

# **Part 3 - Responsibility for Functions**

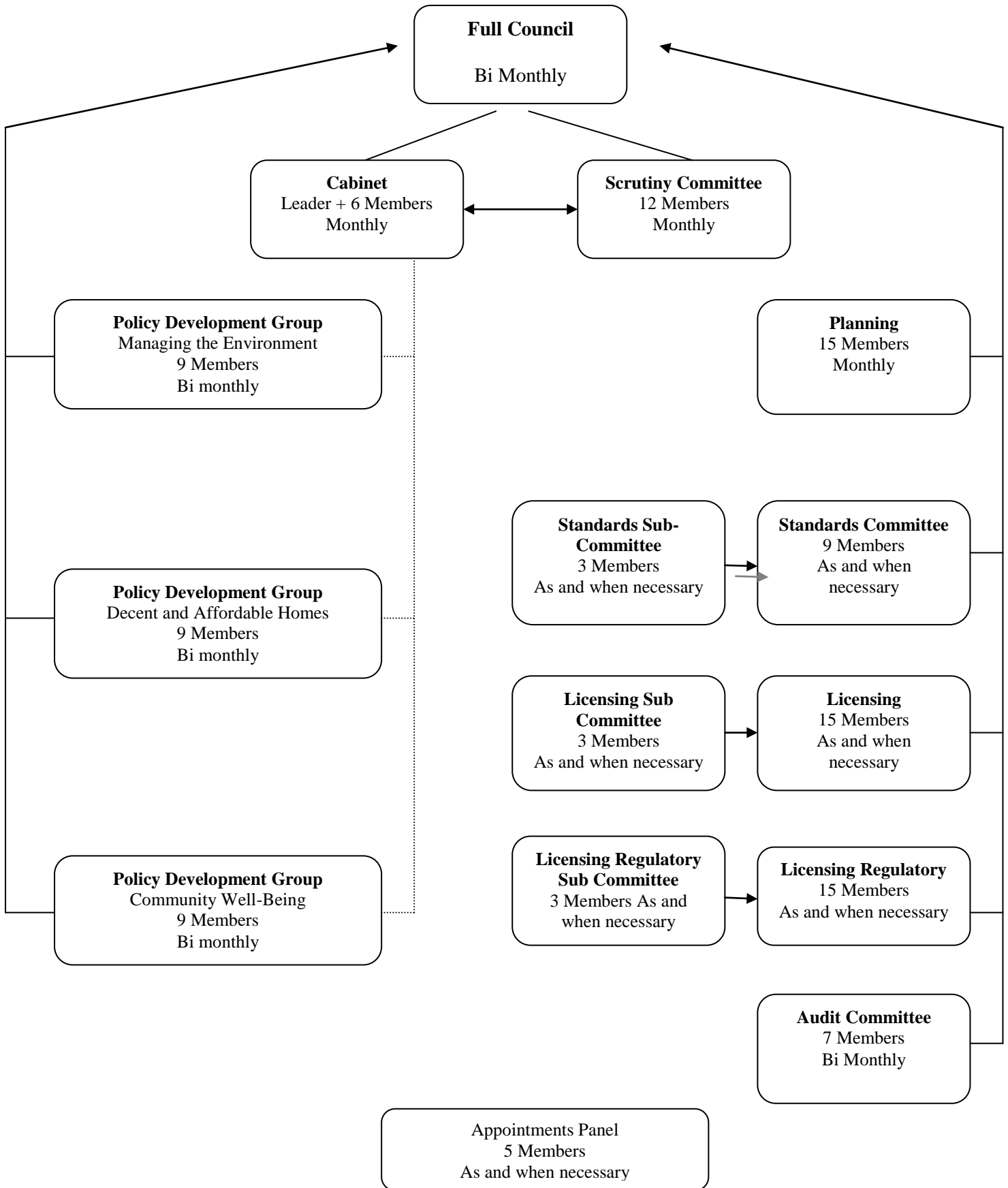
**LOCAL GOVERNMENT ACT 2000 AND  
LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT  
2007**

I, ....., Leader of Mid Devon District Council, in accordance with S.14 of the Local Government Act 2000 as amended by Part 3 of the Local Government and Public Involvement in Health Act 2007 **confirm** the arrangements for Responsibility For Functions contained in Part 3 of the Mid Devon District Council Constitution, November 2007, including all the arrangements for delegation of functions to the Cabinet, the arrangements of functions of the Cabinet members and the Scheme of Delegation to officers.

Signed:

Date:

## The Council's Committee Structure



# Scheme of Delegations

## INTRODUCTION

- 1.1 Legally a local authority depends upon a series of statutes which in some cases give it a power (ie a discretion) to do something – or – in others – a duty to carry out that function or service. Each power or duty is often made subject to various limits as to just how it is to be exercised.
- 1.2 Because of this statutory foundation for the work of local councils, it is important that we are always clear as to which statute we are using to achieve our purposes. Unless we make that clear then it is difficult, if not impossible, for the community to hold us to account.
- 1.3 Apart from “what and how”, we also need to make clear, for transparency and accountability purposes – “who” it is within the Council – that has the power to do something. This means that we must produce a “Delegation Scheme” describing these formal responsibilities.

