

CONSTITUTION UPDATE

Cabinet Member Cllr Peter Hare-Scott
Responsible Officer Chief Executive

Reason for Report: To amend the Constitution following the removal from the establishment of the Head of Legal and Democratic Services post and to update Members on the review and update of the Constitution.

RECOMMENDATION(S):

1. **The Committee endorse:**
 - (a) **The Head of Communities and Governance as the new Monitoring Officer; and**
 - (b) **the Constitutional changes to Articles 12, 14 and 15 (Appendix A) and the scheme of delegation (Appendix B) to reflect the changes to the Monitoring Officer****and recommend them both to Full Council for approval**

Financial Implications: None

Legal Implications: Failure to follow the correct and proper process when making these changes would be unconstitutional

Risk Assessment: Failure to follow the correct and proper process when making these changes would be unconstitutional

1.0 Introduction

1.1 Following the Full Council meeting on 24th October 2012, this report reflects the changes to the Constitution following the removal of the Head of Legal and Democratic Services from the establishment.

1.2 Amended Articles 12, 14 and 15 are attached as Appendix A and the scheme of delegation is attached as Appendix B. The Committee are asked to endorse these changes as well as the change that the Head of Communities of Governance becomes the new Monitoring Officer, and to recommend these changes to Full Council.

2.0 New Model Constitution

2.1 The Association of Council Secretaries and Solicitors (ACSeS) have, in conjunction with Dickinson Dees Solicitors put together a revised draft modular constitution for Local Authorities following legislation changes (Localism Act and Access to Information Act 2012) and this is being launched at the ACSeS conference on 29th November 2012.

2.2 Once this information is publicly available it is proposed that this is reviewed and localised for Mid Devon District Council by the Constitution working group.

3.0 Changes to be made by the Monitoring Officer

3.1 There are sections of the Constitution which are already being reviewed and redrafted by the Monitoring Officer which are local to Mid Devon District Council and will go to the Constitution working group for consideration. These include:

- Removal of references to the Standards Committee e.g. Article 9 and under the Regulatory Powers of the Council in Section 2
- Amending the Terms of reference for the Audit Committee to reflect the fact that Standards issues now sit under their remit
- Reflect the changes of the Local Government Finance Act 2012 under the scheme of delegation to the Head of Finance
- Reflect the changes to the Access to Information Act 2012 which relates to Article 13 and The Access to Information Procedure Rules
- Amend scheme of delegation for officers relating to any job title changes arising from the recent Management restructure and amendments to legislation e.g. Localism Act
- Amend the scheme of delegation for Cabinet Members to reflect changes to portfolios as a result of the subsequent Management restructure
- Insert the new Code of Conduct into the Constitution in place of the old Code

4.0 Potential Subsequent Amendments

4.1 Both the Audit Committee and Cabinet are recommending to Full Council on 12th December 2012 that the Personnel Panel be abolished and removed from the Constitution. Following the outcome of the Council vote the Constitution will be amended accordingly.

Contact for more Information: Kevin Finan, Chief Executive

Circulation of the Report: Leader of the Council

Article 12 – Officers

12.01 Management Structure

Appointment of staff cannot be the responsibility of the Cabinet. Appointment of staff below chief officer level must be the responsibility of the Head of Paid Service or their nominee.

- (a) **General.** The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The full Council will engage persons for the following posts, who will be designated chief officers:

Post	Functions and areas of responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers).</p> <p>Provision of professional advice to all parties in the decision making process.</p> <p>Together with the monitoring officer, responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p> <p>Communications, Emergency Planning, Financial Services, Audit, Performance and Policy, Human Resources and Information Communication Technology Services. Community Development, Corporate Governance Support, Electoral Registration Service, Health Services, Legal Services, Leisure Services, Licensing Services, Member Services, Monitoring Officer, Planning and Regeneration Services. Customer First, Estate Management, Housing Benefits, Housing Enabling and Development, Housing Services, Revenues and Waste Management</p>

- (c) **Head of Paid Service, Monitoring Officer and Chief Financial Officer.**
The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Head of Communities and Governance	Monitoring Officer
Head of Finance	Chief Finance Officer Section 151 Officer

Such posts will have the functions described in Article 12.02–12.04 below.

- (d) **Structure.** The Head of Paid Service will determine and publicise a description of the overall structure of the Council showing the management and deployment of officers. This is set out at Part 7 of this Constitution.

12.02 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will report to full Council on the manner in which the discharge of the Council’s functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

12.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council– if he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports.** The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters referred by the Standards Committee or its sub-committees or in exceptional circumstances by the ethical standards officer.
- (f) **Proper Officer for Access to Information.** The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (g) **Advising whether executive decisions are within the budget and policy framework and the principles of decision making set out in Article 13.** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.
- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity to all Councillors.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

12.04 Functions of the Chief Finance Officer

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

12.05 **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 **Conduct**

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

12.07 **Employment**

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

Article 14 – Finance, Contracts and Legal Matters

14.01 Financial Management

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

14.02 Contracts

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

14.03 Legal Proceedings

The Legal Services Manager is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Legal Services Manager considers that such action is necessary to protect the Council's interests.

14.04 Authentication of Documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Legal Services Manager or other person authorised by him, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Legal Services Manager. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents, which in the opinion of the Legal Services Manager should be sealed. The affixing of the Common Seal will be attested by the Legal Services Manager or some other person authorised by him.

