full support and a further 48 have received a partial award. 37 did not qualify and 13 withdrew or failed to engage. The remaining applications are still awaiting assessment. Total awards currently stand at £13,109.29 which has been paid for proportionately by all the major preceptors.
  - Increased recovery action has led to an increase in the number of inbound Council Tax calls which are dealt with by the Customer Service Team.
  - Council Tax collection rates are being maintained and are currently only 0.4% below last years figure. Collection rates for 2013/14 were 97.7%.
- 2.9 The number of customers that have reached liability order stage is currently relatively low as an overall percentage of working age customers impacted by the scheme. However we are only half way through the year and this position could change as customers who have been paying start to default with their instalments.
- 2.10 Further information on the impact of the scheme can be found in the equality impact assessment (appendix A). The results of which do not identify any

disproportionate impact on any groups. By retaining the key elements of the council tax benefit rules within the scheme and the introduction of the Exceptional Hardship Fund we have continued to ensure that vulnerable groups are identified and protected.

### 3. ISSUES FOR CONSIDERATION

3.1 From 2014/15 funding for Council Tax Reduction has been included within the overall local government funding grant. West Devon Borough Council therefore decides how much funding is available to support the Council Tax Reduction scheme.

3.2 The aim of the local scheme was for it to be 'cost neutral'. By this we mean that the level of Government grant would equal forecasted Council Tax Reduction expenditure for 2014/15. Our scheme was modelled on the basis of expenditure coming out at circa £3,349,212. We have been closely monitoring this to ensure we are not creating significant over/under spend on the collection fund. The table below sets out the cumulative expenditure at the end of each month:

<b>2014/15 As at end of:</b>	<b>Pensioner award cumulative total £</b>	<b>Working Age award cumulative total £</b>	<b>Annual award cumulative total £</b>
<b>April</b>	<b>£1,975,114.83</b>	<b>£1,386,749.20</b>	<b>£3,361,864.03</b>
<b>May</b>	<b>£1,970,851.52</b>	<b>£1,391,781.08</b>	<b>£3,362,632.60</b>
<b>June</b>	<b>£1,966,240.23</b>	<b>£1,396,037.99</b>	<b>£3,362,278.22</b>
<b>July</b>	<b>£1,958,474.88</b>	<b>£1,409,805.09</b>	<b>£3,368,279.97</b>
<b>August</b>	<b>£1,962,835.78</b>	<b>£1,418,868.21</b>	<b>£3,381,703.99</b>

The above figures are the cumulative total at the end of each month that has been awarded in council tax reduction. The awards are given upfront for the whole of the year.

3.3 It is normal that expenditure will fluctuate slightly throughout the year. Actual Predicted Expenditure of £3,381,704 for 2014-15 (predicted cumulative award as at the end of August 2014) is currently slightly higher than the forecasted figure of £3,349,212 (see 3.2). Therefore officers are confident that the difference between forecasted and actual figures as at the end of the financial year will be minimal. The modelling carried out last year which informed the decision to adopt the current scheme is proving to be consistent with what is happening since the Council Tax Reduction Scheme went live.

3.4 All Devon authorities are recommending to retain their existing schemes for 2015/16, which means they are not making any changes (Appendix B). All authorities, bar Teignbridge have a cost neutral scheme very similar in design to West Devon.

3.5 The practicalities of changing our scheme would mean having to go out to consultation. This would need to be done at a time when we still don't fully know the impact on our customers or how much we will actually collect within the year as we are only half way through the financial year. The forecasted expenditure for the next financial year still means that the estimated cost of the scheme is still within the level of Government funding and therefore it makes sense to retain our existing scheme.

#### 4. LEGAL IMPLICATIONS AND STATUTORY POWERS

- 4.1 Clause 34 of the Welfare Reform Bill provides for the abolition of Council Tax Benefit from 31<sup>st</sup> March 2013 and introduces the Local Council Tax Support schemes to be administered by Local Authorities.
- 4.2 If no local CTR scheme is adopted by 31<sup>st</sup> January 2015 the Council will be bound to continue with the scheme adopted in 2014/15.

#### 5. FINANCIAL IMPLICATIONS

- 5.1 The Government funding (Settlement Funding Assessment, SFA) received from Central Government will be reduced by over 15.37% for 2015/16. Council Tax Reduction funding is included within the SFA. The scheme is designed to be cost neutral and covers the shortfall in funding of approximately £442,000. Based on current calculations (see 3.2 and 3.3) officers are confident that the difference between actual and forecasted figures as the end of the financial year will be minimal. The modelling carried out last year which informed the decision to adopt the current scheme is proving to be consistent with what is happening since the Council Tax Reduction Scheme went live.

#### 6. RISK MANAGEMENT

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

#### 7. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	Community Life, Economy
<b>Considerations of equality and human rights:</b>	<i>In deciding to retain the Council Tax Reduction Scheme for 2015, the Council has considered and is of the opinion that no transitional provisions are required. The Council will, for 2015/16, maintain a fund for those taxpayers who experience exceptional hardship.</i>  An Equality Impact Assessment has been undertaken for the proposed scheme.
<b>Biodiversity considerations:</b>	There are no biodiversity considerations to this report
<b>Sustainability considerations:</b>	Financial considerations have been factored into the long term sustainability of the scheme.
<b>Crime and disorder implications:</b>	There are no crime and disorder considerations to this report.
<b>Background papers:</b>	Welfare Reform Act 2012
<b>Appendices attached:</b>	Appendix A – Equality Impact Assessment Appendix B – Devon wide schemes for 2015/16

## 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	Financial Modelling	Scheme does not meet reduction in funding creating shortfall to be met by Preceptors	5	2	10	↔	Extensive financial modelling has been undertaken	
2	Agreement on scheme	Failure to agree a scheme by 31 <sup>st</sup> January 2015	1	2	2	↓	Failure to agree will mean the Council is bound to continue with scheme adopted for 2014/15	
	Financial	Detrimental impact on collection rates	5	2	10	↔	Business case in place with all preceptors agreeing financial support to fund extra resource to undertake early intervention and money advice. 2014/15 rates are looking good.	Kate Hamp
4	Financial	Future funding reductions could mean that the proposed scheme will not remain fit for purpose	5	4	20	↑	Annual review and close monitoring of announcements and national forums.	
5	Financial	Impact on wider economy and most vulnerable	5	3	15	↔	Business case in place with all preceptors agreeing financial support to provide Exceptional Hardship Fund to assist those in extreme financial need.	



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		

Direction of travel symbols ↓ ↑ ⇄

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## Equality Impact Assessment – West Devon Borough Council Council Tax Reduction Scheme 2014/15

Lead Officer	Darren Cole – ICT & Customer Services Manager
Service	ICT and Customer Services
Proposed change to service	Develop a revised Council Tax Reduction scheme for April 2014
Reason for the service change	<p>The Council Tax Benefit scheme was abolished by the Welfare Reform Bill from April 2013. This was replaced with a local Council Tax Reduction scheme. The Council implemented a Council Tax Reduction scheme which was very similar to the previous Council Tax Benefit system. The only change applied was to abolish Second Adult Rebate claims for working age claimants. The shortfall in funding was covered by council tax technical reform changes rather than reducing the level of support provided in Council Tax Reduction.</p> <p>The Council's overall budget has been cut by Central Government with further cuts expected over the following two years. It will be for local councils to determine how to manage the funding gap and any cuts should be made to the current Council Tax Reduction scheme for working age customers.</p> <p>There are strict guidelines from the Government to ensure support for pensioners will remain at the same level as now and will be delivered through a national framework of criteria and allowances.</p> <p>West Devon Borough Council will need to design a new policy. The scheme must be in place by 31<sup>st</sup> January 2014 failure to do so will result in the Council having to continue with the existing scheme which does not produce any savings.</p>
Information about users , research or other evidence	<p>West Devon has the option of not changing the scheme and therefore allowing the shortfall to be taken from the General fund, and ultimately the tax payers, or designing a revised scheme which incentivises work and supports the benefit welfare reform</p> <ol style="list-style-type: none"> <li>1. Develop a new Local Council Tax Reduction scheme .The preferred option would be to continue a means tested scheme aimed at helping those with greatest need. This would be similar to current Council Tax Benefit. To avoid passing on the cost of the reduction to taxpayers further changes would need to be applied Changes being considered under the proposed scheme:             <ol style="list-style-type: none"> <li>a) Calculating award based on % of maximum eligible council tax e.g. 75%</li> <li>b) Property Band D restriction</li> <li>c) Reduction of capital limit from £16,000 to £6,000</li> <li>d) The creation of a exceptional hardship fund to help those most in need</li> </ol> </li> </ol>