## 2.0 **Who?**

- 2.1 To help understand what follows, there are a number of levels of decision making under our Constitution. Each of these is reflected by the tables which follow later in this section.
- 2.2 First, is **full Council** itself. Full Council retains a range of higher level decisions – many relating to our overall strategies – or to the setting of our annual budget and of council tax. Some of these functions can legally **only** be undertaken at this highest level. With others, it has been this Council’s own choice to do so (local choice functions).
- 2.3 Next, is **the Cabinet**. Under the Local Government Act 2000 the great majority of the Council’s decision making must only be carried out by or through the Cabinet – either meeting together – or in some cases – to be decided on an individual basis. The Act prevents other councillors making such decisions.
- 2.4 Then – as qualified above – are the **individual Cabinet Councillors** – where powers may be expressly delegated to them.
- 2.5 Next comes a group of “**regulatory functions**”. Broadly, these are roles where the Council has the task of controlling the activities of individuals – often on an application by application basis. To deal with these detailed controls, parliament decided that special committees should be retained – **outside** the Cabinet. In our case this means we have a Planning Committee, a Licensing Committee and a Licensing Regulatory Committee made up of elected members and which meet in public to hear and make decisions on the individual cases brought before them.
- 2.6 Finally are **the officers**. The great bulk of day to day operational decision making is delegated by the Council or the Cabinet or the Planning Committee to our professional staff. They need these powers so as to enable them to provide the services of the Council in the most economic, efficient and effective way.

## 3.0 **What?**

- 3.1 Attached are a number of tables setting out the broad areas of our statutory powers and the activities and functions we are involved in.
- 3.2 **Section 1** is a list of those matters which remain either with the full Council itself for decision or which are within its control – because the 2000 Act either requires

it or permits it. The section also shows to whom these powers have been delegated (if at all) – whether to a Committee or to an officer.

- 3.3 **Section 2** sets out those powers and duties which the Act **excludes** from Cabinet decision making – such as Planning, Licensing and Licensing Regulatory issues. These are listed as delegated to a Committee or to an officer with any limits on those delegations also included.
- 3.4 **Section 3** lists those powers and duties which are ones which **only** the Cabinet can deal with – itself – or through officers or its committees. This covers the great majority of our powers and duties – with most operational decision making continuing to be delegated to the officers under Section 5 below.
- 3.5 This part also lists functions across a series of Cabinet Functions. These reflect the current responsibilities of each of the current members of the Cabinet for the setting of the overall direction of these services.
- 3.6 **Section 4** describes the delegation arrangements to councillors and officers. This part also includes individual delegation to Cabinet Councillors. This will only be enforced following a specific resolution of Council. As with our current Delegation Scheme, most of the operational decision making under these powers and duties is delegated on to the officers.
- 3.7 **Section 5** describes the power and duties that are delegated to officers.

## SECTION 1

### The Powers Of The Council

4.0 The functions statutorily reserved to the Council are set out below in column 1. Column 2 shows who else is involved – either as having full statutory powers delegated to them or as being the source of a recommendation to full Council.

4.1 Where the power is shown as delegated to an officer, then that officer shall also have the power to re-delegate that power to another officer of the authority or to refer or to remit to another regulatory body of the Council for it to decide.

	<b>Function</b>	<b>If delegated – then to Whom?</b>
1	To set the <i>Policy Framework</i> and the <i>Budget</i> within which the Cabinet must operate. (Both these terms are defined below)	Council – on the recommendation of the Cabinet
2	In a limited range of cases – to make decisions about the discharge of a “Cabinet function”. This applies <b>only</b> to those cases where the decision maker is considering an issue – which is not only:- (a) covered by the Policy Framework or the Budget, but also - (b) where the decision maker is inclined to make it in a manner which:- <ul style="list-style-type: none"> <li>• would be contrary to that Framework, or</li> <li>• would be contrary to/or not wholly in accordance with the Budget</li> </ul>	Council – on the recommendation of the Cabinet
3	To exercise – through delegated powers – those “regulatory functions” (these are listed in detail at Section 2 of this part of the Constitution) which must not be within the remit of the Cabinet:- (a) Development Control; Building Control  (b) Licensing and other Regulatory Functions	Planning Committee; Chief Executive Head of Planning and Regeneration;  Licensing Committee; Regulatory Committee; Chief Executive; Head of HR and Development

	<p>(c) Food Safety</p> <p>(d) Health &amp; Safety at Work (this relates only to those functions which the Council exercises <b>other than</b> as employer)</p> <p>(e) Electoral services</p> <p>(f) Staffing matters (other than those dealt with in the Constitution under Standing Orders as to Employment of Officers)</p> <p>(g) Ceremonial and those Miscellaneous matters</p>	<p>Chief Executive; Head of HR &amp; Development</p> <p>Chief Executive Head of HR &amp; Development</p> <p>Returning and Electoral Registration Officer</p> <p>Head of Paid Service (Chief Executive); Head of HR and Development;</p> <p>Council</p>
4	To agree and/or to amend the terms of reference of the Planning Committee, the Licensing Committee and the Regulatory Committee	Council – on the recommendation of the relevant Committee
5	To decide the number of seats to be allocated to each Party Group( or to independent councillors) in accordance with the “proportionality” rules in the Local Government & Housing Act 1989	Council – on the recommendation of the Monitoring Officer
6	To confirm the appointment of the Head of Paid Service	Council – on the recommendation of the relevant Appointments Panel set up for that purpose
7	To appoint the Monitoring Officer and the Section 151 Officer	Council – on the recommendation of the Head of Paid Service
8	To confirm the dismissal of the Head of Paid Service or of the Monitoring Officer or the Section 151 Officer	Council – on the recommendation of the relevant Appointments Panel set up for that purpose and the recommendation of an appointed Independent Person
9	To elect the Leader of the Council	Council – on the recommendation of the controlling political group or groups of the Council

