



Constitution

East Devon District Council
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Part 1 Summary and Explanation

1. The Council's Constitution

- 1.1. This document contains East Devon District Council's constitution. It sets out how the Council operates, how decisions are made and the procedures that are followed to ensure that the Council is efficient, transparent and accountable to local people.
- 1.2. The Constitution is divided into 15 Articles. These set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

2. What's in the constitution?

- 2.1. Article 1 of the Constitution commits the Council to its role as Community Leader, and its twofold strategic purpose to deliver outstanding service and plan for the future of the District.
- 2.2. The Council's Plan confirms that the Council's ambition is to keep East Devon an outstanding place. The four priorities which underpin this ambition are:
 - A supported and engaged community that has the right homes in the right places, with appropriate infrastructure
 - A sustainable environment that is moving towards carbon neutrality and which promotes ecological recovery.
 - A vibrant and resilient economy that supports local business, provides local jobs and leads to a reduction in poverty and inequality.
 - A well-managed, financially secure and continuously improving council that delivers quality services

Articles 2 – 15 explain the rights of citizens and how key parts of the Council operate. These are:

Members of the Council (Article 2)

Citizens and the Council (Article 3)

The Full Council (Article 4)

Chairing the Council (Article 5)

The Cabinet (Article 6)

Overview of decisions (Article 7)

Regulatory and other committees (Article 8)

The Standards Committee (Article 9)

Joint arrangements (Article 10)

Officers (Article 11)

Decision making (Article 12)

Finance, contracts and legal matters (Article 13)

Review and revision of the Constitution (Article 14)

Suspension, interpretation and publication of the Constitution (Article 15)

3. How the Council operates

- 3.1. The Council is composed of 60 Councillors elected every four years. Details of the Councillors and of the electoral arrangements that applied with effect from May 2003 are set out at the end of Article 2.
- 3.2. Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Code of Conduct is set out in Part 5.1 of this document. The Council's Standards Committee trains and advises District and Parish Councillors on the code of conduct.
- 3.3. All Councillors meet together as the Council. Meetings of the Council are normally open to the public. Here Councillors decide the Council's overall policies and set the budget each year. The Council elects the Leader of the Council. The Leader appoints the Deputy Leader and other members of the Cabinet. Council appoints the membership of other committees. The Council has ultimate responsibility for reviewing performance of the Cabinet and other committees and may question the decisions made by them.

4. How decisions are made

- 4.1. The Council is the primary body in respect of setting out overall policies (the policy framework) and budgeting and is responsible for ensuring performance review of the Cabinet and other Committees.
- 4.2. The Cabinet is the part of the Council that is responsible for operational decisions. Currently, the Cabinet is made up of the Leader of the Council and 9 other Councillors.
- 4.3. When major decisions are to be discussed or made, these are published in a Forward Plan (in so far as they can be anticipated). Meetings of the Cabinet are generally open to the public except where personal or confidential matters are being discussed.
- 4.4. The Cabinet has to make decisions that are in line with the Council's overall policies and budget. If it wishes to make a decision that is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

5. Overview and Scrutiny

- 5.1. The Council has three Overview and Scrutiny Committees (the Overview Committee, the Scrutiny Committee and the Housing Review Board). The Overview and Scrutiny Committees support the work of the Cabinet and the Council as a whole. It allows citizens to have a greater say in Council matters by holding public inquiries into matters

of local concern. These lead to reports and recommendations which advise the Cabinet and the Council as a whole on its policies, budget and service delivery. Overview and Scrutiny Committees also monitor the decisions of the Cabinet. The Scrutiny Committee can call-in a decision which has been made by the Cabinet but not yet implemented. It enables them to consider whether the decision is appropriate. It may recommend that the Cabinet reconsider the decision. It is also the Council's statutory Crime and Disorder Committee. The Overview and Scrutiny Committees may also be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

- 5.2. Although not strictly part of the Overview and Scrutiny Framework, all Councillors may participate in either the Leader of the Council's or a Portfolio Holder's 'Team', the purpose of which is to engage Members in the discussion and assessment of relevant matters before they are the subject of formal reports to the Cabinet.

6. Other committees

- 6.1. In addition to the Cabinet and the Overview and Scrutiny Committees the Council has appointed a range of other Committees to assist it in carrying out its work. Details of these Committees and Joint Bodies are set out in Part 3, Section 2 of the Constitution.

7. Outside bodies

- 7.1. At the 2012 Annual Council meeting, it was also agreed that formal appointment of councillor representatives to outside bodies will only now be made where the outside body meets one or more of the following criteria:
- a) The Council makes a financial contribution to the outside body;
 - b) There is a clear need for the business of the outside body to be reported back to Council;
 - c) The Council has a partnership relationship with the outside body.
- 7.2. Councillors appointed are required to engage with the relevant Portfolio Holder to ensure information is both fed back, and fed into, each outside body, panel and forum that meets the criteria (a-c) above.

8. The Council's Officers

- 8.1. The Council's officers give advice, implement decisions and manage the day-to-day delivery of services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A Protocol governs the relationship between officers and Members of the Council – see Part 5 of the Constitution.

9. Citizen's rights

- 9.1. Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes.

- 9.2. Where members of the public use specific Council services, for example, those relating to planning applications or as a Council tenant, they have additional rights. These are not covered in this Constitution.
- 9.3. Citizens have the right to:
- Vote at local elections if they are registered
 - Contact their local Councillor about any matters of concern to them
 - Obtain a copy of the Constitution
 - Attend meetings of the Council, the Cabinet and its committees except where, for example, personal or confidential matters are being discussed. The right to attend meetings of the Council, the committees and the Cabinet, to inspect their agendas, reports and minutes, and the timetable of their meetings for the current Council year are set out in Part 4.2 of the Constitution under the Access to Information Procedure Rules.
 - Petition to request a referendum on a mayoral form of executive
 - Contribute to investigations by the Overview and Scrutiny Committees
 - Find out, from the Cabinet's Forward Plan or website, what major decisions (known as key decisions) are to be discussed/decided by the Cabinet or decided by the officers, and when;
 - Attend meetings of the Cabinet where key decisions are being discussed or decided (subject to the proviso that the Cabinet can meet in private to discuss certain confidential/exempt matters)
 - See reports and background papers (except where, for example, personal or confidential matters have been discussed), and any record of decisions made by the Council and Cabinet
 - Complain to the Council about the standard of service, the actions or lack of action by staff
 - Complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process
 - Complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct
 - Inspect the Council's accounts and make their views known to the external auditor
 - Exercise rights under the Freedom of Information legislation
- 9.4. The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, please contact: Andrew Melhuish – Democratic Services Manager.

Part 2 Articles of the Constitution

1 Article 1: The Constitution

1.1 Powers of the Council

1.1.1 The Council will exercise all its powers and duties in accordance with the law and this Constitution

1.2 The Constitution

1.2.1 This Constitution, and all its appendices, is the Constitution of the East Devon District Council

1.3 Purpose of the Constitution

1.3.1 The purpose of the Constitution is to:

- To Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- Enable the Cabinet to act quickly and effectively within the Council's approved policy framework whilst at the same time ensuring the delivery of efficient, transparent and accountable decision-making;
- Support the involvement of citizens in the process of local authority decision-making;
- Help Councillors represent their constituents more effectively;
- Enable decisions to be taken efficiently and effectively;
- Create a powerful and effective means of holding decision-makers to public account;
- Ensure that no one will review or scrutinise a decision in which they were directly involved;
- Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- Provide a means of improving the delivery of services to the community.

1.3.2 The Constitution recognises the Council's role as a Community Leader and its strategic responsibility for community planning and best value in service delivery. Its overall objective is, therefore, to organise its activities so as to ensure that they demonstrably contribute to the outcomes identified through the community planning process.