Article 15 – Review and Revision of the Constitution

15.01 Duty to monitor and review the Constitution

The Monitoring Officer will assist the Audit Committee to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the monitoring officer may:

- 1 observe meetings of different parts of the member and officer structure;
- 2 undertake an audit trail of a sample of decisions;
- 3 record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
- 4 compare practices in this authority with those in other comparable authorities, or national examples of best practice.

15.02 Changes to the Constitution

- (a) **Approval.** Changes to the Constitution will only be approved by the full Council after acceptance of the proposal by the Audit Committee and the Monitoring Officer except that the Monitoring Officer shall be responsible without such reference for routine updating necessary to reflect the decisions of the Council.
- (b) **Change from a leader and cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

SECTION 5

Scheme Of Delegation To Officers Only**1 SUMMARY**

- 1.1 This section describes the Chief Officers and other principal officers and sets out the delegation of functions to them.
- 1.2 The over-riding principle is that (with appropriate consultation requirements and exceptions) each Chief Officer will have delegated authority over all matters within their responsibility.

2 THE PRINCIPAL OFFICERS OF THE COUNCIL**2.1 Chief Officers**

The Chief Officer of the Council is:-

- (a) The Chief Executive

2.2 The Corporate Management Team

The Corporate Management Team (CMT) will comprise the Chief Executive, the Heads of Information Communication Technology Service, Planning and Regeneration Service, Finance, Housing, Human Resources and Development, Communities and Governance, Environmental Services and Customer First.

The purposes of the CMT are to ensure:-

- (a) the Council maintains an effective corporate identity and purpose;
- (b) the aims and objectives of corporate policies are achieved;
- (c) there is an effective form of communication and consultation between the Heads of Services; and
- (d) there is effective monitoring of the Council's corporate aims and performance.

2.3 Proper Officers and the other Statutory Officers

The law requires the Council to appoint officers in respect of particular responsibilities. The principal appointments are set out in Appendix 6.

3 FUNCTIONS DELEGATED TO INDIVIDUAL CHIEF OFFICERS AND OTHER PRINCIPAL OFFICERS**3.1 THE CHIEF EXECUTIVE****Delegation**

The Chief Executive as Head of Paid Service is authorised to exercise the following functions:-

- (a) Corporate Human Resources functions contained in Appendix 2
- (b) Corporate strategy and performance review
- (c) Communications
- (d) Complaints
- (e) Emergency Planning

- (f) Financial Services
- (g) Human Resources
- (h) Information Communication Technology Services
- (i) Policy development
- (j) Community Development
- (k) Elections
- (l) Leisure Services
- (m) Licensing functions
- (n) Health Services
- (o) Planning and Regeneration Services
- (p) Customer First
- (q) Estate Management
- (r) Housing Enabling and Development
- (s) Waste Management
- (t) Electoral Registration
- (u) Member Services and Civic Functions

All the above functions shall be the corporate strategic management responsibility of the Chief Executive but the processes and operational decisions shall be the responsibility of the appropriate Heads of Service.

Exceptions and Conditions

There is excepted from the delegation to the Chief Executive any matter:-

- (a) reserved to full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in Appendix 1 (functions which cannot be exercised by a delegated officer);
- (d) which is required to be discharged by another officer pursuant to the requirements of statute;
- (e) which is a function which for any other reason cannot be exercised by the Chief Executive.

The Chief Executive must at all times comply with the Council's Constitution and particularly the principles of decision making to be found in Article 13 of the Constitution together with further statements made below.

Notes

The terms of reference of committees are set out in Part 3 of the Constitution.

The delegation is subject to and with the benefit of the general provisions highlighted at 5 below.

3.2 THE HEAD OF COMMUNITIES AND GOVERNANCE

Delegation

The Head of Communities and Governance shall be the Monitoring Officer

- (a) The Head of Communities and Governance is responsible for the legality of the Council's processes and decisions, in particular:-
 - (i) to prepare, negotiate and execute documents and otherwise take any action required to give effect to all resolutions and/or decisions of the Council at committee or by a delegated officer;
 - (ii) to institute, defend or act in respect of legal proceedings or other determinations involving the Council including power to settle and compromise such matters where necessary to give effect to a resolution and/or decision of the Council at committee or by a delegated officer or where necessary to protect the Council's interest;
 - (iii) to make and serve notices and other instruments where necessary to give effect to a resolution and/or decision of the Council at committee or delegated officer or where necessary to protect the Council's interest;
 - (iv) To commence proceedings in circumstances that require immediate action in consultation with the relevant Cabinet member.

Exceptions and Conditions

There is excepted from the delegation to the Head of Communities and Governance any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
 - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
 - (ii) appendix 2 (corporate personnel functions unless given delegated authority by the Chief Executive);
- (d) which is required to be discharged by another officer pursuant to the requirements of statute;
- (e) which is a function which for any reason cannot be exercised by the Head of Communities and Governance.

The Head of Communities and Governance must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 13 of this Constitution together with further statements made below.

Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

3.4 HEAD OF FINANCE

Delegation

The Head of Finance as the Section 151 Officer is authorised to exercise the following functions:-

- (a) Financial Services
- (b) Housing and Council Tax Benefits
- (c) Revenues.

The Head of Finance shall be the Chief Financial Officer.

Exceptions and Conditions

There is excepted from the delegation to the Head of Finance any matter:-

- (a) reserved to the full Council;
- (b) delegated to a committee;
- (c) which comprises or includes a function described in:-
 - (i) appendix 1 (functions which cannot be exercised by a delegated officer);
 - (ii) appendix 2 (corporate personnel functions unless authorised by the Chief Executive);
- (d) which is required to be discharged by another officer;
- (e) which is a function which for any other reason cannot be exercised by the Head of Finance.