10	<b>To remove the Leader</b>	Council – in accordance with the procedure in Article 7
11	To adopt the Constitution and agree any major changes to it	Council – on the recommendation of the Standards Committee
12	To approve any applications to the Secretary of State in respect of a Housing Land Transfer	Council – on the recommendation of the Cabinet
13	To appoint and dismiss representatives to those outside bodies whose role is <b>not</b> closely linked to an Cabinet function	The Chief Executive acting on the advice of the relevant Committee
14	To adopt/modify a Members' Allowances Scheme	Council – on the recommendation of the Independent Remuneration Panel
15	To change the name of the area	Council
16	To confer the title of honorary alderman	Council
17	To make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation	Council – on the recommendation of the Cabinet
18	To adopt any plan or strategy (whether statutory or non-statutory) which the Council has decided should be undertaken by itself rather than by the Cabinet	Council – on the recommendation of the relevant Committee
19	To deal with any other matter which, by law, must be reserved to Council	Council

- 4.2 **The Council's Policy Framework** is defined in Article 4 of the Constitution. It consists of a series of important plans and strategies which form the basis for many of its services. Each is a substantial document in itself which is regularly reviewed and updated. They are not, therefore, included in this Constitution but current copies are always available at Phoenix House.
- 4.3 **The Budget** includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax Base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its Capital Expenditure.
- 4.4 Whilst decisions on the framing of the Budget itself are ones for the full Council, many of the operational issues relating to monitoring and to virement are delegated to either the Cabinet, potentially to Cabinet Councillors or to the officers – subject always to the approval of the Section 151 Officer.



## SECTION 2

# Regulatory Powers Of The Council

5.0 In order to carry out the Council's "regulatory powers" the following Committees be constituted:-

- Planning Committee – 15 members
- Licensing Committee – 15 members
- Licensing Regulatory Committee – 15 members

5.1 The powers and duties of these committees are set out below:-

PLANNING COMMITTEE
<b>Membership – Fifteen Members of the Authority</b>
<b>Function</b>
To exercise quasi-judicial functions on behalf of the Council as set out below.
<b>Matters Delegated to this Committee</b>
<ul style="list-style-type: none"><li>• Planning and conservation functions relating to town and country planning and development control and all matters concerning trees</li><li>• To confirm and consider changes to the existing Scheme of Delegation to the Head of Planning and Regeneration</li><li>• Conservation Policy</li></ul>

LICENSING COMMITTEE
<b>Membership – Fifteen Members of the Authority</b>
<b>Function</b>
To exercise quasi-judicial functions on behalf of the Council as set out below.
<b>Matters Requiring Submission to the Council</b>
<ul style="list-style-type: none"><li>• Statement of Licensing Policy under section 5 of the Licensing Act 2003</li><li>• Licensing Policy</li></ul>
<b>Matters Delegated to this Committee</b>
<ul style="list-style-type: none"><li>• Liquor, Gaming, Entertainment and Licensing;</li><li>• Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations.</li><li>• To confirm the scheme of delegation of functions in the Guidance to the Licensing Act 2003 as set out below:</li></ul>

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for personal licence		If an objection made	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representations made
Application for provisional statement		If a representation made	If no representations made
Application to vary premises /licence/club premises certificate		If a representation is made	If no representations made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence /club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc			All cases
Decision to object		All cases	

when local authority is a consultee and not the relevant authority considering the application			
Determination of a police objection to a temporary event notice		All cases	
<ul style="list-style-type: none"> <li>Functions permitted under the Gambling Act 2005</li> </ul>			
<b>Matter to be dealt with</b>	<b>Full Council</b>	<b>Sub-Committee of Licensing Committee</b>	<b>Officers</b>
Three year licensing Statement of Principles	X		
Policy not to permit casinos	X		
Fee Setting (when appropriate)			X
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received / representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received / representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission

Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received / representations have been withdrawn
Review of a premises licence		X	
Application for club gaming / club machine permits		Where objections have been made (and) not withdrawn	Where no objections made / objections have been withdrawn
Cancellation of club gaming / club machine permits		X	
Applications for other permits			X
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	

LICENSING REGULATORY COMMITTEE
<b>Membership – Fifteen Members of the Authority</b>
<b>Function</b>
To exercise quasi-judicial functions on behalf of the Council as set out below.
<b>Matters Requiring Submission to the Council</b>
None
<b>Matters Delegated to this Committee</b>
<ul style="list-style-type: none"><li>• Taxi, Private Hire and Miscellaneous Licensing</li></ul>