	<p>2. Do nothing</p> <p>a) Continue with the current scheme as agreed for 2013/2014. With no transitional funding from central government and a 1% welfare benefit uprating which would leave a significant gap in funding.</p> <p>b) Bridge the funding gap through a reduction in spending in other areas which could impact on front line services.</p> <p>c) By doing this, the projected budget for 2015/16 would require the implementation of a severe scheme from day 1 allowing customers no time to adjust their finances.</p>									
<p>Stakeholder consultation and involvement</p>	<p>Following publication of the draft scheme, a formal consultation period ran between 12<sup>th</sup> August 2013 and 7th October 2013. General awareness was raised via press releases and a series of outreach events run by West Devon Connect. An online questionnaire was available on our website throughout the consultation.</p> <p><b>Current Council Tax Benefit Claimants</b></p> <table border="1" data-bbox="488 913 1485 1037"> <thead> <tr> <th></th> <th>Pensioners (exempt)</th> <th>Working age</th> </tr> </thead> <tbody> <tr> <td>Number of claimants</td> <td>2067</td> <td>1968</td> </tr> <tr> <td>%</td> <td>51%</td> <td>49%</td> </tr> </tbody> </table> <p><b>Other stakeholders were consulted</b> via general publicity and mail to explain basic outline and directing them to online consultation, draft scheme documents, drop in sessions, permanent displays in council offices, press releases giving and other engagement events and forums. These stakeholders included:</p> <ul style="list-style-type: none"> <li>Future benefit claimants</li> <li>Residents of West Devon</li> <li>Housing organisation</li> <li>Landlords</li> <li>Community groups and voluntary sector</li> <li>Precepting authorities</li> <li>Staff and Members</li> </ul>		Pensioners (exempt)	Working age	Number of claimants	2067	1968	%	51%	49%
	Pensioners (exempt)	Working age								
Number of claimants	2067	1968								
%	51%	49%								

**Impact of change- Who will be affected. How the change will impact on equality groups . Any positive and negatives impacts of the changes on users. Actions taken to avoid or lessen any negative impacts**

**As caseload data is continually changing analysis and effects will continue**

As at July 2013 there were a total of 24,792 properties liable for Council Tax in West Devon.

16 (%) were receiving Council Tax Reduction of these 1968 working age households would receive less entitlement towards their Council Tax Bill

The changes being considered affect Working Age only. By applying a standard deduction across all working age claimants the impact of the cuts are minimised.

Further analysis of Equality strands are;

AGE	Positive	Negative																
<p>Profile data available from current CTB claims. This covers all people in the CTB household</p> <table data-bbox="81 488 557 837"> <tr> <td>0-15 yr old</td> <td>1804</td> </tr> <tr> <td>16-17</td> <td>213</td> </tr> <tr> <td>18- 24</td> <td>520</td> </tr> <tr> <td>25-34</td> <td>757</td> </tr> <tr> <td>35-49</td> <td>1250</td> </tr> <tr> <td>50-64</td> <td>1209</td> </tr> <tr> <td>65 and over</td> <td>2390</td> </tr> <tr> <td><b>Total</b></td> <td><b>8143</b></td> </tr> </table>	0-15 yr old	1804	16-17	213	18- 24	520	25-34	757	35-49	1250	50-64	1209	65 and over	2390	<b>Total</b>	<b>8143</b>	<ul style="list-style-type: none"> <li>• People of pension age are protected and will not be subject to change under the new scheme.</li> <li>• Could incentivise customers back into work.</li> <li>• Earnings disregards will be in applied when calculating income.</li> <li>• Customers moving into work extended periods will exist to help transition into work</li> <li>• Support will be provided by a dedicated advisor in money management and maximising customer’s income. Ensure customer has claimed all available council tax discounts, exemptions and disabled band reductions. Proactive monitoring of council tax payments through our recovery procedures to identify cases where additional support may be required. This may include setting up payment arrangements which are tailored to customer’s individual circumstances</li> <li>• Our scheme has an Exceptional Hardship fund that provides a safety net so that additional support can be provided for those in exceptional need</li> </ul>	<ul style="list-style-type: none"> <li>• The scheme will discriminate on the grounds of age because of Central Government requirement to protect pensioners. The national pensioner scheme treats them more favourably because allowances are more generous.</li> <li>• Working age people in this group who currently receive CTR will have extra Council Tax to pay.</li> <li>• For some customers this will be the first time they have had to make any contribution towards their council tax.</li> </ul>
0-15 yr old	1804																	
16-17	213																	
18- 24	520																	
25-34	757																	
35-49	1250																	
50-64	1209																	
65 and over	2390																	
<b>Total</b>	<b>8143</b>																	

DISABILITY	Positive	Negative
<p>Profile data available from current CTB claims. In this instance person is defined as disabled if they are in receipt of Disability Living allowance</p> <p>Members of CTB household  Under 18 = 69  Over 18 = 960</p>	<ul style="list-style-type: none"> <li>• Disability Benefit income will be disregarded when calculating entitlement.</li> <li>• Higher allowances will be awarded in the calculation of support for those receiving disability benefits</li> <li>• Support will be provided by a dedicated advisor in money management and maximising customer's income. Ensure customer has claimed all available council tax discounts, exemptions and disabled band reductions.</li> <li>• Proactive monitoring of council tax payments through our recovery procedures to identify cases where additional support may be required. This may include setting up payment arrangements which are tailored to customer's individual circumstances</li> <li>• Our scheme has an Exceptional Hardship fund that provides a safety net so that additional support can be provided for those in exceptional need</li> </ul>	<ul style="list-style-type: none"> <li>• All working age people in this group who currently receive CTR will have extra council tax to pay.</li> <li>• For some customers this will be the first time they have had to make any contribution towards their council tax.</li> </ul>

MARITAL STATUS, family circumstances or caring responsibilities	Positive	Negative
<p>Single person Household.</p> <p>Couple with no children</p> <p>Families with children</p> <p>Household with Carer</p>	<ul style="list-style-type: none"> <li>• Higher allowances will be awarded in the calculation of support for carers</li> <li>• The scheme builds in additional premiums for households with children as Child Benefit and child maintenance is</li> </ul>	<ul style="list-style-type: none"> <li>• All people in this group who currently receive CTR will have extra Council Tax to pay.</li> <li>• For some customers this will be the first time they have had to make any contribution towards their</li> </ul>

	<p>disregarded</p> <ul style="list-style-type: none"> <li>• Support will be provided by a dedicated advisor in money management and maximising customer's income. Ensure customer has claimed all available council tax discounts, exemptions and disabled band reductions.</li> <li>• Proactive monitoring of council tax payments through our recovery procedures to identify cases where additional support may be required. This may include setting up payment arrangements which are tailored to customer's individual circumstances</li> <li>• Our scheme has an Exceptional Hardship fund that provides a safety net so that additional support can be provided for those in exceptional need</li> </ul>	<p>council tax.</p> <ul style="list-style-type: none"> <li>• Families in large properties may have the difference between their larger property banding and a Band D to pay as well as an extra 25% contribution to their council tax payments</li> </ul>
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SEX(gender )	Positive	Negative
<p>Sex (gender ) for Household</p> <p>4511 are female 3632 are male</p>	<ul style="list-style-type: none"> <li>• The scheme will not treat people of either sex any differently</li> <li>• No changes have been made to the treatment of Income and savings of women expecting children</li> </ul>	<p>All people in this group who currently receive CTR will have extra council tax to pay.</p>

Race/Ethnicity Religion/Belief Sexual Orientation	Positive	Negative
<p>No CTR data held for these</p>	<ul style="list-style-type: none"> <li>• The scheme will not treat people in these groups any differently</li> </ul>	<ul style="list-style-type: none"> <li>• All people in this group who currently receive CTR will have extra council tax to pay.</li> </ul>