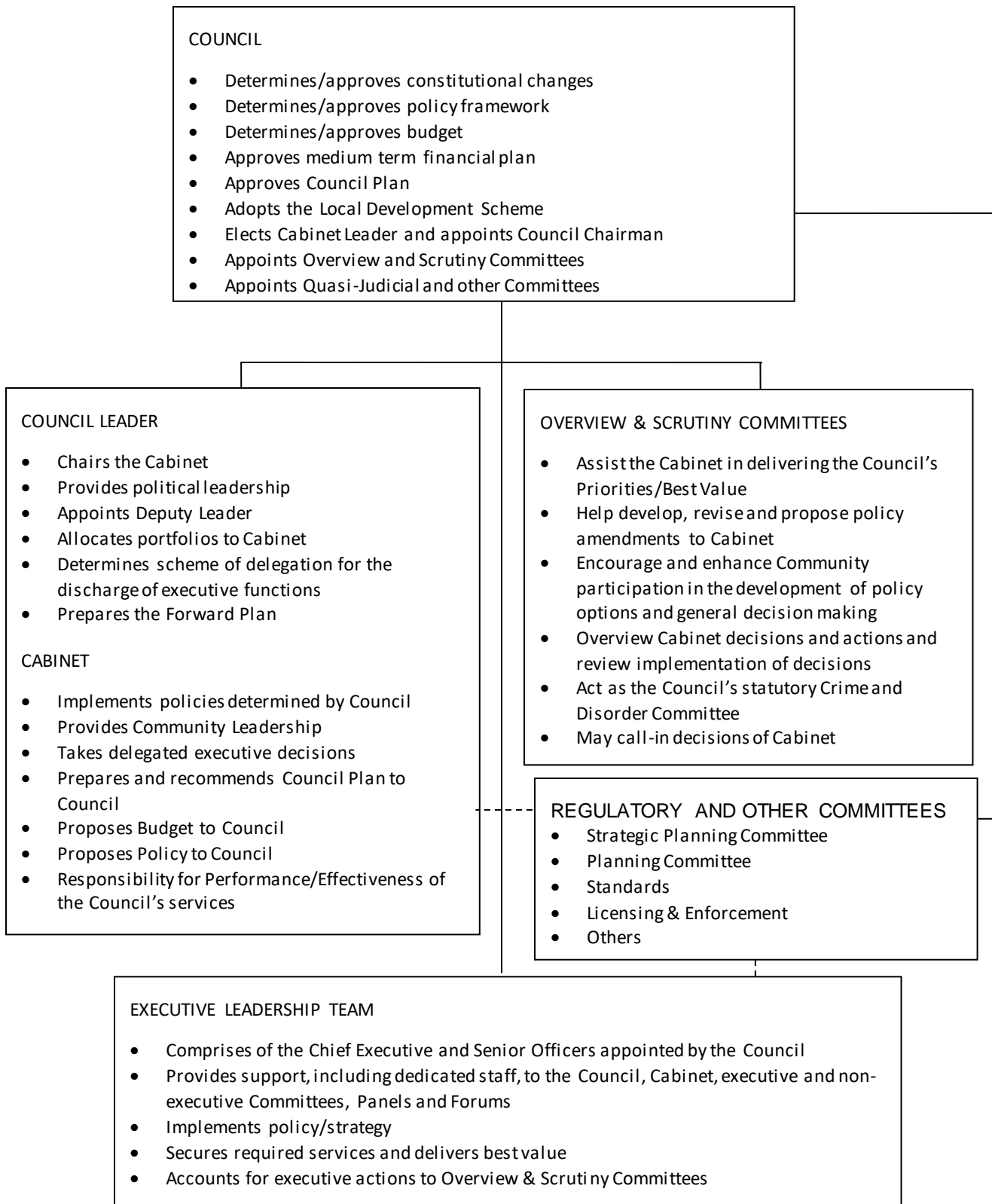
1.3.3 The Council believes in the importance of partnership working in order to effectively discharge its community role, achieve best value and continuous improvement.

1.4 Interpretation and Review of the Constitution

1.4.1 Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option that is considered to be closest to the purposes stated above.

1.4.2 The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

1.4.3 The following illustrates the Council’s Constitutional structure in a diagrammatic form. It is explained in the rest of Part 2 of this Constitution.



2 Article 2: Members of the Council

2.1 Composition and eligibility

2.1.1 **Composition:** The Council will comprise 60 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Boundary Commission and approved by the Secretary of State. Details of the current Councillors and of the wards that they represent are set out at the end of this Article.

2.1.2 **Eligibility:** Only registered voters of the district or those living or working there will be eligible to hold the office of Councillor.

2.2 Election and terms of Councillors

2.2.1 The regular election of Councillors will be held on the first Thursday in May every four years beginning in 2011. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election. Different arrangements apply to the term of office of Leader; see Article 6.

2.3 Roles and functions of Councillors

2.3.1 **Key roles** – Councillors are or will:

- a) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- b) consider the budget proposed by the Cabinet and vote on the final budget;
- c) advise the Cabinet on decisions and policies that affect local issues including through the Council's Overview and Scrutiny Committees (including the Housing Review Board);
- d) participate in regulatory decision-making through its planning and licensing functions;
- e) review and question policies and decisions taken by the Cabinet
- f) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- g) effectively represent the interests of their Ward and of individual constituents;
- h) respond to constituents' enquiries and representations, fairly and impartially;
- i) be familiar with the needs, priorities and aspirations of their local community by being accessible and by being involved in consultation with them and working with other local organisations;
- j) represent the Council on other bodies; and
- k) maintain the highest standards of conduct and ethics consistent with the Council's Code of Conduct.

2.3.2 **Rights and duties:** Councillors will:

(a) have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.

(b) not make public information that is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it

For these purposes, "confidential" and "exempt" information is defined in the Access to Information Rules in Part 4 of this Constitution.

2.4 Conduct

2.4.1 Councillors will at all times observe the Members' Code of Conduct and such other codes as the Council may from time to time adopt and include or refer to in Part 5 of this Constitution.

2.5 Allowances

2.5.1 Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution unless lawfully withheld, for example, following a decision of the Standards Committee.

2.6 Political Groups

2.6.1 Councillors may belong to local political groups. The groups are entitled under the Local Government (Committees and Political Groups) Regulations to nominate Councillors to fill a proportion of the seats on certain committees of the Council.

2.6.2 At meetings of the Council and the committees, individual Councillors may have regard to the views of their political group on policy matters provided they also take into account other relevant considerations. However this would exclude, for example, individual planning applications.

2.7 External Representation

2.7.1 The Council recognises the importance of its relationship with the communities it represents and all those who receive its services in order to provide desired outcomes. It achieves these aims in the following ways:

(a) by making appropriate Councillor appointments to other bodies; and

(b) by ensuring that the Councillor representative role is meaningful and recognises the needs of the electorate.

Ward detail

Name of Ward	Description of Area	No of Cllrs	Councillor Contact Details
Axminster	The Parish wards of Town, Raymonds Hill and Weycroft in the Parish of Axminster.	3	Paul Hayward Sarah Jackson Simon Smith
Beer and Branscombe	The Parishes of Beer and Branscombe.	1	John Heath
Broadclyst	Parishes of Broadclyst, Clyst Honiton, Clyst Hydon, Clyst St Lawrence and Farringdon.	3	Sarah Chamberlain Paula Fernley Eleanor Rylance
Budleigh and Raleigh	The Parishes of Bicton, Budleigh Salterton, East Budleigh, Colaton Raleigh and Otterton.	3	Charlotte Fitzgerald Melanie Martin Henry Riddell
Clyst Valley	Parishes of Clyst St. George, Clyst St. Mary and Sowton.	1	Mike Howe
Coly Valley	The Parishes of Colyton, Farway, Northleigh, Offwell, Southleigh and Widworthy.	2	Paul Arnott Helen Parr
Cranbrook	Cranbrook.	3	Kevin Blakey Kim Bloxham Sam Hawkins
Dunkeswell & Otterhead	The Parishes of Awliscombe, Combe Raleigh, Cottleigh, Dunkeswell, Luppitt, Monkton, Sheldon, Stockland, Upottery and Yarcombe.	2	Colin Brown Yehudi Levine

Name of Ward	Description of Area	No of Cllrs	Councillor Contact Details
Exe Valley	Parishes of Brampford Speke, Huxham, Nether Exe, Rewe, Stoke Canon, Upton Pyne and Poltimore	1	Jamie Kemp
Exmouth Brixington		3	Vacancy Maddy Chapman Cherry Nicholas
Exmouth Halsdon		3	Tim Dumper Andrew Toye Daniel Wilson
Exmouth Littleham		3	Brian Bailey Nick Hookway Anne Hall
Exmouth Town		3	Olly Davey Joe Whibley Eileen Wragg
Exmouth Withycombe Raleigh		2	Steve Gazzard Matt Hall
Feniton	Buckerell, Feniton to include the Parish Ward of Gittisham Village.	1	Alasdair Bruce
Honiton St Michaels	(to include the Parish Ward of Gittisham Vale).	3	Violet Bonetta Jenny Brown Roy Collins
Honiton St Pauls		2	John O'Leary Tony McCollum