The Head of Finance must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 13 of this Constitution together with further statements made below.

Note

The terms of reference of committees are set out in Part 3 of this Constitution.

The delegation is subject to and with the benefit of the general provisions at 5 below.

3.5 HEAD OF PLANNING AND REGENERATION

To exercise all the powers of the Council as Local Planning Authority (including the conduct of appeals and enquiries) under the Planning Acts, (unless expressly delegated to another officer) except where:-

In the case of all Applications:

1. In the opinion of the Head of Planning or the Professional Services Manager, the application is of a significant controversial or sensitive nature;
2. The application has been submitted by or on behalf of the Council;
3. The application is from an Elected Member or Officer;
4. The application is accompanied by an Environment Impact Assessment (EIA);

5. The application is a significant or major departure and is recommended for approval;
6. The Ward Member; Chairman or Vice-Chairman of Planning Committee requires that the Committee consider an application having given clear planning reasons;
7. Applications will be delegated to the Head of Planning to refuse if Section 106 Agreements are not signed and completed within 8 or 13 week time-scale.

In the case of Enforcement:

1. Formal enforcement action is proposed other than a Breach of Condition Notice or in the case where urgent action is required to commence enforcement proceedings, consisting of the service of a Temporary Stop Notice, Enforcement Notice, Stop Notice or commence Injunction proceedings. These proceedings to only be instigated in consultation with one or more of the following: Planning Chairman, Vice Chairman, Ward Member;
2. Other than in consultation with the Legal Services Manager prosecution proceedings regarding any unauthorised advertising/fly posting.

(Note: Formal action does not include the service of a Planning Contravention Notice or Section 330 requisition for information)

In the case of Conservation:

1. It involves the designation of new, or amendment of existing Conservation Area boundaries;
2. It requires the issue of repair and urgent work notices;
3. It involves the submission of funding bids or schemes that have budgetary implications.

In the case of the Local Plan:

Local Plan proposals, policy, reasoned justification are to be considered for publication/ adoption or formal representations for the following stages (other than minor changes) are to be considered.

- Pre-deposit public consultation
- Any stage of deposit of the Plan
- Proposed modifications
- Adoption

(or the equivalent stages of processes of successors to Local Plans).

In the case of Planning Policy:

- 1 Representations to Regional Planning Guidance and Structure Plans (or their successors) are to be made.

2 Supplementary Planning Guidance is to be adopted.

(Not including updating contributions sought through S106 Agreements to reflect changes in the cost of provision of facilities.)

Building Control And Safety:

To exercise all the Council's powers under the Building Act 1984 or regulations made there under except where:-

In the case of charges

- o The annual review of charge results in increases greater than the rate of inflation.

Other Provisions

1. To authorise caravan rallies in accordance with the requirements of CS and C of DA 1960.
2. To make representations where appropriate and with the agreement of the Chairman and/or Vice Chairman of the Committee and Ward Member's (as appropriate) in respect of new Applications for Goods Vehicles Operators' Licenses, or when a significant variation of an existing licence is proposed.
3. To caution offender where there was evidence of a criminal offence and the offender admitted the commission of the offence but the public interest did not require a prosecution.

Local Land Charges

All the powers of the Council in relation to Local Land Charges and the Local Land Charges Register.

Note: Planning Acts – includes the Town and Country Planning Act 1990 (as amended); the Planning and Hazardous Substances Act 1990; the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning and Compensation Act 1991; the Town and Country Planning General Procedure Order 1995; the Town and Country Planning (General) (Permitted Development) Order 1995 and any other Orders, Rules, Regulations or Circulars made under the provisions of any of the above (or amending) Acts.

4 FUNCTIONS DELEGATED TO ALL CHIEF OFFICERS

4.1 Delegation

In addition to the functions specifically delegated by this part of the Constitution, together with those functions contained in the existing register of delegations attached at Appendix 5, each Chief Officer is authorised to exercise any of the Council's functions in relation to the day to day management and delivery of the services for which they are responsible.

4.2 Condition

Each Chief Officer must comply with the principles of decision making set out in Article 13 of the Constitution and further set out within this part of the Constitution.

5 GENERAL PROVISIONS APPLICABLE TO DELEGATIONS

5.1 Further delegations by officers

Where:-

- (a) a function has been delegated to an officer; or
- (b) an officer has been appointed to discharge the function of a proper or other statutory officer,

that officer may in turn delegate that function to another officer or officers. If they do so then:-

- (a) the delegation shall be recorded in writing; and
- (b) a decision taken pursuant to that delegation shall:-
 - (i) be taken in the name of the officer to whom the function was originally delegated; and
 - (ii) have effect as if it had been taken by that officer.

5.2 Additional delegation to officers to accord with responsibilities

In addition to any other delegation to an officer contained in this part of the Constitution, each officer is authorised to exercise any function as necessary for them to perform such of the duties set out in their job description as they are required to perform by the officer or officers responsible for their management.

5.3 Additional delegation in particular circumstances

The Council, the Cabinet or a committee may (unless prevented by statute, the standing orders, the rules of procedure or the requirement of any subsisting Council policy) delegate to an officer the exercise of a function reserved to them.

5.4 The discretion conferred by paragraph 5.3 above shall only be exercised where the Council, the Cabinet relevant committee or officer (as appropriate) consider it necessary in particular circumstances for the proper exercise of the relevant function.