General	Positive	Negative
Change 1a. Reduce maximum Liability to 75%	<ul style="list-style-type: none"> <li>Encourage some households to move to smaller, more affordable accommodation</li> <li>Incentivise customers to try and locate work or extra hours.</li> </ul>	<ul style="list-style-type: none"> <li>All working age will have extra council tax to pay.</li> <li>Customers in rented accommodation and in receipt of housing benefit may have already been affected by welfare reform changes made in April 13.</li> </ul>
Change 1b. Band D Property Band Restriction	<ul style="list-style-type: none"> <li>The scheme will not be contributing to the cost for customer who choose to live in larger properties.</li> <li>The scheme is consistent with benefit welfare changes such as size criteria, benefit cap and local housing allowance.</li> </ul>	<ul style="list-style-type: none"> <li>Could impact households with a large number of family members</li> </ul>
Change 1c. Reduction of capital limit from £16,000 to £6,000	<ul style="list-style-type: none"> <li>Those people with money in reserve pay more</li> </ul>	<ul style="list-style-type: none"> <li>Penalises those who have acquired savings</li> <li>Substantial decrease from £16,000 to £6,000. Reducing the limit by a lesser amount does not realise any significant saving.</li> <li>Penalises those who are trying to save for retirement or to keep the family afloat during difficult times.</li> </ul>
Change 1d. The creation of a exceptional hardship fund to help those in financial need	<ul style="list-style-type: none"> <li>Will ensure there is funding available for those experiencing temporary hardship.</li> </ul>	

#### Submissions from Interested parties ;

Consultation exercise will give further details

Community and Voluntary organisations were invited to respond.

General publicity for all residents e.g press releases, West Devon Connect sessions, static displays, website.

#### Issues and Recommendations

From April 2013 Council Tax Reduction is a local scheme and therefore the council must agree a scheme each year by council by 31<sup>st</sup> January.



Funding for Council Tax Reduction is now included within the business rate retention formula grant.

The Government have decided that pensioners must be protected and have regulated the approach in calculating future support for them. Therefore any local scheme will impact on working age claimants only.

West Devon have consulted with Devon County Council, the Fire and Police as major preceptors and they have been unable to fund the shortfall therefore the support for working age claimants would need to be reduced

To protect the most vulnerable West Devon will have some kind of vulnerability/hardship fund to act as a safety net. This would allow for individual circumstances to be taken into account when appropriate.

A full evaluation of responses from the consultation will be carried out before the final scheme is agreed

From April 2014 the effects of the final scheme will need to be carefully monitored and any negative effects minimised

#### **Action Plan & Review.**

October 2013	Full evaluation of responses from consultation to be carried out
December 2013	Results from consultation and options for final scheme will be considered by Members
April 2014 onwards.	Once final scheme in place further monitoring will be required to minimise any negative effects. Procedures for assisting customers who have problem paying shortfall may need to be revised Scheme and funding will need to be fully reviewed and agreed for 2015/16

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**Appendix B - Devon's Recommended Schemes to Members 2015/16**

All schemes are based on the using the same rules which originally applied to Council Tax Benefit but with the changes identified below. All Devon authorities are proposing to continue with the same scheme as 2014/15 as below.

<b>Local Authority</b>	<b>Limit Liability</b>	<b>Band Restriction</b>	<b>Upper Capital Limit</b>	<b>Hardship Fund</b>	<b>Other</b>
East Devon District Council	80%	Band D	£8,000	Yes	
Exeter City Council	80%	NA	£6,000	Yes	
Mid Devon District Council	80%	Band D	£8,000	Yes	
North Devon District Council	75%	Band D	£6,000	Yes	Increased earnings disregard
South Hams District Council	80%	Band D	£16,000	Yes	Capital limit remains unchanged and is consistent with housing benefit capital limit
Teignbridge District Council	100%	N/A	£16,000	No	
Torridge District Council	75%	Band D	£6,000	Yes	
West Devon Borough Council	80%	Band D	£16,000	Yes	Capital limit remains unchanged and is consistent with housing benefit capital limit
<b>Unitary Authorities</b>					
Plymouth City Council	78%	Band E	£6,000	Yes	
Torbay Council	75%	NA	£6,000	Yes	

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<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>The Openness of Local Government Bodies Regulations 2014</b>
<b>REPORT OF</b>	<b>Democratic Services Manager</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

To consider a report that informs the Council of the implications arising from the adoption of the Openness of Local Government Bodies Regulations 2014.

**Financial implications:**

There are no financial implications directly arising from this report.

**RECOMMENDATION:**

1. That the Council Constitution be amended to reflect the Regulations whereby the press and public are now able to film and to report, using social media including blogging or tweeting, public meetings of the Council and its Member Bodies; and
2. That the Monitoring Officer be given delegated authority, in consultation with the Leader of Council, to develop a process by which decisions taken by officers on behalf of the Council are formally recorded and published.

**Officer contact:**

Darryl White, Democratic Services Manager ([darryl.white@swdevon.gov.uk](mailto:darryl.white@swdevon.gov.uk)) 01803 861247).

**1. BACKGROUND**

- 1.1 On 6 August 2014, the Openness of Local Government Bodies Regulations 2014 came into force.
- 1.2 The Regulations, which apply to all councils and other local government bodies in England, allow the press and public to film and to report using social media including blogging or tweeting, public meetings of the Council and its Member Bodies;

- 1.3 The Regulations also require the Council to make publicly available a 'decisions record' of certain decisions which officers have taken on behalf of the council;
- 1.4 As a consequence of these Regulations, all councils are now legally bound to ensure that the press and public can exercise these new rights.

## **2. ISSUES FOR CONSIDERATION**

### **Filming and Reporting Member Meetings**

- 2.1 In accordance with Council Procedure Rule 21(a), public meetings can already be recorded, subject to receiving the prior approval of the Chairman of that meeting;
- 2.2 Whilst the new Regulations have removed the need for prior permission to be given, it is still felt advisable that, out of courtesy, any person wishing to film or audio record a public meeting should inform officers in advance of the meeting;
- 2.3 In respect of tweeting and blogging, the new Regulations allow for reporting of meetings via social media of any kind. Therefore, these Regulations enable bloggers, tweeters, and for example, Facebook, YouTube users and individuals with their own website(s), to report public meetings;
- 2.4 In addition, Members are not prevented from tweeting and blogging at meetings, as long as it complies with the Code of Conduct;
- 2.5 Any Member, press or member of the public who wish to utilise these new Regulations is required to not be unduly disruptive during a meeting or act in a manner which detracts from the proper conduct of the meeting;
- 2.6 As a consequence of these Regulations, Council approval is sought to amend Council Procedure Rule 24 accordingly.

### **A Decisions Record**

- 2.7 In terms of resource implications, the most significant part of the Regulations is concerned with the requirement to record and publish decisions made by:
  - officers following specific delegation from Executive to an officer;
  - officers following specific delegation from a non-executive committee meeting; and
  - officers under a general authorisation to officers to take decision where the effect is to:
    - o grant permission or a licence;
    - o affect the rights of an individual; or
    - o award a contract or incur expenditure which materially affects the council's financial position.

2.7 At the time of writing this report, the definition of exactly what constitutes an ‘officer decision’ is unclear and the guidance is also somewhat contradictory. It is therefore recommended that the Monitoring Officer be given delegated authority, in consultation with the Leader of Council, to ascertain which decisions should be recorded and to subsequently develop an appropriate process for their publication.

### 3. FINANCIAL IMPLICATIONS

3.1 Whilst there was be some resource implications as a consequence of these Regulations, there are no direct financial implications arising from this report

### 4. RISK MANAGEMENT

4.1 The risk management implications are shown at the end of this report in the Strategic Risk Template:

### 5. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	All
<b>Considerations of equality and human rights:</b>	None directly arising from this report
<b>Biodiversity considerations:</b>	None directly arising from this report
<b>Sustainability considerations:</b>	None directly arising from this report
<b>Crime and disorder implications:</b>	None directly arising from this report
<b>Background papers:</b>	The Openness of Local Government Bodies Regulations 2014 Shared SH/WD Media Protocol
<b>Appendices:</b>	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	Recording at Meetings	Members and officers will need to be aware that public meetings can now theoretically be filmed and recorded without them realising.	3	2	6	↑	Officers are in the process of reviewing a media protocol to support Members and officers in this regard.	Communications Manager / Democratic Services Manager
2	Maintaining an up to date record of decisions	There is criminal liability involved for individual officers for non-compliance of recording relevant decisions.	4	2	8	↑	Once a process is adopted, the record log will be reviewed regularly by the Senior Management Team.	Monitoring Officer / SMT

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Direction of travel symbols ↓ ↑ ⇄



<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7 October 2014</b>
<b>REPORT TITLE</b>	<b>Polling Districts/Polling Places Review 2014</b>
<b>REPORT OF</b>	<b>Head of Corporate Services/Electoral Services Officer</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

The Electoral Administration Act 2006 introduced a duty for all polling districts and polling places to be reviewed every 4 years. The Electoral Administration Act 2013 provided that a review must be carried out within 16 months of October 2013 and must be concluded by 1 January 2015. In order that the Register of Electors 2015, to be published by 1 December 2014, incorporates these changes it is necessary for approval to be given by Council prior to that date.