Name of Ward	Description of Area	No of Cllrs	Councillor Contact Details
Newbridges	Parishes of Dalwood, Kilmington, Musbury and Shute and Whitford.	1	Iain Chubb
Newton Poppleford and Harpford	The Parish of Newton Poppleford and Harpford.	1	Christopher Burhop
Ottery St Mary	Parish wards of North, Tipton St John and Town in the Parish of Ottery St Mary.	3	Peter Faithful Vicky Johns Bethany Collins
Seaton	The Parish of Seaton.	3	Marcus Hartnell Dan Ledger Del Haggerty
Sidmouth Rural	The Parish wards of Salcombe Regis and Sidbury in the Parish of Sidmouth.	1	John Loudoun
Sidmouth Sidford	The Parish wards of North, Primley, Sidford Village and Sidmouth West in the Parish of Sidmouth.	3	Stuart Hughes Mike Goodman Marianne Rixson
Sidmouth Town	The Parish wards of East and South in the Parish of Sidmouth.	2	Ian Barlow Sophie Richards
Tale Vale	Parishes of Talaton, Broadhembury, Payhembury and Plymtree.	1	Richard Jefferies
Trinity	Parishes of Axmouth, Combyne Rousdon and Uplyme.	1	Susan Westerman

Name of Ward	Description of Area	No of Cllrs	Councillor Contact Details
West Hill and Aylesbeare	Parishes of West Hill and Aylesbeare.	1	Jessica Bailey
Whimple and Rockbeare	Parishes wards of Whimple and Rockbeare Rockbeare and Rockbeare Marsh Green in the Parishes of Wimple and Rockbeare.	1	Todd Olive
Woodbury and Lympstone	The Parish of Lympstone and the Parish wards of Exton, Woodbury and Woodbury Salterton in the Parish of Woodbury.	2	Ben Ingham Geoff Jung
Yarty	Parishes of All Saints, Chardstock, Membury and Hawkchurch.	1	Duncan Mackinder

3 Article 3: Citizens and the Council

3.1 Citizen's rights

3.1.1 Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Procedure Rules in Part 4 of this Constitution:

Voting and petition rights:

(a) Citizens on the electoral roll for the area have the right to vote.

(b) Citizens have the right to sign a petition to request a referendum for an elected mayor form of Constitution.

(c) Citizens have the right to sign a petition on any matter within the Council's purview (excluding certain issues including Licensing and Planning matters) and for any such petition to be considered by the Council as set out in the Council's Petitions Scheme. The Council's petition scheme is set out at Part 5 of this Constitution.

Information rights:

(d) To attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;

(e) To attend meetings of the Cabinet when key decisions are being considered (unless confidential or exempt information is likely to be considered);

(f) To find out from the Forward Plan what key decisions will be taken by the Cabinet and when;

(g) To see reports and background papers (except where confidential or exempt information has been considered); and any records of decisions made by the Council and the Cabinet;

(h) To inspect the Council's accounts and make their views known to the external auditor; and

(i) To request access to information under the Freedom of Information legislation.

Right to complain:

(j) To the Council itself under its complaints scheme;

(k) To the Local Government Ombudsman after using the Council's own complaints scheme; and

(l) To the Monitoring Officer about a breach of the Councillors' Code of Conduct.

3.2 Citizen's responsibilities

3.2.1 Citizens must not be violent, abusive or threatening to councillors or officers and must not wilfully harm things owned by the Council, councillors or officers.

4 Article 4: The Full Council

4.1 The Role of the Council

- 4.1.1 Council is the policy making body from which the policy framework will be established. Council has responsibility for ensuring that the correct structures are in place for the effective implementation and delivery of its services. Once the structures are agreed and appointments made, the Cabinet (acting by itself and through portfolio holders and officers) is delegated the responsibility of policy implementation and effective service delivery. The election of the Leader and removing him/her from office, will be the responsibility of Council. The Leader appoints the Deputy Leader and Cabinet. Council appoints all other committees.
- 4.1.2 Each year the Council will appoint a Chair who may not then be a Member of the Cabinet. The Council shall normally meet six times a year unless a need is identified for any additional meetings.

4.2 Functions that only Full Council may exercise

- 4.2.1 Adopting and changing the Constitution.
- 4.2.2 Approving or adopting the policy framework (see paragraph 4.5), the budget (see paragraph 4.3) and any application to the Secretary of State in respect of any Housing Land Transfer (see paragraph 4.4).
- 4.2.3 Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function that is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to or not wholly in accordance with the budget.
- 4.2.4 Electing the Leader and removing him/her from office, appointing Committees and the Chair and Vice Chair of those Committees with the exception that the Leader appoints Cabinet and the Housing Review Board shall appoint its Vice Chair.
- 4.2.5 Agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them.
- 4.2.6 Appointing representatives to outside bodies unless the appointment is made by the Cabinet or has been delegated by the Council.
- 4.2.7 Adopting an allowances scheme under Article 2.5.
- 4.2.8 Changing the name of the area or a parish and conferring or removing the title of honorary alderman.
- 4.2.9 Confirming the appointment, dismissal and redundancy of the Head of Paid Service and Chief Officers.
- 4.2.10 Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills.

- 4.2.11 Expressing its views to the Cabinet before the Cabinet resolve to make a compulsory purchase order.
- 4.2.12 All local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet.
- 4.2.13 Receiving the annual out-turn report on treasury management activities.
- 4.2.14 Functions relating to elections that are not carried out by the Chief Executive or other delegated officer.
- 4.2.15 Power to resolve not to issue a casino premises licence.
- 4.2.16 All other matters which, by law, must be reserved to Council.

4.3 Council meetings

- 4.3.1 There are three types of Council meeting: (a) the annual meeting; (b) ordinary meetings; (c) extraordinary meetings; and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

4.4 Responsibility for functions

- 4.4.1 The Council will keep under review Part 3 of this Constitution setting out the responsibilities for the Council's functions that are not the responsibility of the Cabinet.

4.5 Budget

- 4.5.1 The budget includes the allocation of financial resources both revenue and capital to different services and projects, proposed contingency funds and reserves, setting the council tax and decisions relating to the control of the Council's borrowing requirement, control of investments and the setting of virement limits.

4.6 Housing Land Transfer

- 4.6.1 Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

4.7 Policy Framework

4.7.1 The policy framework means approving and adopting the following plans and strategies some of which must, by law, be a Council decision (under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000) or other legal provision) while others are reserved to Council as a matter of local choice:

Plan or Strategy	Must be a Full Council decision by law	Reserved to Full Council by local choice
Asset Management Plan	✓	
Climate Change Strategy		✓
Commercialisation Strategy		✓
Community Infrastructure Levy (C.I.L)	✓	
Contaminated Land Strategy		✓
Council Plan	✓	
Crime and Disorder Reduction Strategy	✓	
Cultural Strategy		✓
Empty Homes Strategy		✓
Financial Strategy (including Medium Term Financial Plan)	✓	
Gambling Policy (Statement)	✓	
Homelessness and Rough Sleeping Strategy		✓
Housing Strategy/Business Plan		✓
Licensing Policy (Statement)	✓	
Local Development Scheme / Development Plan Documents / [and any replacement documents e.g. Local Plan]	✓	
Local Nature Reserve Strategy		✓
Private sector Renewal Policy		✓
Public Health Strategic Plan		✓
Treasury Management Strategy Statement	✓	
Waste Strategy		✓

5 Article 5: Chair of the Council

5.1 Role and function of the Chair

- 5.1.1 **Ceremonial Role** - primary responsibility for civic and ceremonial functions, and shall attend functions both within and outside the District to represent the Council; host functions in order to promote the Council and its interests; attend and participate in ceremonial events ensure that the Council's services and achievements are appropriately celebrated and publicised.
- 5.1.2 **The Council Meeting** - The Chair shall be elected annually by the Council. The Chair will have the following responsibilities:
- a) To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary having regard to appropriate advice;
 - b) To preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
 - c) To ensure that at the Council meeting Councillors who are not on the Cabinet or who are not Chairs of Committees are able to hold the Cabinet and Committee Chairs to account;
 - d) Generally, to be the conscience of the Council.
- 5.1.3 **The Standards Committee** - The Chair will also be Chair of the Council's Standards Committee.
- 5.1.4 In the absence of the Chair of Council, the Vice-Chair will have the above roles and functions.