5.5 Exercise of delegated power by Council/committee

Notwithstanding a delegation to an officer of any of the Council's functions:-

- (a) the Council, the Cabinet or a committee (where a matter is within the Cabinet or the committee's terms of reference) may exercise the delegated function itself; and
- (b) an officer to whom a function has been delegated may refer the matter for a decision to the Council, the Cabinet or a committee (where the matter is within the Cabinet or the committee's terms of reference).

5.6 The discretion conferred by paragraph 5.5 shall only be exercised where the Council, the Cabinet, relevant committee or officer (as appropriate) consider it necessary in particular circumstances for the proper exercise of the relevant function.

5.7 Inability to Act: Substitute Officers

If any officer:-

- (a) (i) to whom a function has been delegated; or
 - (ii) who has been appointed to discharge the function of a proper or other statutory officer,
- is for any reason unable to act; or
- (b) if the post of any such officer is vacant

then (except where written provision has already been made), the Chief Executive in consultation with the Head of Communities and Governance shall determine who shall act as substitute officer.

6 FURTHER GUIDANCE ON PRINCIPLES OF DECISION MAKING

6.1 Summary

The following paragraphs are to be read in conjunction with Article 13, Paragraph 13.02 of this Constitution and Section 4 of this part of the Constitution.

This section provides direction and guidance to officers involved in the decision making process.

It sets out general requirements, describes the available decision making processes and provides criteria for choosing a process (where it is within an officer's discretion). It also provides a summary of the principal obligations and factors involved in operating the chosen process – including the publication of recording procedures which must be followed where a decision is taken by an officer in consultation with the relevant committee chairman.

7 GENERAL REQUIREMENTS OF OFFICERS INVOLVED IN DECISION MAKING

7.1 Introduction

These paragraphs set out the essential requirements of officers and introduce some key issues relevant to the decision making process as a whole.

Section 8 provides the specific criteria for the choice of decision making process and Section 9 provides the protocol for taking decisions within the selection process.

In all decision making, officers must have regard to paragraph 4 of this part of the Constitution.

7.2 Essential Requirements

In participating in the Council's decision making process and in exercising their delegated functions. Delegated officers must comply with:-

- (a) The Council's Rules of Procedure;
- (b) The Council's Financial and Contracts Procedure Rules;
- (c) The Articles of the Constitution and further guidance contained in this part.

7.3 Key Issues; A General Context for Decision Making

The issues listed below are also extremely important and provide a general context within which delegated officers should operate:-

Effect on Others; Public and Councillor Expectation

- (a) The effect on communities, businesses and individuals.
- (b) The need to ensure democratic accountability through responding to:-
 - (i) the expectation of the public and councillors as to the mode of decision making; and
 - (ii) the anticipated interest of the public and councillors in the matter.
- (c) The effect of the matter on the Council's relationship with Government, Government Agencies and other Local Authorities, private, not-for-profit voluntary sector partners or other external bodies.
- (d) The effect of the matter on other Council services and functions.
- (e) Whether the matter is likely to prove controversial or to involve a fine balance between possible alternative decisions.

Budget

- (f) The approved budget and financial plan.

Policies and Plans

- (g) The approved policy framework which is approved by Council annually.
- (h) Whether the matter would involve a new policy issue.

General Considerations

- (i) General consequences
- (j) Legal consequences
- (k) Personnel consequences
- (l) Human Rights consequences
- (m) Environmental consequences

8 SELECTING THE MODE OF DECISION MAKING

8.1 Introduction

The following paragraphs set out the available decision making processes and give direction and guidance on how selection should be made.

Over time, the requirements of this guidance will become familiar to delegated officers. In the meantime, the sequential questions listed below may help officers to decide which is the correct process:-

- (a) Does the decision need to be taken by full Council?
This will be very rare: for example, if there would be a major divergence from agreed policies or budget.
- (b) If not, does the decision need to be taken by the Cabinet or a committee?
It will if:
 - the subject matter of the decision falls within the terms of reference of the Cabinet or the committee;

- the nature of the decision is such that the delegated officer ought to refer to the Cabinet or committee.
- (c) If not, then the decision can be taken by the delegated officer appropriate to the subject matter of the decision.
- (d) but before taking the decision, the delegated officer may need to consult with a ward member(s), the Cabinet Councillor, a committee chairman, a chief officer or MT.

The formal requirements of this guidance are set out below.

8.2 Decision Making Processes: Options and Uses

Table A below sets out the available decision making processes:-

Column 1 describes each process

Column 2 defines the circumstances in which each is to be used.

Where a matter is before a delegated officer, the delegated officer must ensure that any decision in relation to that matter is taken in accordance with the requirements of Table A below.

TABLE A - DECISION MAKING PROCESSES AND THEIR USES	
Decision making process:	To be used:
Full Council	<p>If the decision would involve any divergence from the current budget and/or policy framework.</p> <p>If the decision would involve determining a new policy of major corporate or strategic significance</p> <p>Note: The decision will also be taken by full Council if:</p> <ul style="list-style-type: none"> (a) required by law; (b) it is the approval of the budget and policy framework; (c) it has been referred to full Council by the Cabinet or one of the committees of the Council.
The Cabinet or a committee	If the decision falls within the terms of reference of the Cabinet or a committee and (where relevant to the committee in question) has been referred to the committee by a delegated officer.
<p>A delegated officer after consultation with one or more (as appropriate to the decision) of the following:-</p> <ul style="list-style-type: none"> - the Cabinet Councillor - a committee 	<ul style="list-style-type: none"> - If (a) the matter would have previously been considered by a relevant policy committee and (b) there are sufficient policy, resource or legal issues and/or significant public/councillor interest. - if (a) the matter would have previously

chairman of a relevant committee	been considered by a committee, and (b) there are significant policy, resource or legal issues and/or significant public/councillor interest.
- ward member	- if there are issues which would have significant impact on the community where it would have previously been considered by the committee in question.
- MT	- where there are significant cross-department policy issues and/or there would be significant cross-department effects on service delivery
- one or more Chief Officer(s)	- where there would be significant effects on the policies and/or service delivery for a chief officer responsible

8.3 Decision Making by the Cabinet and Committees

The Cabinet takes a more strategic role and, therefore, operational issues will be determined at officer level.