## SECTION 3

### Cabinet Powers

- 6.0 The majority of the decision making of the Council relates to areas which are defined as “Executive matters” within the 2000 Act and can therefore **only** be dealt with via the Cabinet.
- (a) The Cabinet meeting as a body **can** make Cabinet decisions;
  - (b) So too can individual Cabinet Councillors. Council will identify particular powers which should be taken by individual Cabinet Councillors;
  - (c) The great majority of operation decision making within policy and the budget will, as before, be the responsibility of the officers – through the Delegation Scheme – subject to the limitations included here;
  - (d) The need for both transparency and accountability require that decision making of this type under the Act needs to be carefully controlled and recorded and that all councillors together with the press and public have full access to those decisions – not only at the time – but also before and after – they are made;
  - (e) Certain types of decisions – **key decisions** – have great levels of safeguards placed upon them and require (for instance) consultation with the Council’s Scrutiny Committee, Audit Committee and Policy Development Groups before being progressed;
  - (f) Those members who are **not** Cabinet Councillors cannot make those decisions;
  - (g) Neither full Council nor Scrutiny Committee, Audit Committee or Policy Development Groups can make Cabinet decisions.
- 6.1 This Delegation Scheme has, therefore, been based on the following features:-
- (a) Most day to day operational decision making powers are delegated to the Council’s officers (see section 7.2);
  - (b) the role of the Cabinet – meeting as a body – has been designed to avoid such operational decisions coming to it **unless** they are **key decisions** or are otherwise of real significance across the Council’s services;
  - (c) the Cabinet’s major role will be in defining and reviewing the Council’s strategies and significant policies and in advising the Council on these matters and as to the Budget;
  - (d) where decisions **can** be made at a lower level, then the Cabinet will ensure that this Scheme is designed, implemented and modified so as to achieve that purpose;
  - (e) before accepting an item for the Cabinet’s agenda, the Leader or the relevant Cabinet Member, together with the Principal Member Services Officer, will satisfy themselves that the issue could not be otherwise properly dealt with under delegated powers;
  - (f) where a matter arises which involves a range of detailed issues but is of such significance that it must be taken to the Cabinet – then the Leader or the relevant Cabinet Member responsible for that service must assess

whether the matter is of such urgency that it would **not** be practical for the advice to be first obtained from:-

- (i) the Scrutiny Committee, Audit Committee or the relevant Policy Development Group, or
  - (ii) an officer, or
  - (iii) a committee of the Cabinet itself;
- (g) so as to make sure that its strategic role is clearly identified and maintained, reports to the Cabinet will be written in such a form that ensures that:-
- (i) unnecessary detail is excluded;
  - (ii) policy factors are clearly identified and analysed;
  - (iii) impact upon our corporate priorities is identified;
  - (iv) all necessary consultation as to its content has taken place, and
  - (v) the issues for decision by the Cabinet are justified as ones which could not reasonably be taken elsewhere.

## SECTION 4

# Delegations To Cabinet Councillors And Officers

### 7.1 Principle 1

The overriding principle upon which the Council's Delegation Scheme is founded is:

All the Council's statutory powers and duties in relation to the functions and activities (listed in the following table) are delegated to either the relevant Cabinet Member or to the Cabinet and from there, as shown, to the Management Team. Those listed include all such incidental and ancillary powers as are needed in order to carry out those functions together with all statutory powers delegated to either Cabinet Member or to the Cabinet by another local authority by virtue of an agreement under the Local Government Acts. Such decisions of the Cabinet may, from time to time, be delegated to the relevant Cabinet Member subject at all times to the following provisos:-

- (a) the decision in question is not a "key decision";
- (b) the power to make the decision has not previously been delegated to an officer;
- (c) the Cabinet Member has considered what consultation is necessary with regard to the proposed decision – including the need to consult with local Ward Members;
- (d) the proposed decision is compliant with the terms and conditions of the existing policy framework;
- (e) receipt and consideration of a written report containing a summary of the legal, financial and all other relevant implications arising from the proposed decision;
- (f) publication of the proposed decision in accordance with the Cabinet Procedure Rules referred to in Part 4 of the Constitution.

7.2 The consequent powers to make all operational decisions as to the Council's services are delegated to the Head of Paid Service, to the Monitoring Officer and to the Section 151 Officer (these are referred to as the "statutory officers"), together with the Heads of Services (who are together known as the "Management Team"), so long as the decision:-

- (a) falls within the Council's Policy Framework, and
- (b) is otherwise within our approved policies, and
- (c) complies with the law, Financial and Contracts Procedure Rules, and other controls within this Constitution, and
- (d) is wholly in accordance with the budget for the current and following year, and
- (e) has not been disapproved by any of the "statutory officers", and
- (f) has not been the subject of a request from the responsible Cabinet Member (if any) for the decision to be remitted to the Cabinet.

### 7.3 Principle 2



Even where statutory power has been delegated, the delegatee still retains a discretion as to how the decision is to be taken. Either:-

- (a) to deal with it him/herself;
- (b) to “remit” the decision – “upwards” (ie – in order to seek endorsement of a proposed decision) – in the case of “Cabinet matters” to the Cabinet, or in the case of a non-Cabinet matter to the Council or to the Planning Committee or to the Regulatory Committees; either Licensing or Regulatory;
- (c) to further delegate that power;
- (d) to consult others before exercising the power;
- (e) to take the decision jointly with other Cabinet Member or officers.

#### 7.4 **Principle 3**

It is expected that, within these delegations, the officers will keep Cabinet Member fully briefed as to the services for which they are responsible and that they will consult with the relevant Cabinet Member on issues where either believe that this is needed. Built upon this foundation, it is anticipated that this will mean that a number of otherwise delegated decisions will, in practice, be taken either by – or in consultation with – the Cabinet Member where he/she believes the matter to be one of a particular sensitivity or corporate significance.

#### 7.5 **Principle 4**

So as to avoid any misunderstandings as to the exercise of these powers, each Cabinet Member and/or each member of the Management Team will adopt the following procedure:-

- (a) completion of the Decision Recording Form at Appendix 3 of Part 3 of the Constitution by member of Management Team and/or other officer;
- (b) consultation with the relevant Cabinet Member(s) and Officer(s);
- (c) agree approach as to the scope for joint decisions;
- (d) Cabinet Member to sign Decision Recording Form.

#### 7.6 **Principle 5**

Any further general delegation of specific statutory powers by Management Team to an officer under Principle 2 shall be made in writing and shall record its extent and any limitations on the exercise of those powers.