6 Article 6: The Cabinet

6.1 Role

6.1.1 The Cabinet will carry out all of the local authority's functions that are not the responsibility of any other part of the local authority, whether by law or under this Constitution. The Cabinet makes operational decisions in accordance with Council policy. Its responsibility for providing policy advice, community planning, best value and performance will be supported by the Overview and Scrutiny Committees (and any panels/forums set up with specific responsibilities).

6.2 Form and composition

6.2.1 The Leader will determine the size of the Cabinet (also referred to as the Executive) within statutory limits. The Leader will appoint between two and nine other councillors to the Cabinet. The Leader and other Members of the Cabinet collectively form the Cabinet. None of the Members of the Cabinet will be Members of the Overview and Scrutiny Committees. Some of the Cabinet will have portfolios allocated by the Leader.

6.3 Leader

6.3.1 The Leader will be a Councillor elected to the position of Leader by the Council. The Leader will hold office until:

- a) he/she resigns from the office; or
- b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000; or
- c) he/she is no longer a Councillor; or
- d) he/she is removed from office by resolution of the Council;
- e) The election of another Leader at the Annual Council meeting.

6.4 The Leader and the Cabinet

6.4.1 The Leader has responsibility for the smooth running of the Cabinet.

6.4.2 The Leader chairs all meetings of the Cabinet.

6.4.3 The Leader appoints the Deputy Leader, and may remove him/her from office.

6.4.4 The Leader has responsibility for the allocation of portfolios (and scheme of delegated powers) to the Cabinet Members and may vary them in writing at his/her discretion, subject to Article 6.9. The portfolio areas of responsibility are set out in Article 6.12. The Leader may appoint Cabinet Members without portfolio.

- 6.4.5 The Leader has overall responsibility for matters relating to and arising from Corporate Governance including the publication of a formal annual report presenting an objective and understandable account of the Council's activities and achievements, its financial position and performance and proposed future objectives.

6.5 The Deputy Leader

- 6.5.1 The Deputy Leader will be a councillor on the Cabinet appointed to the position of Deputy Leader by the Leader. The Deputy Leader will hold office until:

- a) he/she resigns from office; or
- b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000; or
- c) he/she is no longer a Councillor; or
- d) he/she is removed from office by the Leader.

- 6.5.2 The Deputy Leader will carry out the functions of the Leader when he/she is unable to act, or the office of Leader is vacant.

6.6 Other Members of the Cabinet

- 6.6.1 The other Members of the Cabinet will be Councillors appointed to the position by the Leader. They shall individually hold office until:

- a) they resign from office; or
- b) they are suspended from being Councillors under Part III of the Local Government Act 2000; or
- c) they are no longer Councillors; or
- d) they are removed from office, either individually or collectively by the Leader.

6.7 Members of the Cabinet who are Portfolio Holders

- 6.7.1 During their period as a Portfolio Holder each Councillor will be expected to work closely with key staff. This will require an effective system of relevant information provision to those Councillors. Responsibility for the identification of such information lies with the Portfolio Holder and/or the key staff who will also be expected to brief the appropriate Councillor on important operational items which may be happening as part of delegated Council business. Portfolio Holders expected to speak at Cabinet meetings, or called in to speak at Overview and Scrutiny Committees or other Council meetings, must also be briefed by appropriate staff who will be entitled to accompany them at such meetings and able to speak there in their own right.

- 6.7.2 The generic role of a Portfolio Holder will include:

- a) Collective responsibility for policy implementation as a Cabinet Member;

- b) Specific responsibility for speaking at the Cabinet on issues within allocated portfolios;
- c) The exercise of delegated powers;
- d) Occasional responsibility for speaking on behalf of the Council at outside meetings where Councillor attendance is required;
- e) An acceptance of the need to be well informed, and where appropriate to undergo training about relevant current issues;
- f) Responding to media requests as appropriate in relation to topical issues. In this respect, each Councillor should attend media training sessions;
- g) Speaking at Council meetings on issues relevant to the allocated portfolio;
- h) Attendance at Overview and Scrutiny Committees to speak on particular performance issues and to assist on the preparation of policy issues.

6.8 Proceedings of the Cabinet

- 6.8.1 Proceedings of the Cabinet will take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution. In addition they may appoint sub-committees, panels and forums to assist or advise in the carrying out of any of its functions.

6.9 Responsibility for functions

- 6.9.1 The Leader will maintain a list in Part 3 of this Constitution setting out whether the Cabinet itself, or which individual Members of the Cabinet, or officers are responsible for the exercise of particular executive functions.

6.10 Leader and Portfolio Teams

- 6.10.1 The Leader and each Portfolio Holder will be advised and assisted in carrying out their responsibilities by a group of Members. The groups will be informal and flexible to establish all-party working within each portfolio area. They will be of up to 15 members and shall as far as reasonably practicable reflect the political balance of the Council. The Monitoring Officer will work with Group Leaders to agree the composition of the Portfolio Teams.
- 6.10.2 Their primary function will be to enable the Leader/Portfolio Holders to initiate the review and development of policies and to discuss major issues that have yet to be considered by the Cabinet. They may also assess the implementation of matters that have already been approved in principle and to advise on budget monitoring.
- 6.10.3 It is the prerogative of the Leader/Portfolio Holder to call meetings of their Portfolio Teams and to frame their agendas. Members of a Portfolio Team and the Chief Executive can however suggest topics for discussion and the Cabinet will be entitled to refer items to a Portfolio Team for debate.

6.10.4 Portfolio Teams will not be decision-making bodies and their meetings will not therefore be in public. Their meetings will not be scheduled in the Council Calendar but will be serviced by the relevant Senior Officer. In all other respects Portfolio Teams will identify the working arrangements with which they are most comfortable. The appropriate officer will undertake the co-ordination and distribution of agendas, background papers and prepare short notes (not minutes) of the meetings.

6.11 Assistant Portfolio Holders

6.11.1 An Assistant Portfolio Holder shall be a Councillor appointed at the discretion of the Leader to any Portfolio and who assists the Portfolio Holder by contributing to the policymaking process within Cabinet for their respective area. In that regard they will support a Portfolio Holder with their work, is invited to and expected to attend Cabinet briefings, Cabinet meetings and attend meetings the Portfolio Holder has outside the Council or with officers. Assistant Portfolio Holders are not legally a part of the Cabinet, have no voting rights at Cabinet and have no authority to make executive decisions.

6.11.2 An Assistant Portfolio Holder is not precluded from sitting on any of the Overview and Scrutiny Committees but must be mindful of any role they have played in relation to the matter under consideration and have regard to the requirements of paragraph 2 of the Overview and Scrutiny Procedure Rules (Part 4.5) of this Constitution which prevents any member being involved in scrutinising a decision which he / she has been directly involved in.

6.12 Cabinet portfolios

Member	Portfolio	Detail
Councillor Marianne Rixson	Climate Action & Emergency Response	<ul style="list-style-type: none"> - Net Zero strategy and Compliance - Best practice in Green Planning and Carbon Neutral Construction - Ecology policy development - Developing the Council's Green Initiatives - Community responses to COVID-19 - Post COVID-19 recovery - Council's effective response to Brexit (inc. implications for the authority, residents and businesses of East Devon) - Emergency Planning
Councillor Geoff Jung	Coast, Country & Environment	<ul style="list-style-type: none"> - Habitat Mitigation - Ecology Policy Implementation - Wildlife and Habitat Conservation - Wildlife and Cemeteries - Flooding (inc flood resilience) - Nutrient Management Plans - Beaches & Foreshores - Countryside and Open Spaces - AONB protection and enhancement