**Financial implications:**

There are no financial implications arising directly from this report

**RECOMMENDATIONS:**

That all polling districts and polling places remain unchanged until the publication of the Local Government Boundary review and to delegate the implementation of any changes as a result of that review to the Electoral Registration Officer in consultation with the Chair of the Political Structure Working Group.

**Officer contact:** Jan Montague, Head of Corporate Services  
[jan.montague@swdevon.gov.uk](mailto:jan.montague@swdevon.gov.uk)

**1. BACKGROUND**

- 1.1 In order to comply with the Electoral Registration and Administration Act 2013 the Council must carry out a compulsory review of the polling districts and polling places by 1 January 2015.
  
- 1.2 In legislation the responsibility for the review of polling districts and polling places rests with the local authority while the provision of polling stations lies with the Returning Officer personally.

### 1.3 Definition of terms.

**Polling district:** the area created by the division of a constituency, ward or division into smaller parts, within which a polling place can be determined which is convenient to electors.

**Polling place:** A polling place is a geographical area in which a polling station is located. The geographical area can be defined as tightly as a particular building or as widely as the entire polling district. Where a polling place is not named, by default it is the whole polling district.

If polling places are too specific and the polling place is unavailable at election time then the Returning Officer would be forced to hold the election in a different polling place from that contained in the Order. It would then be necessary to issue an appropriate Notice and make arrangements for a new order to be made. With very tight election timescales and considerably high workloads, the need for additional paperwork would be disruptive to the election process.

**A Polling station** is the actual location, chosen by the Returning Officer, where the process of voting takes place and must be within the polling place for the particular polling district.

### 1.4 Consultation for the review has been carried out with:

- a. Borough Councillors
- b. County Councillors
- c. Members of Parliament
- d. Parish Clerks
- e. Political Parties
- f. Disability Groups
- g. Members of the public
- h. Returning Officers

### 1.5 A press release inviting comment on the review was issued which received wide coverage in the media and details of the review were included on the Council's website

## 2. ISSUES FOR CONSIDERATION

### 2.1 A representation was received from Brentor Parish Council who questioned the use of the polling station in Lydford for parish council elections, they thought that Parliamentary elections should be treated differently, suggesting that the electorate (currently 313 people) who go to the Nicholls Hall in Lydford to vote should vote at the Brentor Village Hall. This is impracticable because it would cause confusion and inconvenience for the electorate of Lydford.

## 3. LEGAL IMPLICATIONS

### 3.1 The Council has a duty under the Electoral Administration Act 2013 to carry out a compulsory review of all polling districts and polling places.

The compulsory review periods are —

- (a) the period of 16 months beginning with 1st October 2013, and
- (b) the period of 16 months beginning with 1st October of every fifth year after that.

3.2 The decision to approve the outcome of the review can be made only by Council.

#### 4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising from this report.

#### 5. RISK MANAGEMENT

5.1 The risk management implications are as indicated at the end of this report.

<b>Corporate priorities engaged:</b>	Community Life
<b>Statutory powers:</b>	The Electoral Administration Acts 2006 & The Electoral Registration and Administration Act 2013
<b>Considerations of equality and human rights:</b>	Equality and Human Rights Legislation
<b>Biodiversity considerations:</b>	None
<b>Sustainability considerations:</b>	None
<b>Crime and disorder implications:</b>	None
<b>Background papers:</b>	Public Notice of the commencement of the review 29 July 2014 The Electoral Administration Act 2006 The Electoral Registration and Administration Act 2013 Review of polling Districts and Polling Places (Parliamentary Elections) Regulations 2006 The West Devon Polling Districts and Polling Places Order 2011 Letters and emails of representation
<b>Appendices attached:</b>	Consultation Document Appendix 1 – List of Polling Districts, Polling Places and Polling Stations Appendix 2 – List of consultees

## 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	Legislative requirement to review the polling districts / places	To provide the opportunity for polling districts and polling places to meet the needs of electors and reflect the recommendations of the local Government Boundary Commission for England.	3	2	6	↔	Officers consult with the electorate to ensure suitable polling places / polling stations.	Head of Corporate Services / Electoral Administrator
Page 98	Polling places being too specific	If polling places are too specific and the polling place was unavailable, then the Returning Officer would be forced to hold the election in a different polling place from that contained in the Order. It would then be necessary to issue an appropriate Notice and make arrangements for a new Order to be made.	2	1	2	↔	The review will ensure that the polling plans are not too specific.	Head of Corporate Services / Electoral Administrator



**West Devon  
Borough  
Council**

## **REVIEW OF POLLING DISTRICTS AND POLLING PLACES**

To assist any interested party who may wish to make representations, the Council has put together the following information.

### **Definition of a Parliamentary Constituency, a Ward, Polling District, Polling Place and Polling Station**

- **Parliamentary Constituency**

The area designated by the Boundary Commission which is represented by a Member of Parliament (MP) in the House of Commons. This cannot be changed by the review – it is the division of the constituency into polling districts and places that is under review

- **Wards**

The District is divided into areas known as “Wards” which are represented by District Ward Councillors. Ward boundaries cannot be changed by this review – it is the division of wards into polling districts and polling places that is under review.

- **Polling Districts**

A polling district is the area created by the separation of a ward into smaller parts, within which a polling place can be determined which is most convenient for the electors

- **Polling Places**

A polling place is the area or building in which the number of polling stations will be selected by the (Acting) Returning Officer.

- **Polling Station**

A polling station is the room or area in which voting takes place. This must be located within the polling place that has been designated for the particular polling district. The number of polling stations to be accommodated within a polling place is the decision of the (Acting) Returning Officer for the election.

## **Timetable for the Review**

The Council is required to publish notice of the holding of a review. This has been carried out by way of notices posted at the council offices in Kilworthy Park, Tavistock and St James Street, Okehampton. It has also been published on the Council's website. Copies of the notice have also been sent to Town and Parish Clerks for display. The timetable for the review is set out below:

Commencement of Consultation	29 July 2014
Closing date for representations	29 August 2014
Consideration of all representations	1- 8 September 2014
Publication of any changes to draft Order	9 September 2014
Consideration of any amendments to draft Order	16 September 2014
Report to Full Council	07 October 2014
Completion of review and Publication of final Polling District Places Order	By 31 December 2014

## **Criteria for Polling Places and Polling Districts**

The Electoral Commission has set out guidance to assist in assessing the current arrangements and any proposals for change. As part of the assessment of the suitability of polling district boundaries, the following should be considered:

Are the boundaries well defined? For example. Do they follow the natural boundaries of the areas? If not, is it clear which properties belong in the polling district?

Are there suitable transport links within the polling district, and how do they relate to the areas of the district that are most highly populated? Are there any obstacles to voters crossing the current polling district and reaching the polling place e.g. steep hills, impassable major roads, railway lines, rivers?

There are also a number of factors that must be considered when reviewing existing polling places or assessing new polling places, including:

The location: is it reasonably accessible within the polling district? Does it avoid barriers for the voter such as steep hills, major roads, rivers, etc.? Are there any convenient transport links?

Size: if required, can the polling place accommodate more than one polling station? If multiple polling stations are required, is the polling place ample enough to accommodate all voters going into and out of the polling stations, even where there is a high turnout?

Suitability: is the building readily available in the event of any unscheduled elections? Is there any possibility that the building may be demolished as part of a new development? Is the building accessible to all those entitled to attend the polling place?