A copy of any such delegation shall be provided to The Monitoring Officer who, as “proper officer”, when so required has the duty formally to certify the existence and validity of those statutory powers in any legal proceedings or to sign formal agreements on the Council’s behalf giving effect to those decisions.

7.7 Within these principles, the following table lists the range of functions for which all the Council’s statutory powers and duties are delegated to the Cabinet and then to the Management Team. The table shows the current service portfolios each of which is held by a Cabinet Member as responsible for the overall policy direction for that service. The table also shows the “lead officer” who is primarily responsible for the delivery of that service. Any limits upon the delegations to the officers (other than those listed above) are shown here.

## **DELEGATION OF CABINET FUNCTIONS**

### **General Delegation to all Cabinet Members (subject to requirement that the matter is within the terms and reference of their respective Portfolio)**

- 8.0 Authority to issue press releases and deal with the press.
- 8.1 Authority to approve proposals and schemes in respect of operational matters that are required to implement the policy framework.
- 8.2 Authority to accept the lowest tender, provided it falls within the sum set by the Cabinet, if payment is to be made by the Council, or the highest tender, if the payment is to be received by the Council, such acceptance to be reported to the next meeting of the Cabinet where tenders or offers are invited by the Council for:
  - (a) carrying out of works in accordance with the specification and/or bills of quantity (over the sum of £50K), or,
  - (b) purchase or sale of land, premises (over the sum of £100K), vehicles, equipment or machinery surplus to the Council's needs (over the sum of £50K), or,
  - (c) concessions in accordance with detailed particulars to accept a tender provided the accepted sum is within estimates.
- 8.3 Authority to approve alteration and extensions to schedules/specifications to contract that do not have the effect of exceeding a previously approved budget sum, subject to legal advice.
- 8.4 Authority to approve a maximum 5% "overspend" in respect of expenditure on works for a specified project within an approved budget.
- 8.5 Authority to approve acquisitions, disposals and leases where in accordance with the policy framework and subject to relevant terms and conditions being negotiated by the relevant member of the Management Team.
- 8.6 Authority to increase or alter fees and charges, subject to a statutory consultation and/or advertisement procedure where applicable.
- 8.7 Dealing with human resources related issues (except those delegated to the Chief Executive), including organisational reviews but excluding additions to the approved establishment outside the approved budget (that would previously have been a matter for the Cabinet).
- 8.8 Submitting comments on any consultation paper, report, information item, progress item or proposed or actual policy of any external body (for example, government policies, planning guidance, white and green papers, etc). Such matters will be reported in the Weekly Information Sheet.
- 8.9 Approving all grants within the approved budget but excluding those already delegated to officers.

- 8.10 All decisions necessary to enable the Council to implement the Council's agreed Capital Programme.
- 8.11 Appointments to external bodies.

**MODEL DECISION RECORDING FORM**

DECISION:

--

REASON FOR DECISION:

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DECISION BY:

\* Cabinet Member .....

\* Officer .....

*\* Member or Officer as appropriate*

**CONSULTEES**

WARD	
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HAS/HAVE WARD MEMBER(S) BEEN CONSULTED?	YES*/NO (delete as appropriate)
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COMMENTS OF WARD MEMBER(S)
----------------------------

COMMENTS OF OTHER CONSULTEES

DATE OF DECISION:

EXEMPT INFORMATION?

YES\*/NO (delete as appropriate)

\*If yes to either question, state why:

FINANCIAL, LEGAL & EQUALITY ISSUES, IF ANY:

RISK ASSESSMENT

ADDITIONAL INFORMATION/DOCUMENTS TAKEN INTO ACCOUNT:\*

\* additional means additional to anything containing exempt information

SIGNED

.....

(Member or officer taking decision)

DATE ..... (of decision)

IMPORTANT NOTE: This form shall be circulated to Members and also published on Sharepoint.

## 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 (Head of Paid Service)

### 2.2 The Management Team

The Management Team (MT) will comprise the Chief Executive, the Heads of Communities and Governance (Monitoring Officer), Finance (Section 151 Officer) Business Information Service, Planning and Regeneration Service, Housing and Property Services, Human Resources and Development and Customer First.

The purposes of the MT 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;
- (d) there is effective monitoring of the Council's corporate aims and performance; and
- (e) Ensure that the business of the Council is carried out in a proper manner

### 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 STATUTORY OFFICERS AND OTHER PRINCIPAL OFFICERS

### 3.1 THE CHIEF EXECUTIVE (HEAD OF PAID SERVICE)

#### Delegation

All Council 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.

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) Elections
- (c) All functions listed under the Heads of Service in 3.2 to

#### **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 12 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 (MONITORING OFFICER)**

#### **Delegation**

The Head of Communities and Governance shall be the Monitoring Officer and is authorised to exercise the following functions:

- (a) Economic Development
- (b) Community Development
- (c) Markets
- (d) Internal Audit
- (e) Risk Management
- (f) Performance Management
- (g) Strategic Corporate Planning
- (h) Safeguarding of Children and Vulnerable Adults
- (i) Member Services
- (j) Legal Services
  
- (k) As Monitoring Officer, 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 12 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.

### **3.3 HEAD OF FINANCE (SECTION 151 OFFICER)**

#### **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) Waste and Recycling Management
- (d) Environmental Enforcement

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 12 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 PLANNING AND REGENERATION**

**Delegation**

The Head of Planning and Regeneration is authorised to exercise the following functions:-

- (a) Development Control
- (b) Forward Planning
- (c) Conservation
- (d) Building Control

**Exceptions and Conditions**

There is excepted from the delegation to the Head of Planning and Regeneration 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 Planning and Regeneration.