Member	Portfolio	Detail
		<ul style="list-style-type: none"> - Environmental Health - Community Health & safety - Household Refuse & Recycling - Streetscene Services - Parks & gardens (maintenance) - Play / skate parks and sports grounds (maintenance) - Public Toilets - Cemeteries and Allotments - Licensing
Councillor Sarah Jackson	Communications & Democracy	<ul style="list-style-type: none"> - Governance Review - Constitutional Reform - Public Democratic Engagement - Freedom of Information / Subject Access - Democracy & Elections - Democratic Services - Democratic Outreach to Parishes and Towns - Member Declarations of Interest - Anti-Bribery Policy - Member Development - Press & Media enquiries / liaison - Direct communications to residents - External Communications inc. press & media and direct to resident communications - Public Digital Interface (inc website functionality and content and transactions, EDDC app, social media, and Firmstep) - Branding and Marketing - Public Consultations
Councillor Matt Hall	Economy	<ul style="list-style-type: none"> - Economic Development - Rural Economy - Business Support - Business Grants (inc AIR / ARG) - Business Intelligence - Exmouth and Axminster Regeneration - Enterprise Zone - Broadband Provision and Improvements - External Investment
Councillor Paul Hayward	Finance & Assets	<ul style="list-style-type: none"> - Audit & Governance - Budget Preparation & Monitoring - Capital Project Monitoring - Council Tax - Land Charges - Procurement - Revenues & Benefits - Treasury Management - Car Parks revenue - Asset Portfolio Acquisition Management & Transfer - Assets Improvements and Repairs

Member	Portfolio	Detail
		<ul style="list-style-type: none"> - Revenue Generating Assets (inc. Beach Huts, buildings but excluding Car Parks) - Car Parks as a property asset
Councillor John Loudoun	Council and Corporate Co-ordination	<ul style="list-style-type: none"> - Cabinet Cohesion - Internal Planning and Policy Development and Delivery (inc Council / Corporate / Service Planning) - Lead Member Coordination and reporting - External bodies - Member report liaison - Regional Engagement with other authorities - Customer Services and care (including complaints) - Staff Health and Safety - Legal Services - Human Resources - Officer Learning and Development - Organisational Development - Payroll Services (including pay, benefits and reward) - Performance Monitoring - Management Information - Systems Thinking - Equality - IT Client Lead for Service related projects and staff IT equipment
Councillor Olly Davey	Strategic Planning	<ul style="list-style-type: none"> - Development Management & Building control - Growth Point - NPPF - Local Plan Review and Policy - National Park Review - Neighbourhood Plans - Strategic Planning & Delivery
Councillor Dan Ledger	Sustainable Homes & Communities	<ul style="list-style-type: none"> - Affordable Homes - Community Development & Support - Gypsies & Travellers - Health & Wellbeing - Homelessness - Housing Enabling - Social Inclusion - Private Housing
Councillor Nick Hookway	Culture, Leisure, Sport & Tourism	<ul style="list-style-type: none"> - Visitor Economy and Tourism Strategy - Events programme - Event delivery - Arts and Culture - Leisure provision and policy - Sports Strategy for East Devon

Member	Portfolio	Detail
		<ul style="list-style-type: none">- Play and sports events- Park and garden events- LED operations

7 Article 7: The Overview and Scrutiny Committees

7.1 Terms of reference

7.1.1 Overview and Scrutiny is a non-executive function carried out by three committees, the Overview Committee, the Scrutiny Committee and the Housing Review Board ('the Overview and Scrutiny Committees'). The legal provisions affecting the Overview and Scrutiny Committees are contained in section 21 of the Local Government Act 2000 and regulations under section 9 and 32 of the Local Government Act 2000, the Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007.

7.1.2 The Overview and Scrutiny Committees operate within the guiding principles of effective scrutiny promoted by the Centre for Public Scrutiny, namely:

- a) Provide a 'critical friend' challenge to the Cabinet as well as external authorities and agencies;
- b) Reflect the voice and concerns of the public and its communities;
- c) Take the lead and own the scrutiny process on behalf of the public;
- d) Make an impact on the delivery of public services

7.1.3 The Overview and Scrutiny Committees will look beyond the Council to how other authorities and partners impact on the District and delivery of the Council Plan and ensure that the Council develops its partnership working to help achieve integrated Devon service delivery (including the Local Government family Devon-wide, achieving savings through partnership working with neighbouring authorities (Mid Devon, Exeter, Teignbridge, West Dorset, East Devon and Blackdown Hills AONB Partnerships), Police, Fire, and the Clinical Commissioning Groups and health providers, effective Local Economic Partnership operation and Local Strategic Partnership service commissioning.

7.1.4 The Overview and Scrutiny Committees will have the power to establish specific sub-committees, called Task and Finish Forums, comprising Members of the relevant Committee, other councillors as appropriate (excluding the Cabinet) and where appropriate, members of the public.

7.1.5 The Overview and Scrutiny Committees will have the authority to require members of the authority and officers to attend a meeting to answer questions. They will receive reports on performance in order to assist them in their duties;

7.1.6 The Overview and Scrutiny Committees may make reports and recommendations to partner authorities concerning the partner's functions in the Council's area and require the partner to have regard to the report; partner authorities must also provide such information as the Committee may reasonably require to discharge its functions.

7.2 General functions

7.2.1 The Overview Committee will principally provide the ‘critical friend’ challenge and reflect the voice and concerns of the public and its communities prior to the decision being taken so as to make an impact on the delivery of public services.

7.2.2 The Scrutiny Committee will principally take the lead and own the post decision scrutiny process (in its widest sense) on behalf of the public with a view to making an impact on the delivery of public services.

7.2.3 Within their Terms of Reference, both the Overview Committee and Scrutiny Committee will:

(a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council’s functions including considering the draft budget by way of a joint meeting between the two committees in January each year (or such time as is appropriate).

(b) make reports and/or recommendations to the full Council and/or the Cabinet in connection with the discharge of any functions.

(c) make reports and/or recommendations to full Council and/or Cabinet on any matter affecting the area or its inhabitants.

(d) enable Members to refer matters relevant to the functions of the committee to it by including items on the committee agenda and notify the Member of its reasons for its decision if it decides not to exercise any of its functions further, subject to the restriction on referral in 7.2.7.

(e) the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012 excludes from referral to Overview and Scrutiny the following:

(i) a planning decision;

(ii) a licensing decision;

(iii) any matter concerning an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;

(iv) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the Overview Committee or Scrutiny Committee;

(f) a matter does not fall within (e) if it consists of an allegation relating to items (i) to (iii) and it is alleged that a function for which the authority is responsible has not been discharged at all or that its discharge has failed or is failing on a systemic basis;

(g) exercise the right to question any Member as regards delegated Ward Member functions if and when such a scheme is made under sections 120 and 236 of the 2007 Act.

7.3 Specific Functions of the Overview Committee, relating to policy development and review

7.3.1 To assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues.

- 7.3.2 To conduct research and carry out community and other consultation in the analysis of policy issues and possible options.
- 7.3.3 To consider and propose mechanisms to encourage and enhance community participation in the development of policy options.
- 7.3.4 Question Members of the Cabinet and/or committees and Senior Officers about their views on issues and proposals affecting the area.
- 7.3.5 Subject to prior Council approval of an annual work plan, liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

7.4 Specific Functions of the Scrutiny Committee

- 7.4.1 Review and scrutinise the decisions made by and performance of the Cabinet and Council officers both in relation to individual decisions and over time.
- 7.4.2 Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas.
- 7.4.3 Question Members of the Cabinet and Senior Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects.
- 7.4.4 Make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process.
- 7.4.5 Review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance.
- 7.4.6 Question and gather evidence from any person (with their consent).
- 7.4.7 Exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet and/or a Portfolio Holder Member of the Cabinet.

7.5 Specific Functions of the Housing Review Board

- 7.5.1 Advise the Cabinet on the Council's landlord activities and functions affecting tenants and leaseholders.
- 7.5.2 Maintain an active involvement in the on-going review of the options for the future ownership and management of Council owned homes, and make recommendations.
- 7.5.3 Promote good practice and oversee Service improvements.
- 7.5.4 Monitor performance on core housing management activities and report to the Cabinet.
- 7.5.5 Assist the Cabinet to monitor and prepare the Housing Revenue Account budget and the Housing Revenue Account Business Plan.

- 7.5.6 Promote tenant and leaseholder involvement and implementation of the Resident Involvement Strategy.
- 7.5.7 Consult with the Resident Involvement Strategy Monitoring Forum who will liaise with tenant groups and representatives.
- 7.5.8 Encourage good practice in relation to equality and diversity issues, and ensure that the needs of vulnerable tenants are satisfied.
- 7.5.9 Advise on any other matters affecting the Council's landlord duties and responsibilities.

7.6 Finance

- 7.6.1 The Overview and Scrutiny Committees may exercise overall responsibility for the finances made available to them.