The few committees which will remain relatively unchanged are:-

- (a) Regulatory committees
Planning Committee, Licensing Committee and Regulatory Committee
- (b) Committees set up for a limited purpose
For example, Personnel Panel

8.4 Reporting Matters to the Cabinet

Where a decision in relation to a matter falls to be taken by a delegated officer, the delegated officer may elect to report on the matter (either generally or in relation to some aspect of it) by way of information to the Cabinet if the delegated officer considers this expedient having regard to the nature and significance of the matter, the terms of reference of the Cabinet and the provisions of this part of the Constitution.

8.5 Involving Councillors: Supplementing the Formal Process

The nature of a decision being taken may mean that the delegated officer is obliged to consult with an Cabinet Councillor. Such a decision would have previously been taken by a policy committee. However, not all decisions which previously went to a policy committee will necessarily need to go to a formal decision making meeting of the Cabinet. What matters is the significance of the decision. See Table A above. Officers may also need to refer the decision to the Cabinet.

In addition to these formal requirements, delegated officers should ensure, through informal processes, that the minority parties, relevant ward councillors and other affected councillors are kept informed and provided with appropriate opportunities to contribute.

These processes should be properly structured, and it is particularly important that Chief Officers meet regularly with representatives of all parties to brief them as to forthcoming significant decisions including, where appropriate, decisions which would previously have been taken by a policy committee. This will assist delegated officers in deciding whether or not formal consultation with the Cabinet members is required, or any reference to the Cabinet.

8.6 Disputes About The Selection of a Decision Making Process

Except as provided by the following paragraph, any disagreement as to which of the decision making processes is appropriate to a matter shall be determined by the Leader in consultation with the Head of Communities and Governance. The decision of the Leader shall be final.

Where the disagreement is as to whether a decision should or should not be made by the Leader, the disagreement shall be determined by Chairman and Vice Chairman of the Council in consultation with the Chief Executive. The collective decision of the Chairman and Vice Chairman of the Council shall be final.

9 MAKING THE DECISION

9.1 Introduction

Selecting the appropriate decision making process is only the first stage of effective decision making.

How the decision is made within the chosen process is equally important.

The considerations applicable to the making of decisions through any processes are too numerous and complex to detail in full within this part of the Constitution. However, a basic summary of the principal considerations is given below.

Delegated officers must have regard to these considerations whenever they are involved in making a decision using delegated powers or in referring a matter to full Council, to the Cabinet or to a committee for decision. The summary will also be relevant to councillors taking a decision at full Council, the Cabinet or at committee.

9.2 Principal Considerations and Issues

(a) **Acquiring and considering relevant information**

The most fundamental requirements in taking a decision are to consider all factors which are relevant and to ignore those which are not. The weight given to individual factors must be reasonable and consistent. Before a decision is taken, the available alternatives to that decision should have been considered and discounted for substantive reasons.

Delegated officers must therefore acquire all the necessary facts and information. What matters is not what the officer is aware of, but what they ought to be aware of. This will always include the factual context and the impact on affected persons, but could also include the history of the matter, statutory requirements (which can limit or define what can be taken into account), government and council policies, and financial implications.

(b) **Consultation**

Another essential issue is the need to consider whether it is appropriate to consult with communities, businesses and other third parties who have an interest in the matter. In some cases, minimum consultation requirements are prescribed by law. However, it should be remembered that the Council is required to act in the interests of the public as a whole, so the decision desired by consultees may not necessarily be the right decision to make.

In addition, a delegated officer must not act or give the impression of acting under the direction of another; responsibility for the decision rests with the officer. This is particularly important where the delegated officer has formally consulted with a member(s).

(c) Obtaining Advice

A delegated officer must also ensure that they obtain appropriate advice from the Council's legal, financial and other specialist staff.

(d) Access to Information

Although the Local Government (Access to Information) Act 1985 does not apply to decisions made by delegated officers, they should operate within the spirit of the Act and should allow access to material contributing to the decision to anyone with a legitimate interest in it unless this would involve disclosing exempt or confidential information. In particular, where a decision is taken in consultation with a member(s), delegated officers must act as if the Act applied.

(e) Interests

Delegated officers should always consider whether they may have a personal interest in the decision. If they are in any doubt, they should consult the Head of Communities and Governance before proceeding.

(f) Preparing a Report: Publication of Documents

Where the decision is to be taken at a meeting of the Cabinet, a formal report must be prepared. As a minimum the report should include all the numbered sections set out in the model report at Appendix 4.

In addition, the following publication requirements apply to a decision to be taken at a meeting of the Cabinet:-

- (i) The matter (other than urgent items of business) to be decided must be published a minimum of five clear working days before the meeting at which the decision is due to be taken.
- (ii) The report and other documents to be considered at the meeting must be published and distributed to members of the Scrutiny Committee and to relevant ward councillors.
- (iii) Documents to be considered will include a list of background papers materially used in the compilation of those documents.
- (iv) If the matter is an urgent item of business, documents will be published as soon as possible.