The Electoral Commission recognises that the choice of polling station will often be a balance between the quality of the building, in terms of access and facilities, and the proximity of the building to the electors it is intended to serve; and that there may be circumstances where the polling place might fall wholly or partly outside the polling district

because suitable alternatives are not available in the relevant area.

Although it is Council policy to avoid the use of schools where possible, there may be locations where there are no other suitable premises in the area. For the purposes of elections, the (Acting) Returning Officer is entitled to use free of charge, subject to covering the cost of heating, lighting and caretaking charges, schools maintained or assisted by a local authority as well as those schools that receive grants made up of monies provided by Parliament. In conducting this review, it is proposed that, in order to minimise the risk of long queues at a polling station, as far as possible, that no more than 2500 voters should be assigned to a polling station for local elections. It should be noted that the number of postal voters in each polling district is a relevant consideration in this regard. In the event of a combined and/or Parliamentary Election, given more complex arrangements and higher voter turnout, it may be necessary to review these numbers. In all circumstances, consideration is given to whether a polling place is capable of accommodating more than one polling station if necessary.

Presiding Officers are encouraged to make comments and observations regarding the suitability of polling stations to which they are allocated and Polling Station Inspectors visited all polling stations during the recent elections in May 2011. Any comments will be taken into account when conducting the review.

### **The Role of the (Acting) Returning Officer**

Whilst it is for the Council to decide on the creation of polling districts and the location of polling places, it is for the (Acting) Returning Officer to decide how many polling stations are required for each polling place. The (Acting) Returning Officer must allocate electors to the polling stations in such manner as he or she thinks most conducive to the smooth running of polling day. The Council must consult the (Acting) Returning Officer as part of the review and the (Acting) Returning Officer must comment during any review on both the existing polling places and polling stations; and on any proposed changes.

### **Other Representations**

The Council is also required to seek representations from those with expertise in relation to access to premises and facilities for disabled people. Such persons must be given the opportunity to comment on the representations made by the (Acting) Returning Officer. Election candidates and agents, political parties and members of the Council will also be notified of the review.

### **Summary of Consultees**

Any elector in the Constituency may make representations on the designation of polling districts or places. In addition, the Council has notified the following groups/individuals about the review:

The (Acting) Returning Officer for Central Devon  
The (Acting) Returning Officer for Torridge & West Devon  
The Member of Parliament for Central Devon  
The Member of Parliament for Torridge & West Devon  
West Devon Borough Councillors

Devon County Councillors representing divisions within the West Devon area.  
West Devon Town and Parish Councils  
Registered Political Parties & Election Agents  
Age UK Devon  
Living Options Devon  
Scope  
Tass  
Royal National Institute of Blind People (RNIB)

### **Completion of the review**

The revised Polling District Places Order must be approved and published by 31 December 2014.

The following information will be published on the Council's website and made available, on request, at the West Devon Borough Council Office, Kilworthy Park, Tavistock.

- all correspondence sent to the Returning Officer in connection with the review
- all representations made by any group or person in connection with the review
- proposals for the designations of polling districts and polling places
- details of the actual designations of polling districts and polling places agreed as a result of the review

### **Challenging the Review**

Although the Electoral Commission has no initial role in the review process itself, it does have an important role in respect of considering representations and observations that a Council has failed to conduct a proper review on one of two grounds:

- that the Council has failed to meet the reasonable requirements of the electors in the constituency, or a body of them (i.e. the reasonable requirements of a particular area of the authority have not been satisfactorily met); or
- that the Council has failed to take sufficient account of the accessibility to disabled persons of polling stations within a designated polling place.

Representations based on any other grounds will not be considered by the Commission.

All representations made to the Commission must be made in writing either by post, email or fax and should include the location and any other relevant information, stating specifically why it is inaccessible or does not meet the reasonable requirements of the electors.

### **Who may make a representation to the Electoral Commission?**

Section 18D (1) of the Representation of the People Act 1983, sets out who may make representations to the Electoral Commission namely;

- not less than thirty registered electors in the constituency (although electors registered anonymously cannot make a representation)
- a person (except the (Acting) Returning Officer) who made representations to the council when the review was being undertaken
- any person who is not an elector within the constituency but who the Electoral Commission feels has sufficient interest in the accessibility of disabled persons in the areas or has particular expertise in relation to the access to premises or facilities of disabled persons



The (Acting) Returning Officer is entitled to make observations on any representations made to the Commission.

### **What will the Electoral Commission do?**

The Electoral Commission is required to consider any representations and observations and may direct the relevant council to make any alterations it sees necessary to the polling places designated by the review. Should a Council fail to make the alterations within two months of the direction being given, the Commission may make the alterations itself.

### **Proposals**

Set out in Appendix A are details of current polling districts and polling places for the Central Devon Parliamentary Constituency

Set out in Appendix B are details of the current polling districts and polling places for that part of the Torridge & West Devon Parliamentary Constituency which is within the West Devon boundary

Set out in Appendix C are details of the polling stations used at the May 2014 elections with details of the total electorate allocated to each polling station.

### **Representations**

Any persons wishing to make comments or representations regarding the proposals may do so. Any representations you wish to make should be **received by close of business (5pm) on 29 August 2014**

All representations must be made in writing either by post, e-mail or fax.

Representations by post should be sent to:

Electoral Services  
West Devon Borough Council  
Kilworthy Park  
Tavistock  
PL19 0BZ

Representations by fax should be sent to: 01822 813634

For any queries, please telephone the Electoral Services helpline on 01822 813665

All representations will be published on the Council's website as soon as possible after receipt. Even if you have already commented on the proposals, you may make further submissions in response to views and comments you see on the website.

The final decision will be taken by members of the Council and a notice of any alterations will be published on the Council's website no later than 31 December. Any changes will become effective at all elections held after that date.

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<b>POLLING DISTRICTS</b>	<b>POLLING STATION</b>	<b>POLLING PLACES</b>	<b>REASON FOR CHANGE</b>
Beaworthy	Parish Hall, Patchacott, Beaworthy	Beaworthy	
Beaworthy (East Ward)	Parish Hall, Patchacott, Beaworthy	Beaworthy	
Belstone	Village Hall, Belstone	Belstone	
Bere Ferrers (Bere Alston)	Parish Hall, Bere Alston	Bere Alston	
Bere Ferrers (Bere Town)	Church Hall, Bere Ferrers	Bere Ferrers	
Bondleigh	Town Hall, North Tawton	North Tawton	
Bradstone	Kelly Hall, Meadwell	Meadwell	
Bratton Clovelly	Parish Hall, Bratton Clovelly	Bratton Clovelly	
Brentor	Village Hall, Brentor	Brentor	
Bridestowe	Methodist Church Hall, Bridestowe	Bridestowe	
Broadwoodkelly	Parish Hall, Broadwoodkelly	Broadwoodkelly	
Buckland Monachorum	Village Hall, Buckland Monachorum	Buckland Monachorum	
Buckland Monachorum (Crapstone)	Village Hairdresser, Crapstone	Crapstone	
Buckland Monachorum (Milton Coombe)	Village Hall, Milton Coombe	Milton Coombe	
Buckland Monachorum (Clearbrook)	Clearbrook Village Hall	Clearbrook	
Buckland Monachorum (Yelverton)	St Pauls Church Hall, Yelverton	Yelverton	
Buckland Monachorum (Harrowbeer)	St Pauls Church Hall, Yelverton	Yelverton	
Chagford	Jubilee Hall, Chagford	Chagford	
Coryton	Victory Hall, Lewdown	Lewdown	
Drewsteignton	Parish Rooms, Drewsteignton	Drewsteignton	
Drewsteignton(Crockernwell)	Parish Rooms, Drewsteignton	Drewsteignton	
Drewsteignton(Venton)	Parish Rooms, Drewsteignton	Drewsteignton	
Drewsteignton(Whiddon Down)	Village Hall, Whiddon Down	Whiddon Down	