7.7 Annual Report

- 7.7.1 The Overview and Scrutiny Committees will report annually to full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

7.8 Section 19 of the Police and Justice Act 2006

- 7.8.1 The Act requires the Council to have a statutory Crime and Disorder Committee for the purposes of section 19 of the Police and Justice Act 2006. The role of the Crime and Disorder Committee shall be carried out by the Scrutiny Committee.
- 7.8.2 The Scrutiny Committee has the power to review or scrutinise the decisions made, or other action taken, by the responsible authorities in respect of their crime and disorder functions. Any recommendations made as a result can be referred to the Cabinet or Council with respect to the discharge of those functions. Where a report or recommendation results from a review, a copy must be sent to such of the responsible authorities and to the persons or bodies with which the duty to co-operate under section 5 (2) of the Crime and Disorder Act 1998 applies as the Scrutiny Committee thinks appropriate. The recipients of the report or recommendations must give consideration, and respond to the Scrutiny Committee indicating what (if any) action it proposes to take, and have regard to the report or recommendations in exercising its functions.
- 7.8.3 The Police and Justice Act also requires arrangements to be made to enable a Member who is not a Member of the Scrutiny Committee to refer a local crime and disorder matter to the Scrutiny Committee. Local crime and disorder matters are those affecting the Member's Ward including anti-social behaviour and alcohol and substance misuse. If the Scrutiny Committee decides not to make a report or recommendations in relation to a matter raised by a Ward Member, the Scrutiny Committee must make clear the reasons why.

7.9 Crime and Disorder (Overview and Scrutiny) Regulations 2009

- 7.9.1 The Regulations provide for the choice of co-opting additional members from those persons and bodies who are responsible authorities under the Crime and Disorder Act 1998; who may have voting rights on crime and disorder matters if the Scrutiny Committee decides this. The Scrutiny Committee may co-opt either employees or non- executive members of a responsible authority.
- 7.9.2 Minimum of one meeting per calendar year on crime and disorder.
- 7.9.3 Responsible authorities must provide information requested of them by the Scrutiny Committee. The Committee may require an officer of a responsible authority or a co-operating body to attend a meeting, on reasonable notice.
- 7.9.4 Responses to any reports or recommendations made must be in writing within one month from the date of the report/recommendation, or, if this is not reasonably possible, as soon as possible, back to the Crime and Disorder Committee.
- 7.9.5 The Committee shall review such responses and monitor the action (if any) taken.

7.10 [Section 21A Local Government Act 2000](#)

- 7.10.1 The Overview Committee and Scrutiny Committee also discharge the Council's functions for the purposes of reporting a 'local government matter' as defined by the Local Government and Public Involvement in Health Act 2007.
- 7.10.2 Subject to the approval of Full Council the Overview Committee and the Scrutiny Committee have the right to co-opt additional members permanently and or for particular issues (with voting rights on crime and disorder matters if the committee so wishes).

7.11 [Relationship between Overview Committee and the Strategic Planning Committee](#)

- 7.11.1 The Strategic Planning Committee shall consider all planning policy related matters (as set out within its Terms of Reference in Section 2 of Part 3 of the Constitution) and accordingly those matters shall not fall within the Overview Committee's Terms of Reference and nothing in this Article 7 shall be construed as indicating to the contrary.

7.12 [Proceedings of the Overview and Scrutiny Committees](#)

- 7.12.1 The Overview and Scrutiny Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution. In addition they may appoint sub-committees, panels and forums to assist in the carrying out of matters referred to them by the Cabinet, together with such other matters as any of the three Committees may deem necessary within their remit.

8 Article 8: Regulatory and Other Committees

8.1 Regulatory and Other Committees

8.1.1 The Council will also appoint the following Committees/Sub Committees:

Strategic Planning Committee

Planning Committee

Licensing and Enforcement Committee

Personnel Committee (from which the Investigating and Disciplinary Sub Committee, Employment Appeals Sub Committee and Interviewing (Chief Officers) Sub Committee will be drawn)

Audit and Governance Committee

8.1.2 Their terms of reference and delegated powers are set out in Part 3 of this Constitution. No other Committee or Sub Committee shall be established unless authorised by resolution of the Council or under the provisions of the Licensing Act 2003.

9 Article 9: Standards Committee

9.1 Standards Committee

9.1.1 The Council meeting will establish a Standards Committee and an Assessment Sub Committee and a Hearings Sub Committee. The Standards Committee will meet four times each year and is subject to the political balance rules unless full Council has unanimously waived this requirement.

9.2 Composition

9.2.1 **Membership:** The membership of the full Standards Committee shall comprise the Chair of the Council, six Councillors, three non-voting independent Members and three non-voting Parish Council Members; One member of the Cabinet may be a member of the Committee (but excluding the Leader at all times); The independent Members shall be persons who are not Councillors or officers of the Council or any other body having a standards committee; The Parish Members shall be a member of a Town or Parish Council wholly or mainly in the Council's area and who shall not be Councillors or officers of the Council.

9.2.2 **Independent Members:** An independent Member's appointment shall normally be for a term of four years, and may be extended by the Council for up to a further four years.

9.2.3 **Parish Members:** A Parish Member's appointment shall normally be for a term of four years, and may be extended by the Council for up to a further four years. A Parish Member's appointment shall automatically determine if s/he ceases to be a Member of the Town or Parish Council wholly or mainly in the Council's area.

9.2.4 **Chairing the Committee:** The Chair of the Council shall be the Chair.

9.2.5 The composition of the Assessment Sub Committee shall be three district councillors plus an independent Member and a Parish Member, drawn by the Monitoring Officer from the Standards Committee, and one of the Independent Persons. The Independent Member, Parish Member and Independent Person shall be non-voting.

9.2.6 The composition of the Hearings Sub Committee shall be three district councillors plus an Independent Member and a Parish Member, drawn by the Monitoring Officer from the Standards Committee as required for each hearing. The Independent Member and Parish Member shall be non-voting.

9.2.7 **Quorum:** The quorum for meetings of the Committee, Assessment Sub Committee and Hearings Sub Committee is specified in the Terms of Reference (Part 3 Section 2) but shall comprise at least three Members with voting rights.

9.3 The role and function of the Standards Committee

9.3.1 Discharging the Council's standards related functions under Part III of the Local Government Act 2000 and the Localism Act 2011.

- 9.3.2 Promoting and maintaining high standards of conduct by Councillors, co-opted Members and Council officers.
- 9.3.3 Considering reports referred to the Committee by the monitoring officer and making recommendations concerning the governance and ethical standards of the Council.
- 9.3.4 Assisting the Councillors and any co-opted Members to observe the Council's Code of Conduct for Members.
- 9.3.5 Advising the Council on the adoption or revision of the Council's Code of Conduct for Members; a Code for officers, and any related codes or protocols.
- 9.3.6 Monitoring the operation of the Council's Code of Conduct for Members.
- 9.3.7 Advising, training or arranging to train Councillors on matters relating to the Council's Code of Conduct.
- 9.3.8 To grant dispensations to Councillors from requirements relating to Disclosable Pecuniary, Other Registerable and / or Non-Registerable Interests set out in the Council's Code of Conduct for Members [so far as not delegated to the Monitoring Officer] where:
 - a) the committee considers that the dispensation is in the interests of persons living in the authority's area; or
 - b) without a dispensation, each Member of the Cabinet would be unable to participate in the matter; or
 - c) the committee considers that it is otherwise appropriate to grant a dispensation.
- 9.3.9 To discharge statutory functions relating to compliance with the Code of Conduct for Parish Councils wholly or mainly in its area and the Members of those Parish Councils.
- 9.3.10 To appoint sub-committees to undertake these functions.

9.4 [The role and function of the Assessment Sub Committee](#)

- 9.4.1 To receive reports from the Monitoring Officer on valid complaints to determine the appropriate action to be taken.
- 9.4.2 The Assessment Sub-Committee will consider the Monitoring Officer's report and, having regard to the "Local Assessment Criteria" and the views of the Independent Person, it will take a decision on how a complaint progresses, on the basis of one or more of the following options:
 - a) No further action
 - b) Monitoring Officer investigation
 - c) Other action
 - d) Referral to the Police
 - e) Referral to Independent Investigation
- 9.4.3 The Assessment Sub Committee may also grant dispensation in the same circumstances as the Standards Committee.

9.5 The role and function of the Hearings Sub Committee

9.5.1 To conduct hearings into allegations of breach of the Code of Conduct following an investigation report referred by the Monitoring Officer.

9.5.2 The Committee will make findings of fact and determine whether there has been any breach of the Code of Conduct, the Council's Standing Orders, or Financial Regulations.