(g) Proportionality in Decision Making

The decisions which officers will need to take cover a vast range of complexity and impact. Although all of the matters described in

paragraphs (a) to (f) above are relevant to any decision, the manner in which they are addressed should be in proportion to the nature of the decision. If it is not, then the decision making process risks being either inappropriately lightweight or overly cumbersome and bureaucratic.

As a minimum:-

- (i) Any relevant requirements of statute and/or Procedure Rules as to consultation, publicity, recording, notification and other matters must be followed;
- (ii) If the process involves the production of a report or other material to which Council requirements or guidance as to content, layout and other matters apply, those requirements and guidance must be followed; and
- (iii) Where none of the matters mentioned in (i) or (ii) apply, it must always be possible to discern from the papers produced by or associated with the decision making process:-
 - (A) What decision was made; and
 - (B) Why it was made.(this does not necessarily mean the decision and the reason for it must always be recorded in a formal or standard way; what matters is to be able to show from written material what has happened and why)

These are the basic principles, and it is not possible for this summary to give exhaustive guidance.

However, a rigorous process is indicated if any of the following applies (the key areas where attention should be concentrated are indicated in brackets):-

- (i) The matter is unique and/or raises new issues which have never been decided before (policy, impact, financial and legal advice)
- (ii) The decision is likely to impact on a significant part of the public or a significant third party group (consultation, giving reasons, notification);
- (iii) The matter has generated widely differing views, or the various decision options are finely balanced (consultation, analysis of the available options, giving reasons);
- (iv) The matter involves significant one-off or ongoing expenditure (financial advice);
- (v) The decision may be challenged by a disaffected third party or is on the borders of the Council's legal powers (legal advice).

In the case of a decision described in (i) to (v) above such decision should be recorded in the form annexed at Appendix 3. Each recorded decision to be published as soon as possible on the Weekly Information Sheet and the Council's Intranet site.

Conversely, a simpler and less formal approach is indicated if any of the following applies:-

- (i) The matter is very similar to matters previously decided;
- (ii) The decision will not have a significant impact and will affect only a few people;
- (iii) The decision is unlikely to surprise or disappoint anyone affected;
- (iv) The matter involves little or no expenditure;
- (v) There is no doubt about the Council's power to make the decision.

Decisions which are largely administrative, repetitive and involve predictable considerations which are limited in extent lend themselves well to a standardised and streamlined procedure; and, therefore, there will be no obligation to record such decision in the form set out in Appendix 3.

Similarly, a series of more complex decisions may have an issue in common. In such circumstances, it may be worthwhile to produce and approve a document which analyses the issue and lays down general principles relating to it. This will mean that detailed analysis of the issue only has to be carried out once, rather than on each occasion that a decision involving it arises. However, care must be taken that the individual circumstances of each decision are still taken into account.

10 INTERPRETATION

10.1 Summary

This section contains formal provisions designed to assist in the interpretation of this part of the constitution where there is doubt as to its meaning or application to a particular situation.

10.2 General Interpretation Provisions

A purposeful approach shall be taken in interpreting the delegations contained in this part of the Constitution so as to give effect to the Council's intention that (subject to the requirements of the protocol) all functions of the Council shall be exercised by a delegated officer and to give effect to the intentions of the Council as set out in the Constitution generally.

(a) Validity of Decisions

The validity of a decision of a delegated officer shall not be questioned on the grounds that:-

- (i) It ought not to have been made by an officer because the issue is of such significance that it ought to have been referred to the Council or a committee, or because the officer ought to have consulted with one or more other officers and/or councillors;
- (ii) It ought to have been made by a different officer; or
- (iii) The provisions of the protocol contained in this part of the Constitution or of any other directions, rules or guidance made by the Council or an officer have not been wholly or mainly followed.

although the validity of a decision may not be questioned it will be open to any Member of the Council to ask for scrutiny of the decision making process.

(b) Unallocated Functions

The exercise of any function which:-

- (i) shall be conferred on the Council after this part of the Constitution comes into effect; or
- (ii) for any other reason does not fall within the authority of any officer

shall be conferred (subject to the requirements of the Protocol) on such officers as shall be determined by the Chief Executive in consultation with the Head of Communities and Governance.

- (c) Functions Defined by Example

Where:-

- (i) this part of the Constitution confers any power on any person; and
- (ii) the description of the extent of the functions to which that power applies includes or refers to particular examples of the functions

then

- (i) such examples shall be deemed to be included by way of illustration only and not limitation; and
- (ii) shall not prejudice the generality of the extent of those functions.

- (d) Determination of Interpretation Questions

Any question as to the interpretation of this part of the Constitution (other than a disagreement to which the provisions of paragraph 8.6 above apply) shall be determined by the Chief Executive in consultation with the Head of Communities and Governance. The Chief Executive's decision shall be final.

- (e) Directions and Guidance

If the Chief Executive considers it necessary or expedient, the Chief Executive may, in consultation with the Head of Communities and Governance, publish directions, rules or guidance relating to the interpretation and/or implementation of these officer delegations and committee terms of reference.

10.3 Definitions of Expressions Used in this Part of the Constitution

“Cabinet”	means the body elected by the Council
“Cabinet Councillor”	means a member of the Council who sits on the Cabinet
“committee”	means any body which is (irrespective of what it is called) a committee, sub-committee, joint committee or joint sub-committee of the Council.
“delegated officer”	means any officer or employee of the Council to whom (whether exclusively, jointly or in common with others) a function of the Council has been delegated.
“function”	is to be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any function.
“officer”	means any officer or other employee of the Council.

“person” includes a body corporate or unincorporated unless the context otherwise requires.