Dunterton	Village Hall, Milton Abbot	Milton Abbot	
Exbourne	Village Hall, Exbourne	Exbourne	
Germansweek	Parish Hall, Germansweek	Germansweek	
Gidleigh	Village Hall, Throwleigh	Throwleigh	
Gulworthy	Parish Hall, Gulworthy	Gulworthy	
Gulworthy (Morwellham)	Parish Hall, Gulworthy	Gulworthy	
Gulworthy (Wheal Maria)	Parish Hall, Gulworthy	Gulworthy	
Hatherleigh	Hatherleigh Community Centre	Hatherleigh	
Highampton	Village Hall, Highampton	Highampton	
Horrabridge	Village Hall, Horrabridge	Horrabridge	
Huccaby	Huccaby Farm, Hexworthy	Hexworthy	
Iddesleigh	Northcote Village Hall, Iddesleigh	Iddesleigh	
Inwardleigh	Parish Hall, Folly Gate	Folly Gate	
Inwardleigh (Folly Gate)	Parish Hall, Folly Gate	Folly Gate	
Jacobstowe	St James Church, Jacobstowe	Jacobstowe	
Kelly	Kelly Hall, Meadwell	Meadwell	
Lamerton	Lamerton Sports & Community Centre	Lamerton	
Lewtrenchard	Victory Hall, Lewdown	Lewdown	
Lifton	Church Hall, Lifton	Lifton	
Lydford	Nicholls Hall, Lydford	Lydford	
Mary Tavy	Coronation Hall, Mary Tavy	Mary Tavy	
Marystow	Victory Hall, Lewdown	Lewdown	
Meavy Village	Parish Hall, Meavy	Meavy	
Meavy (Dousland)	The Burrator Inn, Dousland	Dousland	
Meeth	Parish Hall, Meeth	Meeth	
Milton Abbot	Village Hall, Milton Abbot	Milton Abbot	
Milton Abbot (Chillaton)	The Chichester Arms, Chillaton	Chillaton	
Monkokehampton	Church Hall, Monkokehampton	Monkokehampton	
Northlew	Victory Hall, Northlew	Northlew	
North Tawton	Town Hall, North Tawton	North Tawton	
Okehampton Park	Village Hall, Meldon	Meldon	
Okehampton Brightley	Charter Hall, Okehampton	Okehampton	

Okehampton East	Charter Hall, Okehampton	Okehampton	
Okehampton West	Charter Hall, Okehampton	Okehampton	
Peter Tavy	Village Hall, Peter Tavy	Peter Tavy	
Postbridge	Village Hall, Postbridge	Postbridge	
Princetown	The Village Centre, Princetown	Princetown	
Sampford Courtenay	Village Hall, Sampford Courtenay	Sampford Courtenay	
Sampford Spiney	Village Hall, Horrabridge	Horrabridge	
Sheepstor	Parish Hall, Meavy	Meavy	
Sourton	Parish Hall, Sourton	Sourton	
South Tawton (Part)	Victory Hall, South Zeal	South Zeal	
South Tawton (Part)	Village Hall, Whiddon Down	Whiddon Down	
Spreyton	Village Hall, Spreyton	Spreyton	
Sticklepath	Village Hall, Sticklepath	Sticklepath	
Stowford	Parish Hall, Stowford	Stowford	
Sydenham Damerel	The Royal Inn, Horsebridge	Sydenham Damerel	
Tavistock North	Tavistock Methodist Church, Tavistock	Tavistock	
Tavistock South (Part)	Parish Church Centre, Tavistock	Tavistock	
Tavistock South (Part)	Whitchurch Village Hall	Tavistock	
Tavistock South West	Fairway Furniture Store, Tavistock	Tavistock	
Throwleigh	Village Hall, Throwleigh	Throwleigh	
Thrushelton	Victory Hall, Lewdown	Lewdown	
Walkhampton Village	Memorial Hall, Walkhampton	Walkhampton	
Walkhampton Dousland	Burrator Inn, Dousland	Dousland	
Whitchurch	Whitchurch Village Hall	Whitchurch	

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## **Appendix 2**

### **List of Consultees**

All West Devon Borough Councillors

All Devon County Councillors

Parish Councillors (Via Parish Clerks)

Member of Parliament (Torrige & West Devon) - Geoffrey Cox

Member of Parliament (Central Devon) – Mel Stride

Local Conservative Association

Local Liberal Democrats

Returning Officer for Torrige & West Devon Constituency

Members of the Public (By press release and notices in each parish/town).

Age Concern – local branch (Okehampton & Torrige)

Age UK Devon

Tavistock Access Group

TASS

Living Options Devon

Devon Disability network

Scope

RNIB

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<b>NAME OF COMMITTEE</b>	<b>Council</b>
<b>DATE</b>	<b>7<sup>th</sup> October 2014</b>
<b>REPORT TITLE</b>	<b>Dog Control Orders - West Devon</b>
<b>Report of</b>	<b>Street Scene Manager</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

This report looks to confirm the final implementation of Dog Control Orders in West Devon, under the Clean Neighbourhood and Environment Act 2005.

**Financial implications:**

There is a cost of approximately £1,500 in order to place legal notices in the local press at the appropriate times during the process.

**RECOMMENDATIONS:**

It is recommended that the Council agrees to issue the final Dog Control Orders for

1. Fouling of land by dogs and removal of dog faeces
2. The keeping of dogs on leads
3. Not putting a dog on a lead when directed by an authorised officer
4. The exclusion of dogs from land

under the Clean Neighbourhood and Environment Act 2005. Orders will be published to take account of the consultation responses received and to ensure the effective date for the orders is the 17<sup>th</sup> October 2014.

**Officer contacts:**

Dai Antill – [dai.antill@swdevon.swdevon.gov.uk](mailto:dai.antill@swdevon.swdevon.gov.uk)

Cathy Aubertin – [Cathy.Aubertin@swdevon.gov.uk](mailto:Cathy.Aubertin@swdevon.gov.uk)

**1. BACKGROUND**

- 1.1 West Devon Borough Council currently undertakes enforcement under the Dog Fouling of Land Act 1996 alongside any locally existing bye laws. Enforcement efforts are currently concentrated majorly in the areas where Town/Parish Councils make a financial contribution towards dog warden time.

- 1.2 Following a previous report to the Communities Committee, in June 2013, Members agreed to continue with the necessary work to introduce appropriate Dog Control Orders across the Borough. Informal consultation commenced with Town and Parish Councils in respect of implementing Dog Control Orders across the Borough. This work was necessary both to improve current enforcement legislation and subsequently service levels and to encourage greater overall take up of the dog warden scheme.
- 1.3 Chagford introduced a local Dog Control Order in 2009 which excludes Dogs at Jubilee Field. These same requirements have been included in the proposed Dog Exclusion Order.

## **2. DOG CONTROL ORDERS**

- 2.1 The Clean Neighbourhood and Environment Act 2005 includes five dog control offences that it is possible to control by Dog Control Orders, and they are:
- 1 Fouling of land by dogs and removal of dog faeces
  - 2 The keeping of dogs on leads
  - 3 Not putting a dog on a lead when directed by an authorised officer
  - 4 The exclusion of dogs from land
  - 5 The number of dogs permitted to be walked on leads

The Council is looking to make orders relating to 1-4 of the above list, and have consulted on draft orders accordingly.

- 2.2 Section 55 of the Act enables Local Authorities or Town and Parish Councils to make orders that apply to offences aimed at the control of dogs to specified land in their area.
- 2.3 Section 57 of the Act provides that Orders may apply to all public land which is open to the air and to which the public are permitted or entitled to have access. There are exemptions to this definition which have been made by the Secretary of State.
- 2.4 Section 59 of the Act allows authorised officers of Local Authority, Town and Parish Councils, and any other authorised person, the right to issue a Fixed Penalty Notice (FPN). In effect, this would allow Town and Parish Councils to authorise their own officers to issue FPNs and, in addition, the Borough Council would be able to authorise officers other than the Dog Warden to issue notices, such as Monitoring Officers and Civil Enforcement Officers.
- 2.5 Section 60 of the Act enables a Local Authority, Town and Parish Councils to specify the amount of fixed penalty in relation to their own Dog Control Orders. The draft orders relate to a fixed penalty notice of £80.00.

## **3. CONSULTATION PROCESS**

- 3.1 All Borough Town and Parish Councils, together with various stakeholders; have been involved in the consultation process which started in January 2014. They

were consulted throughout February 2014 when the draft documents were circulated for responses. Twelve responses were received at this stage and some minor amendments were made to the documents. Street Scene staff also attended parish meetings on request to provide Dog Control Order updates.