9.5.3 Where appropriate to impose sanctions on a Member found to have failed to comply with the Code of Conduct including:

- a) censuring or reprimanding the Member;
- b) publishing its findings in respect of the Member's conduct;
- c) reporting its findings to Council [or to the Parish Council] for information or sanctions;
- d) recommending to the Member's Group Leader (or in the case of un-grouped Members, recommending to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- e) recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- f) recommending to Council that the Member be replaced as Executive Leader;
- g) instructing the Monitoring Officer to [or recommend that the Parish Council] arrange training for the Member;
- h) removing [or recommending to the Parish Council that the Member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish Council];
- i) withdrawing [or recommend to the Parish Council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- j) excluding [or recommending that the Parish Council exclude] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

9.5.4 The Hearings Sub Committee may also grant dispensations in the same circumstances as the Standards Committee.

10 Article 10: Joint Arrangements

10.1 Arrangements to promote well being

10.1.1 The Council, or the Cabinet, in order to promote the economic, social or environmental wellbeing of its area (and subject to the matter in question being included in the Council's community strategy) may:

- a) enter into arrangements or agreements with any person or body;
- b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- c) exercise on behalf of that person or body any functions of that person or body.

10.2 Joint Arrangements

10.2.1 The Council may establish joint arrangements with one or more local authorities and/or their executives to exercise functions that are not executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.

10.2.2 The Cabinet may establish joint arrangements with one or more local authorities to exercise functions that are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

10.2.3 Except as set out below, the Cabinet may only appoint executive members to a joint committee and those members need not reflect the political composition of the local authority as a whole.

10.2.4 Details of joint arrangements (if any) including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

10.3 Access to Information

10.3.1 The Access to Information Rules in Part 4 of this Constitution apply.

10.3.2 If all the members of a joint committee are Members of the Cabinet/executive in each of the participating authorities then its access to information regime is the same as that applied to the executive.

10.3.3 If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

10.4 Delegation to and from other Local Authorities

10.4.1 The Council may delegate non-executive functions to another local authority or, in certain circumstances, the Cabinet/executive of another local authority.

10.4.2 The Cabinet may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.

- 10.4.3 The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

10.5 Contracting Out

- 10.5.1 The Council and/or the Cabinet (in respect of executive functions only) may contract out to another body or organisation functions that may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

10.6 Strata Service Solutions Ltd

- 10.6.1 The Council has together with Exeter City and Teignbridge District Council agreed to the creation of Strata Solutions Services ("Strata") (a company wholly owned by the three authorities to provide ICT functions across the three authorities). The Council is required to appoint an officer of the Council as a member of the Strata Board and this decision has been delegated to the Head of Paid Service. In addition there is a Joint Executive Committee and Joint Scrutiny Committee. The Council has agreed to the appointment of the Leader of the Council as the Council's representative on the Joint Executive Committee. The three Members appointed to the Joint Scrutiny Committee are appointed by the Council annually. The Terms of Reference and Rules of Procedure governing the operation of the Joint Executive Committee and Joint Scrutiny Committee are exclusively contained within Part 8 of this Constitution.

10.7 South East Devon Habitat Regulations Executive Committee

- 10.7.1 The Council has together with Exeter City and Teignbridge District Council agreed to the formation of a joint committee to be responsible for ensuring the timely delivery and effective mitigation arising from new development which might impact three sites of European wildlife importance. The Council has agreed to the appointment of the Portfolio Holder for Strategic Development as the Council's representative on the joint committee an appointment which is made annually. The Terms of Reference and Rules of Procedure governing the operation of the Joint Executive Committee and Joint Scrutiny Committee are exclusively contained within Part 9 of this Constitution.

11 Article 11: Officers

11.1 Management Structure

11.1.1 The Council will employ such officers as it considers necessary to carry out its functions.

11.1.2 The Council will appoint persons for the following posts, who will be designated Chief Officers:

Post	Functions and areas of responsibility
Chief Executive	Overall corporate management and operational responsibility (including overall management responsibility for all officers). Provision of professional advice to all parties in the decision making process. Representing the Council on partnership and external bodies (as required by statute or the Council). Acting as the Council's Electoral Registration Officer, Returning Officer and Acting Returning Officer for all relevant electoral purposes
Director of Governance and Licensing	Services include Legal, Democratic Services, Licensing and Information and Complaints
Director of Finance	Services include Accountancy and Audit, Benefits, Revenue Collection. Responsible for asset management, car parking and major projects
Director for Housing, Health and Environment	Services include Housing, Environmental Health, Streetscene and Countryside and Leisure

11.1.3 In addition to the above the Council may appoint one or more further Directors or equivalent to assist the Chief Officers; together with the Chief Officers this shall be the Senior Management Team.

11.1.4 All other staff will be appointed by a Chief Officer or by one of their managers.

11.1.5 **Head of Paid Service, Monitoring Officer and Chief Financial Officer** – The Council will designate the following posts to assume the appropriate statutory responsibilities and these post holders shall be referred to as the Statutory Officers:

Post	Statutory Designation
Chief Executive	Head of Paid Service
Director of Governance and Licensing	Monitoring Officer
Director of Finance	Chief Finance Officer (S151 Officer)

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

11.2 Functions of the Head of Paid Service

11.2.1 **Discharge of functions by the Council.** The Head of Paid Service will report to Full Council on:

- a) the manner in which the discharge of the Council's functions is co-ordinated;
- b) the number and grades of officers required for the discharge of functions;
- c) the organisation of the officers; and
- d) the appointment and proper management of the authority's staff.

11.2.2 **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.

11.3 Functions of the Monitoring Officer

11.3.1 **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.

11.3.2 **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 (or to the Cabinet in relation to an executive function) if he or she 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.

11.3.3 **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.

11.3.4 **Conducting investigations:** The Monitoring Officer will conduct investigations into Standards matters and where appropriate make reports or recommendations in respect of them to the Standards Committee.

11.3.5 **Proper officer for access to information:** The Monitoring Officer will ensure that decisions of the Cabinet, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

11.3.6 **Advising whether executive decisions are within the budget and policy framework:** The Monitoring Officer (together with the Chief Finance Officer) will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

- 11.3.7 **Providing advice:** The Monitoring Officer will provide advice to all Councillors on the scope of powers and authority to take decisions, issues relating to probity and the policy framework.
- 11.3.8 **Acting as the Corporate Complaints Officer .**
- 11.3.9 **Contributing to corporate management:** The Monitoring Officer will contribute to the corporate management of the Council.
- 11.3.10 **Maintaining the Corporate and District / Parish Register of Council Members' Interests.**
- 11.3.11 **Monitoring and Reviewing the Constitution:** The Monitoring Officer (together with the Head of Paid Service) will monitor and review the operation of the Constitution in accordance with the contents of Article 14.
- 11.3.12 The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

11.4 Functions of the Chief Finance Officer

- 11.4.1 **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 or to the Cabinet in relation to an executive function and the Council's external auditor if he or she 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.
- 11.4.2 **Administration of financial affairs:** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- 11.4.3 **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.
- 11.4.4 **Providing advice:** The Chief Finance Officer will provide advice on financial impropriety, and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- 11.4.5 **Give financial information:** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

11.5 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

- 11.5.1 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.

11.6 Conduct

- 11.6.1 Officers will comply with the Officers' Code of Conduct set out in Part 5 of this Constitution and any Member/Officer Protocol/Code of Conduct and policies as the Council may from time to time adopt.

11.7 Employment

- 11.7.1 The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution and such other relevant standing Orders as from time to time may be required.

12 Article 12: Decision Making

12.1 Responsibility for Decision Making

12.1.1 The Council will issue and keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

12.2 Principles of Decision Making

12.2.1 All decisions of the Council will be made in accordance with the following principles:

- a) within legal and financial parameters;
- b) proportionality (i.e. the action must be proportionate to the desired outcome);
- c) due consultation and the taking of professional advice from officers;
- d) respect for human rights;
- e) a presumption in favour of openness (including explaining what options were considered and giving the reasons for decisions);
- f) clarity of aims and desired outcomes;
- g) promotion of equality;
- h) reduction in crime and disorder;
- i) sustainability;
- j) compliance with Members' and Officer Codes of Conduct

12.3 Types of Decision

12.3.1 Decisions reserved to Full Council: Decisions relating to the functions listed in Article 4 (policy framework and budget) will be made by the Full Council and not delegated.