“decision making process” means the Protocol for decision making contained in Sections 8 and 9 of this part of the Constitution and any supplemental directions, rules, guidance or other documents prepared pursuant to it.

Any reference to an Appendix in this part of the Constitution shall be deemed to be a reference to Appendix 1, Appendix 2, Appendix 3 or (as the case may be) Appendix 4 to this part of the Constitution.

**DELEGATION TO OFFICERS THAT IS CONSEQUENTIAL UPON THE
ADOPTION OF THE NEW CONSTITUTION AND THE RESPONSIBILITY FOR
FUNCTIONS CONTAINED IN PART 3**

POWER	OFFICER
LAND TRANSACTIONS	
Authority to approve the terms on which land development project – other than schemes in the approved Capital Programme of other standing Committees – are undertaken (this to include industrial developments; town centre developments; major land assembly and development projects)	Chief Executive
Provision of valuation services for the Council	Chief Executive
ELECTIONS	
Register of Electors	Chief Executive
Authority to adjust fees in respect of elections	Chief Executive
FINANCE	
Authority to deal with purchase, maintenance and deployment of vehicles where the expenditure is not within an approved budget head	Chief Executive
HEALTH AND COMMUNITY SERVICES	
To deal with Renovation Grants including Disabled Facilities Grants and Minor Works Grants	Head of Environmental Services
Houses in Multiple Occupation	Head of Environmental Services
Private Sector Housing	Head of Environmental Services
Health Education	Head of Environmental Services
Pest Control	Head of Environmental Services
Food Protection	Head of Environmental Services

APPENDIX B

Control of Pollution (save for dog litter and litter generally)	Head of Environmental Services
Control of Pollution (dog litter and litter generally)	Head of Environmental Services
Water Quality	Head of Environmental Services
To deal with Infectious (communicable) and notifiable diseases	Head of Environmental Services
General health duties	Head of Environmental Services
To remove and dispose of abandoned vehicles	Head of Environmental Services
To deal with issues relating to the Sunday Trading Act 1994	Head of Environmental Services
To deal with issues relating to Health and Safety at Work (where the Council is the enforcing authority) including such matters within the Council's own buildings	Head of Environmental Services
Authority to deal with National Health Service issues	Head of Environmental Services
To take legal proceedings in respect of the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment (currently regulated by the Licensing Act 2003)	Legal Services Manager and Licensing Manager
The Health Act 2006 and associated regulations	Head of Environmental Services
HOUSING	
Authority to manage the housing stock including the replacement of existing Woolaway and Airey type houses and the updating of Cornish Unit properties	Head of Housing and Property
Authority to maintain and improve the housing stock	Head of Housing and Property
'Enabling role' – to act as a catalyst between landowners, private sector builders, housing associations and other agencies to ensure the	Head of Housing and Property

APPENDIX B

continued provision of affordable housing in the District	
The letting of properties and all matters incidental thereto including the collection of rents and recovery of possession	Head of Housing and Property
To provide a warden service	Head of Housing and Property
To deal with issues relating to the Central Alarm System (Piper Life Line)	Head of Housing and Property
To liaise with tenants including tenant participation	Head of Housing and Property
Authority to act in respect of unlawful eviction/harassment	Head of Housing and Property
Housing Advances	Head of Finance
Rent Rebates (Housing Benefit)	Head of Housing and Property
Sale of Council Houses	Head of Housing and Property
Authority to Repurchase former Council Houses	Head of Housing and Property
Council Shops	Head of Housing and Property
PLANNING	
To make representations in respect of new applications for Heavy Goods Vehicle Operators Licences or when a significant variation of an existing Licence is proposed	Head of Planning and Regeneration in consultation with the ward member as appropriate
EMPLOYEES	
Authority to deal with membership subscriptions and donations (other than recreation, leisure and arts)	Chief Executive

APPENDIX 6

PROPER OFFICERS

Earlier local government legislation required local authorities to appoint officers with specified titles but the Local Government Act 1972, in the main, abolished the procedure. This was in order to give local authorities freedom in deciding what officer posts to establish. It follows that the officers responsible for certain statutory duties can no longer be identified by the post they occupy. Consequently, the Act makes provision for certain officers to be designated by their employing authority as the "Proper Officer" to carry out particular functions under various Acts of Parliament.

1 CHIEF EXECUTIVE

The Chief Executive is appointed to the Proper Officer in relation to:-

- (a) any reference to any enactment passed before or during the 1971-72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26 October 1972 to the clerk of a Council or the town clerk of a borough which, by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council;
- (b) any reference in any local statutory provision to the clerk of the Council or similar which, by virtue of an order made under the Local Government Act 1972 or the Local Government Act 1992 is to be construed as a reference to the Proper Officer of the Council;
- (c) the following provisions:-

Statute	Role/Function/Responsibility	Proper Officer
Local Government & Housing Act 1989		
Section 4	Head of Paid Service	Chief Executive
Local Government Act 1972		
Schedule 12 Para 4(2)(b)	Signature of Summons to Council Meetings	Chief Executive
Sections 83(1) – (4)	Witness and receipt of declarations of acceptance of office	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Section 84	Receipt of declarations of	Chief Executive or,

	resignation of office	in his absence or as instructed by him, the Head of Communities and Governance
Section 88 (2)	Convening Council to fill casual vacancy in the office of Chairman	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Section 89(1)(b)	Receipt of notice of casual vacancy	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Section 96(2)	Keeping record of declarations of pecuniary interest and notices	Chief Executive or, in his absence or as instructed by him, the Head of Communities and Governance
Sections 100B(2), 100B(7), 100C(2) & 100F(2)	Distribution of summons and proceedings and release of documents to Councillors	Chief Executive or, in his absence or as instructed by him, the Member Services Manager