The Head of Planning and Regeneration must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 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.

#### **Delegation specific to the Planning Function**

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 and Regeneration 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 and Regeneration to refuse if Section 106 Agreements are not signed and completed within 8 or 13 week time-scale.

##### **In the case of re-negotiations on planning obligation (S106 Agreements and Undertakings);**

1. Is submitted under Section 106 BA of the Town and Country Planning Act 1990, if Committee considerations would be outside the date of determination delegated authority is given to the Head of Planning and Regeneration to agree amendments in consultation with the Head of Housing, the Cabinet Member for Housing and the Chair of Planning Committee

2. In the case of renegotiations on another planning obligation issues the Ward Member or Chair or Vice Chair of Planning requires that the Committee consider the proposed changes having given clear planning reasons otherwise they will be delegated to the Head of Planning and Regeneration

**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 the Community Infrastructure Levy Regulations (CIL) and associated enforcement:

1. Formal CIL enforcement action comprising CIL Stop Notice or in the case where urgent action is required to commence enforcement proceedings consisting of the service of a CIL Stop Notice or commence CIL Injunction proceedings. These proceedings only to be instigated in consultation with one or more of the following: Planning Chairman, Vice Chairman, Ward Member.

**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 and policies with reasoned justification for publication and consultation or adoption at the following stages (other than where minor modifications and other minor changes are made).

- Local Plan options consultation
- Publication and consultation of the ‘submission’ Local Plan
- 
- Local Plan Adoption

**In the case of Planning Policy:**

- 1 Representations to strategic plans and policies at a larger than District scale are to be made
- 2 Supplementary Planning Documents dealing with Mid Devon wide guidance and sites/areas for publication prior to consultation and for adoption (other than where minor modifications and other minor changes are made)

*(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*

- 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.

## **3.5 HEAD OF HUMAN RESOURCES AND DEVELOPMENT**

### **Delegation**

The Head of Human Resources and Development is authorised to exercise the following functions:-

- (a) Human Resources
- (b) Payroll
- (c) Learning and Development
- (b) Leisure
- (c) Licensing
- (d) Environmental Health
- (e) Private Sector Housing
- (f) Health & Safety

### **Exceptions and Conditions**

There is excepted from the delegation to the Head of Human Resources and Development 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 Human Resources and Development.

The Head of Human Resources and Development must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 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.

## **3.6 HEAD OF HOUSING AND PROPERTY SERVICES**

### **Delegation**

The Head of Housing and Property Services is authorised to exercise the following functions:-

- (a) Housing Services
- (b) Property Services
- (c) Grounds Maintenance
- (d) Community Safety
- (e) Emergency Planning

### **Exceptions and Conditions**

There is excepted from the delegation to the Head of Housing and Property Services 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 Housing and Property Services.

The Head of Housing and Property Services must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 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.

### **3.7 HEAD OF CUSTOMER SERVICES**

#### **Delegation**

The Head of Customer Services is authorised to exercise the following functions:-

- (a) Customer Services
- (b) Communications
- (c) Revenues

#### **Exceptions and Conditions**

There is excepted from the delegation to the Head of Customer Services 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 Customer Services.

The Head of Customer Services must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 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.

### **3.8 HEAD OF BUSINESS INFORMATION SERVICES (BIS)**

#### **Delegation**

The Head of Business Information Services is authorised to exercise the following functions:-

- (a) ICT
- (b) Information Management
- (c) Gazetteer Management
- (d) Land Charges:

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

#### **Exceptions and Conditions**

There is excepted from the delegation to the Head of BIS 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 BIS.

The Head of BIS must at all times comply with the Council's Constitution and particularly the principles of decision making found in Article 12 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.

## **4 FUNCTIONS DELEGATED TO ALL HEADS OF SERVICE**

### **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, all Heads of Service are 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 Head of Service Officer must comply with the principles of decision making set out in Article 12 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 kept by the Monitoring Officer; 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 12, Paragraph 12.02 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 OFFICER 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 Contract 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**

When making a decision delegated officers must consider:-

- (1) 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 process 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.
- (2) Budget
  - (a) The approved budget and financial plan.
- (3) Policies and Plans
  - (a) The approved policy framework, which is approved by Council annually.
  - (b) Whether the matter would involve a new policy issue.
- (4) General Considerations
  - (a) General consequences
  - (b) Legal consequences
  - (c) Personnel consequences
  - (d) Human Rights consequences
  - (e) Environmental consequences

## **8 SELECTING THE PROCESS 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?  
It does if the subject matter of the decision falls within the terms of reference of the Council  
the nature of the decision is such that the delegated officer ought to refer to the Council.
- (b) If not, does the decision need to be taken by the Cabinet or a committee or individual Cabinet Member?  
It does if:
- the subject matter of the decision falls within the terms of reference of the Cabinet or the committee or individual Cabinet Member;
  - the nature of the decision is such that the delegated officer ought to refer to the Cabinet or committee or individual Cabinet Member.
- (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 Leader and/or relevant Cabinet Member(s), a committee chairman or the relevant Head of Service.

The formal requirements of this guidance 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.