- 3.2 In May 2014 all Town/Parish Councils and stakeholders were invited to an evening meeting to provide an update presentation on the Dog Control Order's. This allowed those that attended an opportunity to better understand the documents and the planned proposals.
- 3.3 On 19<sup>th</sup> June 2014 a Public Notice was advertised in the local Tavistock and Okehampton Times, detailing a four week public consultation period in respect of the Dog Control Orders. The updated documents and maps were available on the WDBC website and in Council offices.

Liaison continued with several Town and Parish Council's during this period, who wished for amendments to be made in respect of land within their locality.

- 3.4 During the course of the public consultation period, the local media highlighted the orders, which assisted in engagement with the community. This resulted in 74 responses being received towards the end of the consultation period.

#### 3.5 **REVIEW OF RESPONSES**

Officers met on 29<sup>th</sup> July 2014 to review the responses received from the public and other groups. Recommended amendments were made to the draft documents to reflect the responses of consultees where local requests did not affect the operational practicality of the orders overall. Proposed amendments were also considered by our Legal specialists. There are no major amendments proposed to any order. As changes are minor there is no requirement to carry out a process of re-consultation.

- 3.6 The Dog Control Orders with proposed amendments to reflect the public consultation changes were considered by the Council Leader, Deputy Leader and Chair and Vice Chair of the Communities Committee.
- 3.7 It is important to note that the orders are intended to allow easier overall enforcement in relation to problem areas or fouling 'hot spots'. The orders will also allow for partner agencies to enforce in their areas if they are so minded.
- 3.8 Local specific variations to orders can be added by locality if there are instances where these are felt necessary. Through the consultation processes none are identified at this point.

#### 4. **LEGAL IMPLICATIONS**

- 4.1 The introduction of Dog Control Orders will allow for a consistent approach to dog control throughout the Borough and will replace existing byelaws. The Dog Control Orders under the Clean Neighbourhoods and Environment Act will replace the Dog Fouling of Land Order in terms of our ability to prosecute.

- 4.2 It will be possible for third party organisations to be authorised to enforce the orders on behalf of the Council, which aligns fully with the locality working principles of our transformation programme.
- 4.3 On 20<sup>th</sup> October 2014 the Government is introducing new legislation to deal with anti social behaviour through the Anti Social Behaviour Crime and Police Act 2014. After that date any future Dog Control Orders would be legislated for as a Public Space Protected Order (PSPO). The West Devon orders would be automatically converted to into a PSPO after 3 years of operation provided they are made prior to the 20 October 2014.
- 4.4. It is intended that the Dogs on Leads Order reflects the legal requirements of the CROW Act for areas of land where this is relevant.

## 5. FINANCIAL IMPLICATIONS

- 5.1 A cost of approximately £1,500 in order to place legal notices in the local press at the appropriate times during the process. This cost will be met through existing budgets.

## 6. RISK MANAGEMENT

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

## 7. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	Community well being; access to services; towards excellence; customer first
<b>Statutory powers:</b>	Clean Neighbourhood and Environment Act 2005  Dog Control Orders (Prescribed Offences and Penalties) Regulations 2006  Dog Control Orders (Procedures) Regulations 2006  The Control on Dogs (non-application to Designated Land) Order 2006
<b>Considerations of equality and human rights:</b>	Not applicable
<b>Biodiversity considerations:</b>	Not applicable
<b>Sustainability considerations:</b>	Not applicable
<b>Crime and disorder implications:</b>	Not applicable
<b>Background papers:</b>	Communities Committee reports
<b>Appendices attached:</b>	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.	Orders misrepresented in community	Full communication programme to explain and support the amended legislation	3	3	9	↔	<p>Full informal and formal public consultation to be undertaken to allay concerns</p> <p>Officers are working closely with the local media to ensure full information is given.</p>	C Aubertin/ D Antill

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Direction of travel symbols ↓ ↑ ↔

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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 **7<sup>th</sup>** day of **OCTOBER 2014** at **4.30 pm** pursuant to Notice given and Summons duly served.

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

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 L J G Hockridge	Cllr A F Leech
Cllr J R McInnes	Cllr J B Moody
Cllr M E Morse	Cllr T G Pearce
Cllr P J Ridgers	Cllr L B Rose
Cllr R F D Sampson	Cllr P R Sanders
Cllr D K A Sellis	Cllr J Sheldon
Cllr E H Sherrell	Cllr D Whitcomb

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

**CM 39 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs S C Bailey, M V L Ewings, C Hall, N Morgan, D E Moyse, C R Musgrave, R J Oxborough and D M Wilde.

**CM 40 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. These were recorded as follows:-

Cllr D K A Sellis declared a personal interest in Item 18: 'Dog Control Orders – West Devon' (Minute CM 53 below refers) by virtue of being a dog walker on the moor and remained in the meeting, but abstained from the vote on this item.

**CM 41 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 held on 22 July 2014 as a true record”.

**CM 42 COMMUNICATIONS FROM THE MAYOR**

The Mayor had no communications to bring forward.

## CM 43

### NOTICES OF MOTION

It was moved by Cllr P R Sanders and seconded by Cllr K Ball that:

*'This Council calls upon the Secretary of State for Transport and the Chancellor of the Exchequer to support the future economic resilience of the South West Peninsula by investing in improved strategic road and rail transport links.*

*Our area is frequently cut off from the rest of the country because strategic transport links are adversely affected by severe weather, accidents or maintenance works. An efficient and integrated transport infrastructure is critical to ensure essential services function and the economy can grow.*

*We ask the Government to invest in four key areas to help Devon's economy:*

- *Improvements to the A303/A30/A358 to create a reliable second strategic road link from London to the South West Peninsula;*
- *A resilient and reliable railway for the South West Peninsula;*
- *Faster rail journey times and better connections;*
- *Sufficient capacity and quality of our trains (both engines and carriages) to meet demand.'*

In presenting his motion, the proposer made specific reference to:-

- the hope that the motion would be supported by a number of local authorities throughout the region. In so doing, the motion was seen as an opportunity to put pressure on central government;
- the major economic benefits to the South West of investing in improved strategic road and rail transport links;
- the quality of the rail stock and service in the south west being well below the national average. In making this point, the proposer felt that the quality was derisory and simply not good enough.

During the ensuing debate, Members echoed the economic importance of the South West being in receipt of a fair amount of funding from central government in order to improve its rail and road infrastructure.

When put to the vote, the motion was declared **CARRIED**.

## CM 44

### MINUTES OF COMMITTEES

#### a. **Audit Committee – 22 July 2014 and 23 September 2014**

It was moved by Cllr D K A Sellis, seconded by Cllr J B Moody and upon being submitted to the Meeting was declared to be **CARRIED** and **"RESOLVED** that the Minutes of the 22 July 2014 and 23 September 2014 meeting be received and noted, with the exception of Unstarred Minutes AC 19, AC 21 and AC 22".



In respect of the Unstarred Minutes:

- i. **AC 19 – Audit of the Annual Statement of Accounts 2013/14**  
It was moved by Cllr D K A Sellis, seconded by Cllr J B Moody and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that

1. the Financial Statements and the Technical Appendix (as outlined at Appendix A of the presented agenda report) be approved and adopted; and
2. the wording of the Letter of Representation (as outlined at Appendix B of the presented agenda report) be also approved and signed by the Chairman and Head of Finance and Audit.”

- ii. **AC 21 – Treasury Management – Annual Report 2013/14**  
It was moved by Cllr D K A Sellis, seconded by Cllr J B Moody and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that

1. the Treasury Management Report for 2013/14 be received and noted;
2. the actual prudential indicators for 2013/14 as shown in Appendix A of the presented agenda report be noted; and
3. the Minimum Revenue Provision Statement (as detailed in paragraph 6.2 of the presented agenda report) be also noted.

- iii. **AC 22 – Internal Audit – Revision of and Progress Against the 2014/15 Plan**

It was moved by Cllr D K A Sellis, seconded by Cllr J B Moody and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that

1. the revisions being made to the 2014/15 Internal Audit Plan and the progress towards achieving the aims of the Plan be noted; and
2. representations be sent to the Audit Commission which outline the Council’s deep reservations regarding the recommendation to no longer appoint Grant Thornton as the Council’s External Auditor.

- b. **Community Services Committee – 2 September 2014**

It was noted that the meeting scheduled to take place on 2 September had been cancelled.

**c. Planning and Licensing Committee – 29 July 2014, 26 August 2014 and 23 September 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 29 July 2014, 26 August 2014 and 23 September 2014 meeting be received and noted”.