Schedule 12 4(3)	Receipt of notices regarding address to which summons to meeting are to be sent	Chief Executive or, in his absence or as instructed by him, the Member Services Manager
Schedule 14 25(7)	Certificate of resolutions	Chief Executive or, in his absence or as instructed by him, the Member Services Manager

2 LEGAL SERVICES MANAGER

The Legal Services Manager is appointed to the Proper Officer in relation to the following provisions:-

Statute	Role/Function/Responsibility	Proper Officer
Local Government Act 1972		
Section 225(1)	Deposit of Documents	Legal Services Manager
Section 229(5)	Certification of photographic copies of documents	Legal Services Manager
Sections 234(1) & (2)	Authentication of documents: Financial, Rating, Superannuation	Legal Services Manager and S.151 Officer
Sections 236(9) & (10)	Service of Byelaws on other Authorities	Legal Services Manager
Section 238	Certification of Byelaws	Legal Services Manager

Local Government Act 1974

Section 30(5)	Notice of Local Government Ombudsman's report	Legal Services Manager
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Local Government (Miscellaneous Provisions) Act 1976

Section 41	Evidence of resolutions and minutes of proceedings	Legal Services Manager
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Local Government and Housing Act 1989

Section 5(1)(a)	Monitoring Officer	Head of Communities and Governance
Sections 15 & 16	Appointment of Members to Committees	Head of Communities and Governance

Representation of the People Act 1983

Sections 8(1)(2)(a)	Registration Officer	Chief Executive
Sections 28 & 35	Electoral Registration Officer and Returning Officer	Chief Executive and Legal Services Manager

Issues in respect of Elections, etc.

3 CHIEF FINANCIAL OFFICER

The Financial Services Manager is the Council's statutory Chief Financial Officer and is appointed the Proper Officer in relation to the following:-

- (a) Any reference in any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any instrument made before 26 October 1972 to the Treasurer or a Treasurer of a Borough which by virtue of any provision of the said act is to be construed as a reference to the Proper Officer of the Council.
- (b) Any reference in any local statutory provision to the Treasurer of a specified Council which, by virtue of an order made under Section 254 of the Local Government Act 1972, or the Local Government Act 1992 is to be construed as a reference to the Proper Officer of the Council.

(c) Provisions of the Local Government Act 1972, as follows:-

Statute	Role/Function/Responsibility	Proper Officer
Local Government Act 1972		
Section 115 (2)	Receipt of money due from officers	S. 151 Officer or Chief Executive
Section 146 (1) (a) & (b)	Declarations and certificates with regard to securities	S.151 Officer or Chief Executive
Section 234(1) & (2)	Authentication of documents: Financial, Rating Superannuation	S.151 Officer or Chief Executive
Local Government Finance Act 1988		
Section 114	Reporting on decisions or actions which may result in unlawful expenditure or loss to the authority	S. 151 Officer

4 HEAD OF PLANNING AND REGENERATION

The Head of Planning and Regeneration is appointed the Proper Officer in relation to:-

Statute	Role/Function/Responsibility	Proper Officer
Local Government Act 1972		
Section 234(1) & (2)	Authentication of documents: Dangerous Structure Notices Certification of Local Plans	Head of Planning and Regeneration

The Head of Planning and Regeneration is appointed the Proper Officer in respect of powers contained in Section 78 of the Building Act 1984, ie, to act as “the surveyor” empowered to take and authorise emergency action in respect of damage and dangerous buildings, walls, etc, and to order the demolition of buildings rendered dangerous by fire damage, without prior authorisation of the Council.

5 HEAD OF ENVIRONMENTAL SERVICES

The Health Services Manager is appointed Proper Officer in relation to Section 47 National Assistance 1948 and Section 1 National Assistance (Amendment) Act 1951.

Statute	Role/Function/Responsibility	Proper Officer
Local Government Act 1972		
Sections 234(1) & (2)	Authentication of documents: - Notifiable Diseases and Food Poisoning	Head of Environmental Services
6 HEAD OF HOUSING		
Statute	Role/Function/Responsibility	Proper Officer
Local Government Act 1972		
Sections 234(1) & (2)	Authentication of documents: - Letting of Garages	Head of Housing and Property
7 HEAD OF COMMUNITIES AND GOVERNANCE		
Statute	Role/Function/Responsibility	Proper Officer
Local Government and Housing Act 1989		
Section 5(7)	Deputy Monitoring Officer	Solicitor
8 HEAD OF ICT		
Statute	Role/Function/Responsibility	Proper Officer
Data Protection Act		
1998	Data Protection Officer	Head of ICT
9 MISCELLANEOUS		
Statute	Role/Function/Responsibility	Proper Officer
Local Government Act 1972		
Section 112	Duties to be carried out by a Proper Officer	The Officer responsible for carrying out the duty

10 DECISION MAKING

The report author of any report to be considered by the Council or a Committee / Sub-Committee thereof is appointed as Proper Officer under the Local Government Act 1972 in relation to:-

- (a) the identification of and compilation of lists of background papers to reports;
- (b) the identification of confidential documentation.

11 OTHER

The Constitution and / or primary and secondary legislation associated with the Constitution and policy making functions and decision-making contain a range of Proper Officer posts. Save where prescribed in this part of the Constitution, those responsibilities are set out in the remainder of the Constitution, eg Council Procedure Rules. In the absence of any identified post holder, the Proper Officer shall be the Chief Executive.