<b>TABLE A - DECISION MAKING PROCESSES AND THEIR USES</b>	
<b>Decision making process:</b>	<b>To be used:</b>
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> <p>(a) required by law;</p> <p>(b) it is the approval of the budget and policy framework;</p> <p>(c) it has been referred to full Council by the Cabinet or one of the committees of the Council.</p>
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"> <li>- the Cabinet Member</li> <li>- a committee chairman of a relevant committee</li> <li>- ward member(s)</li> <li>- Management Team</li> <li>- one or more Heads of Service</li> </ul>	<ul style="list-style-type: none"> <li>- 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.</li> <li>- if (a) the matter would have previously been considered by a committee, and (b) there are significant policy, resource or legal issues and/or significant public/councillor interest.</li> <li>- if there are issues which would have significant impact on the community where it would have previously been considered by the committee in question.</li> <li>- where there are significant cross-department policy issues and/or there would be significant cross-department effects on service delivery</li> <li>- where there would be significant effects on the policies and/or service delivery for a Head of Service responsible</li> </ul>

### 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

Planning Committee, Licensing Committee and Regulatory Committee

### 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

In addition to the formal requirements set out in Table A, delegated officers should ensure, through informal processes (including member briefing), that the

relevant ward councillors and all councillors, if appropriate are kept informed and given the opportunity to contribute.

#### **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 INTERPRETATION**

#### **9.1 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.

#### **9.2 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.

## APPENDIX 1

### **FUNCTIONS WHICH CANNOT BE EXERCISED BY A DELEGATED OFFICER**

- 1 Consideration of certain Ombudsman Reports  
(*S31A Local Government Act 1974*)
- 2 Consideration of reports of the Chief Finance Officer  
(*S115 Local Government Finance Act 1988*)
- 3 Consideration of reports of the Head of Paid Service  
(*S4(5) Local Government and Housing Act 1989*)
- 4 Consideration of reports of the Monitoring Officer  
(*S5(5) Local Government and Housing Act 1989*)
- 5 Certain functions relating to non-domestic rating  
(*S139 Local Government Finance Act 1988*)
- 6 Certain functions relating to Council Tax  
(*S67 Local Government Finance Act 1992*)
- 7 Making bylaws  
(*S235 Local Government Act 1972*)
- 8 Promoting legislation  
(*S239 Local Government Act 1972*)
- 9 Reports of the External Auditor  
(*S160 Local Government Act 1972*)

### CORPORATE PERSONNEL FUNCTIONS

The following functions will be exercised by the Chief Executive:

- (a) Approval of strategic personnel policies
- (b) Council wide pay and grading structure and the job evaluation process which underpins it
- (c) Re-organisation/restructuring within services which result in a re-allocation of responsibilities and/or change in post titles
- (d) Heads of Service pay/gradings (determined by South West Employers and then ratified by Pay & grading Group)
- (e) Appointment of Heads of Service
- (f) Management competency and appraisal schemes
- (g) Changes in application of discretionary pension provisions for Local Government Pension Scheme (LGPS) and Total Pensionable Service (TPS)
- (h) Approval of early retirements/added years (where award of added years exceeds standard council policy)
- (i) Approval of personnel, employee development and health and safety procedures/codes of practice
- (j) Approval of revisions to conditions of service for employees arising from enhanced local discretion, new employment legislation, EC directives etc (including variations to/departures from National Agreements/Conditions of Service)
- (k) Early retirements (except ill-health) within the Council's Discretionary Pensions Policy
- (l) Trade union (corporate) facility time
- (m) Collective Dispute Hearings
- (n) Personnel/TUPE implications of the externalisation of functions
- (o) Approval of compensation in relation to such issues as the settlement of employment tribunal cases
- (p) Ring fencing for appointments
- (q) Appeals under the Job Evaluation Scheme (delegated to the Pay & Grading Group)
- (r) Payment of salaries above an employee's substantive grade (delegated to the Pay & Grading Group)

#### Note

In accordance with the requirements set out above the functions at (a) to (o) above will be exercised following consultation with the Leader of the Council.



## **Onward Delegation**

The Corporate Personnel Functions are exercised by the Chief Executive and are highlighted in Part 3 of the Constitution.

Attached is an authorisation from the Chief Executive who has determined that certain functions may be further delegated.

## **Onward Delegation to Heads of Service**

- 1 Minor changes to staffing structures within services, including reallocation of responsibilities and/or change of post title. Major reorganisation/restructuring of whole service units will require discussion at Corporate Management Team.
- 2 Management competency and appraisals schemes.  
Involves a decision as to whether or not a relevant qualification is appropriate to a particular job and whether that can be highlighted as an ongoing training need in an appraisal scheme.
- 3 Approval for trade union activities.
- 4 Personnel/Tupe implications of any externalisation of functions.
- 5 Approval of compensation in relation to such issues as settlement of employment tribunal cases.
- 6 Ring fencing for appointments.
- 7 Appeals under the Job Evaluation scheme.
- 8 Payment of salary above the employee's substantive grade.
- 9 Appointment of staff.
- 10 Appointment of temporary staff for contracts less than 12 months within budget
- 11 Overtime payments.
- 12 Incremental increase within grade.
- 13 Bouquet/Merit payments (delegated to the Pay & Grading Group).
- 14 Honorarium payments (delegated to the Pay & Grading Group)

Finally, it should be remembered that decisions taken by Heads of Service are to be taken in the name of the Chief Executive and have the effect as if they had been taken by the Chief Executive. It should be further remembered that a function carried out by the Head of Service in relation to the above mentioned delegations must be recorded in writing.

## **Onward Delegation to the Pay and Grading Group**

The Pay and Grading Group consists of Management and Union representatives and deals with the Job Evaluation Scheme.