**CM 45 APPOINTMENT OF EXECUTIVE DIRECTOR**

A report was considered that recommended the appointment of the Executive Director – Service Delivery and Commercial Development.

In presenting the report, Cllr P R Sanders made reference to the lengthy and robust recruitment exercise and the Panel having been unanimous in its recommendations. In proposing the motion, the Leader wished to make an amendment to his published agenda report, which sought to delete the first paragraph in the exempt Appendix A. This proposal was subsequently seconded by Cllr R F D Sampson.

In discussion, it was confirmed that this proposal had already been approved at a meeting of South Hams District Council.

When put to the vote, it was then **“RESOLVED** that the appointment of the recommended successful candidate for the position of Executive Director – Service Delivery and Commercial Development (as detailed in Appendix A of the presented agenda report) be agreed.”

**CM 46 TORRIDGE AND THE FUTURE OPERATING MODEL**

A report was considered that brought the Council up to date on informal discussions that had been ongoing between the Leader and his counterparts at South Hams District Council and Torrridge District Council.

Cllr P R Sanders introduced the report and reiterated that the recommendation only sought to instruct officers to carry out the detailed work to determine the opportunities, financial benefits and risks to the Council, West Devon Borough Council (WDBC) and Torrridge District Council (TDC) of forming a partnership to deliver the Future Operating Model in a shared services relationship. Cllr P R Sanders also emphasised that the recommendation was wholly reliant upon similar recommendations being approved by WDBC and TDC.

In discussion, reference was made to:-

- (a) the workload of senior managers. Whilst there was the potential for staff time to be wasted in this regard, such was the potential benefits of forming a partnership that it was considered to be worthwhile. In addition, senior managers had given assurances that this work was manageable for them and would not impact upon the progress of the T18 Programme;

- (b) the timing of this report. Some Members expressed their view that, when considering the ongoing Senior Management Review, now was not a good time to progress this matter any further. In contrast, other Members reminded the Council that the report only sought to undertake further exploratory works and it would be foolhardy not to investigate this matter further;
- (c) further partnership opportunities. Members were given assurances that this work would not preclude from any further partnership opportunities being explored.

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 officers be instructed to formally consider the option of working with Torridge District Council to implement a combined future operating model in order to bring a report back to Council in December 2014 for a final decision. In so doing, the officers will create a:-

- (a) Refined business case;
- (b) Detailed analysis of the benefits and risks;
- (c) Governance arrangement; and
- (d) Timetable for implementation.”

#### **CM 47**

#### **CREATING A LOCAL AUTHORITY TRADING COMPANY**

The Council considered a report that requested approval of the formation of a Local Authority Trading Company with the sole shareholders being West Devon Borough Council and South Hams District Council.

Cllr P R Sanders introduced the report and highlighted the significant improvements which had been made to the report since it had been deferred at the last meeting on 22 July 2014 (CM 34 refers).

In discussion, the following points were raised:-

- (a) Members were given assurances that the list of priority areas (as outlined at Appendix 1 of the presented agenda report) was not an exhaustive list and could be added to at any given time;
- (b) It was noted that officers were currently working on some detailed business cases, but the company could, in theory, start trading as soon as it was considered appropriate.

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:

1. the Council agree to create a wholly-owned Local Authority Trading Company with West Devon Borough Council and South Hams District Council having an equal shareholding;

2. delegated authority be given to 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, including finalising the Articles of Association and the Shareholder's Agreement; and
3. those priority areas identified by the Income Generation Working Group for income generation (as outlined in Appendix 1 of the presented agenda report) be pursued, with officers being tasked with working up more detailed business cases where appropriate."

**CM 48**

**PROPOSED AMALGAMATION OF WEST DEVON HOMES WITH DEVON AND CORNWALL HOUSING**

The Council considered a report that advised of the proposed restructure of West Devon Homes (WDH) within the Devon and Cornwall Housing (DCH) Group and that sought approval for the amalgamation of the two organisations.

In introducing the report, Cllr P R Sanders informed that:-

- in light of dwindling central government funding, it was becoming increasingly difficult for smaller housing organisations to survive. In addition, DCH had access to much more significant funding streams and greater negotiating power and influence with developers;
- in respect of concerns raised over a loss of Borough Council control, the Council relinquished any rights it had when it voluntarily decided to no longer appoint any Member representatives on to the Board.

In discussion, some Members commented on how useful the recent Informal Council session had been to allay concerns over this proposal. 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:

1. Council approve the conversion of WDH from a company limited by guarantee to a community benefit society and its subsequent amalgamation as a community benefit society with DCH;
2. the Head of Environmental Health and Housing be authorised to act on behalf of the Council and to exercise the Council's vote in support of the conversion of WDH to a community benefit society and its amalgamation with DCH at special general meetings of WDH set up for these purposes; and
3. the Transfer Agreement dated 22 February 1999 between the Council and WDH be varied as set out in the presented agenda report, with the Head of Environmental Health and Housing be authorised to complete the Deed of Variation."

**CM 49 BUSINESS RATES POOLING IN DEVON**

The Council considered a report that recommended that the Council remained in the membership of the Devon Business Rates Pool for the financial year 2015/16.

In reply to a question, it was confirmed that the membership of the Pool was re-constituted annually.

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 the Council remains in the Devon Business Rates Pool for the financial year 2015/16."

**CM 50 COUNCIL TAX REDUCTION**

A report was considered that sought continuation of the existing Council Tax Reduction Scheme for 2015/16.

To provide assurance, it was noted that recommendation 2 sought agreement to grant delegated authority to reflect minor changes only and any changes which were deemed significant, would need to be re-considered by Members.

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:

1. the existing Council Tax Reduction Scheme for 2015/16 be agreed to be continued; and
2. delegated authority be given to the Head of Finance and Audit, in consultation with the Leader of Council, to make amendments to the policy document to take account of any further changes in law, government guidance or policy that require urgent amendment."

**CM 51 THE OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014**

The Council considered a report that informed of the implications arising from the adoption of the Openness of Local Government Bodies Regulations 2014.

It was then proposed by Cllr R F D Sampson, seconded by Cllr T G Pearce and upon being submitted to the Meeting was declared to be **CARRIED** and **"RESOLVED** that:

1. the Council Constitution be amended to reflect the Regulations whereby the press and public are now able to film and to report, using social media including blogging or tweeting, public meetings of the Council and its Member Bodies; and
2. the Monitoring Officer be given delegated authority, in consultation with the Leader of Council, to develop a process by which decisions taken by officers on behalf of the Council be formally recorded and published."

**CM 52**

**POLLING DISTRICTS/POLLING PLACES REVIEW 2014**

The Council considered a report that provided an update on the Polling Districts/Polling Places Review 2014.

Cllr P R Sanders informed that he had been given the impression by the Local Government Boundary Commission for England that their final recommendations would be published on Tuesday, 14 October 2014.

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 all polling districts and polling places remain unchanged until the publication of the Local Government Boundary review, with the implementation of any consequent changes arising from the review being delegated to the Electoral Registration Officer, in consultation with the Chairman of the Political Structures Working Group."

**CM 53**

**DOG CONTROL ORDERS – WEST DEVON**

A report was considered that looked to confirm the final implementation of Dog Control Orders in West Devon, under the Clean Neighbourhood and Environment Act 2005.

Cllr R F D Sampson introduced the report and, to enable for the appropriate notice period to be given, suggested that the effective date for the Orders should be delayed by five days from 17 October 2014 to 22 October 2014.

In discussion, the Council was informed that, once established as part of the T18 Programme, the Neighbourhood Locality Officers would have a key role to play in this regard.

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 it be agreed that the final Dog Control Orders be issued for:-

1. Fouling of land by dogs and removal of dog faeces;
2. The keeping of dogs on leads;
3. Not putting a dog on a lead when directed by an authorised officer; and
4. The exclusion of dogs from land

under the Clean Neighbourhood and Environment Act 2005. Orders will be published to take account of the consultation responses received and to ensure the effective date for the Orders is 22 October 2014.”

#### **CM 54**

#### **COMMON SEAL**

A copy of the documents signed by the Mayor during the period 14 July 2014 to 26 September 2014 was attached to the agenda (page 139 refers) and noted by the Meeting.

It was moved by Cllr R F D Sampson, seconded by Cllr A Clish-Green 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 6.10 pm)

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