Appeals under the Job Evaluation Scheme

Payment of salaries above an employee's substantive grade

Bouquet/Merit payments

Honorarium payments

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

POWER	OFFICER
<b>LAND TRANSACTIONS</b>	
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
<b>ELECTIONS</b>	
Register of Electors	Chief Executive
Authority to adjust fees in respect of elections	Chief Executive
<b>FINANCE</b>	
Authority to deal with purchase, maintenance and deployment of vehicles where the expenditure is not within an approved budget head	Chief Executive
<b>HEALTH AND COMMUNITY SERVICES</b>	
To deal with Renovation Grants including Disabled Facilities Grants and Minor Works Grants	Head of Human Resources & Development
Houses in Multiple Occupation	Head of Human Resources & Development
Private Sector Housing	Head of Human Resources & Development
Health Education	Head of Human Resources & Development
Pest Control	Head of Human Resources & Development
Food Protection	Head of Human Resources & Development
Control of Pollution (save for dog litter and litter	Head of Human Resources

generally)	& Development
Control of Pollution (dog litter and litter generally)	Head of Finance
Water Quality	Head of Human Resources & Development
To deal with Infectious (communicable) and notifiable diseases	Head of Human Resources & Development
General health duties	Head of Human Resources & Development
To remove and dispose of abandoned vehicles	Head of Finance
To deal with issues relating to the Sunday Trading Act 1994	Head of Human Resources & Development
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 Human Resources & Development
Authority to deal with National Health Service issues	Head of Human Resources & Development
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 Officer
The Health Act 2006 and associated regulations	Head of Human Resources & Development
<b>HOUSING</b>	
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 Services
Authority to maintain and improve the housing stock	Head of Housing and Property Services
'Enabling role' – to act as a catalyst between landowners, private sector builders, housing associations and other agencies to ensure the continued provision of affordable housing in the District	Head of Housing and Property Services

The letting of properties and all matters incidental thereto including the collection of rents and recovery of possession	Head of Housing and Property Services
To deal with issues relating to the Central Alarm System (Piper Life Line)	Head of Housing and Property Services
To liaise with tenants including tenant participation	Head of Housing and Property Services
Authority to act in respect of unlawful eviction/harassment	Head of Housing and Property Services
Housing Advances	Head of Finance
Calculation of Rent Rebates (Housing Benefit)	Head of Housing and Property Services
Sale of Council Houses	Head of Housing and Property Services
Authority to Repurchase former Council Houses	Head of Housing and Property Services
Management of Council Shops and Commercial Units	Head of Housing and Property Services
Authority in consultation with the appropriate Cabinet Member to acquire sites and affordable housing units for the continued provision of affordable housing in the District	Head of Housing and Property Services
Authority in consultation with the Cabinet Member for Housing to apply for Homes and Communities Agency (HCA) or any other funding for the continued provision of affordable housing in the District	Head of Housing and Property Services
<b>PLANNING</b>	
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
<b>EMPLOYEES</b>	
Authority to deal with membership subscriptions and donations (other than recreation, leisure and arts)	Chief Executive

## 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 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:-

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government &amp; Housing Act 1989</b>		
Section 4	Head of Paid Service	Chief Executive
<b>Local Government Act 1972</b>		
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
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 Principal Member

		Services Officer
Schedule 14 25(7)	Certificate of resolutions	Chief Executive or, in his absence or as instructed by him, the Principal Member Services 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
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Sections 15 & 16	Appointment of Members to Committees	Head of Communities and Governance
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**Representation of the People Act 1983**

Sections 8(1)(2)(a)	Registration Officer	Chief Executive
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Sections 28 & 35	Electoral Registration Officer and Returning Officer	Chief Executive
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Issues in respect of Elections, etc.

**2 HEAD OF COMMUNITIES AND GOVERNANCE**

The Head of Communities and Governance is the Council’s statutory Monitoring Officer and is appointed as the proper Officer in relation to the following:

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government and Housing Act 1989</b>		
Section 5(7)	Appointment of the Deputy Monitoring Officer	Solicitor
<b>Localism Act 2011</b>		
Chapter 7, Section 29(1)	Keeping record of declarations of pecuniary interest and notices	Head of Communities and Governance (Monitoring Officer) or, in her absence or as instructed by her, the Deputy Monitoring Officer

**3 HEAD OF FINANCE**

The Head of Finance 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:-

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
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
<b>Local Government Finance Act 1988</b>		
Section 114	Reporting on decisions or actions which may result in unlawful expenditure or loss to the authority	S. 151 Officer or Finance Manager

#### 4 HEAD OF PLANNING AND REGENERATION

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

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
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 HUMAN RESOURCES AND DEVELOPMENT

The Head of Human Resources and Development is appointed Proper Officer in relation to Section 47 National Assistance 1948 and Section 1 National Assistance (Amendment) Act 1951.

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Sections 234(1) & (2)	Authentication of documents: - Notifiable Diseases and Food Poisoning	Head of Human Resources and Development

## 6 HEAD OF HOUSING AND PROPERTY SERVICES

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Sections 234(1) & (2)	Authentication of documents: - Letting of Garages	Head of Housing and Property Services

## 7 HEAD OF BUSINESS INFORMATION SERVICES

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Data Protection Act</b>		
1998	Data Protection Officer	Head of Business Information Services

## 8 MISCELLANEOUS

<b>Statute</b>	<b>Role/Function/Responsibility</b>	<b>Proper Officer</b>
<b>Local Government Act 1972</b>		
Section 112	Duties to be carried out by a Proper Officer	The Officer responsible for carrying out the duty

## 9 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.

## 10 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. Except 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.