12.3.2 Key decisions: A "key decision" means an executive decision which is likely:

(a) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Council's area:

(i) In accordance with section 38 of the Local Government Act 2000, in determining the meaning of "significant" regard shall be had to any guidance for the time being issued by the Secretary of State

(ii) the Council has determined that significant expenditure or savings shall be defined as the Council incurring expenditure or the making of savings of £100,000 or more;

- (iii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

12.4 Decision making by the Full Council

12.4.1 Subject to Article 12.8, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.5 Decision making by the Executive

12.5.1 Subject to Article 12.8, the Cabinet will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.6 Decision making by Overview and Scrutiny Committees

12.6.1 The Overview and Scrutiny Committees will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.7 Decision making by other committees and sub-committees established by the Council

12.7.1 Subject to Article 12.8, other Council committees (and sub-committees) will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

12.8 Decision making by Council bodies acting as Tribunals

12.8.1 The Council, its committees, a Councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

13 Article 13: Finance and Contracts

13.1 Financial Management

13.1.1 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.

13.2 Contracts

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

14 Article 14: Review and Revision of the Constitution

14.1 Duty to monitor and review the constitution

14.1.1 The Monitoring Officer (together with the Head of Paid Service) will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

14.2 Protocol for monitoring and review of the Constitution by Monitoring Officer

14.2.1 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 will:

- a) Observe meetings of different parts of the Member and officer structure;
- b) Undertake an audit trail of a sample of decisions;
- c) Record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders; and
- d) Compare practices in the Council with those in other comparable authorities, or national examples of best practice.

14.3 Changes to the Constitution

14.3.1 Only Full Council can approve changes to the Constitution.

15 Article 15: Suspension, Interpretation and publication of the Constitution

15.1 Suspension of the Constitution

- 15.1.1 Suspension of the Articles: The Articles of this Constitution may not be suspended
- 15.1.2 Suspension of the Rules of Procedure: A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors entitled to attend the meeting in question is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

15.2 Interpretation

- 15.2.1 The ruling of the Chair of Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1 and to relevant professional advice.

15.3 Publication

- 15.3.1 The Chief Executive will make the Constitution available electronically to each Member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the Member first being elected to the Council.
- 15.3.2 Copies of this Constitution will be available for inspection at Council offices and other appropriate locations. Copies of the full Constitution may be purchased by members of the local press and the public on payment of a reasonable fee.
- 15.3.3 A summary of the Constitution will be regularly maintained and kept up to date and be freely available within the district of East Devon.

16 Schedule 1: Description of Executive Arrangements

16.1 The following parts of this Constitution constitute the executive arrangements:

- 16.1.1 Article 6 (The Cabinet) and the Executive Procedure Rules.
- 16.1.2 Article 7 (Overview and Scrutiny Committees) and the Overview and Scrutiny Procedure Rules.
- 16.1.3 Article 10 (Joint arrangements).
- 16.1.4 Article 12 (Decision making) and the Access to Information Procedure Rules.
- 16.1.5 Part 3 (Responsibility for Functions).

Part 3: Responsibility for Functions

1. Section 1: Outline of responsibilities as required by Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

1.1. Local Choice Functions

1.1.1. Local Choice Functions which may be, but need not be, the responsibility of the Cabinet:

	Functions	Decision making body	Membership	Delegation of Functions
1	Local Act Functions Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of the Functions and Responsibilities Regulations	Nil	Nil	Nil
2	Determination of Appeals The determination of an appeal against any decision made by or on behalf of the authority	Employment Appeals Sub Committee	5 Councillors appointed by Council	
3	Local Area Agreements Functions under sections 106, 110, 111 and 113 of the Local Government Public Involvement in Health Act 2007	Cabinet (to make final decisions after considering the views of the relevant Overview and Scrutiny Committee)	10 Councillors	
		Overview and Scrutiny Committee	28 Councillors (combined)	

	Functions	Decision making body	Membership	Delegation of Functions
4	Contaminated Land Any function relating to contaminated land	Council: policies and strategies	60 Councillors	
		Cabinet: determination of action relating to the Council's own land and advising Council on policies and strategies	10 Councillors	Director of Housing, Health and Environment
		Licensing and Enforcement Committee on enforcement matters	15 Councillors	Director of Governance and Licensing/ Director of Housing, Health and Environment
5	Pollution The discharge of any function relating to the control of pollution or the management of air quality	Council: policies and strategies	60 Councillors	
		Cabinet: determination of action relating to the Council's own land and advising Council on policies and strategies	10 Councillors	Director of Housing, Health and Environment
		Licensing and Enforcement Committee on enforcement matters	15 Councillors	Director of Housing, Health and Environment
6	Abatement Notices The service of an abatement notice in respect of statutory nuisance	Director of Housing, Health and Environment		EHOs designated by the Director of Housing, Health and Environment

	Functions	Decision making body	Membership	Delegation of Functions
7	Noise and Statutory Nuisance Act 1993 The passing of a resolution that Schedule 2 to the Act should apply in the Council's area	Council	60 Councillors	Nil
8	Statutory Nuisance Inspections The inspection of the Council's area to detect any statutory nuisance	Director of Housing, Health and Environment		EHOs designated by the Director of Housing, Health and Environment
9	Statutory Nuisance Complaints Investigation	Director of Housing, Health and Environment		EHOs designated by the Director of Housing, Health and Environment
10	Land Ownership for Planning Purposes The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land	Chief Executive, Director of Governance and Licensing		Assistant Director Planning Strategy and Development Management and Development Management Officers and Legal Officers
11	Land Ownership generally The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Chief Executive, Director of Governance and Licensing		Assistant Director Planning Strategy and Development Management and Development Management Officers and Legal Officers

	Functions	Decision making body	Membership	Delegation of Functions
12	Appointments to other organisations The appointment of any individual (a) to any office other than an office in which he is employed by the Council (b) to any body other than (i) the authority; (ii) a joint committee of two or more authorities: or (c) to any committee or sub committee or such a body, and the revocation of any such appointment	Cabinet (in respect of those functions that are the responsibility of the Cabinet)	10 Councillors	
		Council (for all other appointments)	60 Councillors	
13	Staff Secondments The making of agreements with other local authorities for the placing of staff at the disposal of those authorities			Chief Executive

- 1.1.2. Note: Where any of the above involve the preparation of a strategic or other relevant policy for the Council to approve the Cabinet will initially prepare and then submit the draft plan or strategy after consideration of the views of the relevant Overview and Scrutiny Committees provided this does not relate to a function which cannot legally be that of the Cabinet.

1.2. Responsibility for Council Functions

1.3. Responsibility for Council Functions are functions not permitted to be the responsibility of the Cabinet:

	Committee	Membership	Functions	Delegation of functions
A	Licensing and Registration functions (in so far as not covered by any other paragraph of this Schedule) Licensing and Enforcement Committee	15 Councillors	Such functions as are set out in Schedule 1 to the Functions Regulations as are applicable to a District Council	See detailed list under delegated powers to officers (Part3)
B	Functions relating to Health and Safety at Work Licensing and Enforcement Committee	15 Councillors	Functions under any of the “relevant statutory provisions” within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the Council’s capacity as an employer.	See detailed list under delegated powers to officers (Part 3)
C	Functions relating to Elections Council	60 Councillors	Functions relating to elections as set out in Schedule 1 to the Functions Regulations (except paragraphs 2, 7, 10, 12, 13, 14, 16, 17, 18, 19, 20 – all of which are delegate	Chief Executive – in respect of paragraphs 2, 7, 10, 12, 13, 14, 16, 17, 18, 19, 20.
D	Functions relating to name and status of areas and individuals Council	60 Councillors	Functions set out in Schedule 1 of the Functions Regulations	

	Committee	Membership	Functions	Delegation of functions
EB	Functions relating to community governance Council		Proposals relating to the reorganisation of parishes As set out in Schedule 1 of the functions regulations with the exception of paragraphs 1, 2, 3, 5, 6, 7, 8, 9 which are delegated to the Chief Executive	To the Chief Executive in respect of paragraphs 1,2,3, 5,6,7,8 and 9
F	Power to make, amend, revoke or re-enact byelaws Council (on report from the relevant committee)	60 Councillors		
	Power to enforce byelaws: a) Planning Committee	16 Councillors		See detailed list under delegated powers to officers in part 3
	Power to enforce byelaws: b) Licensing and Enforcement Committee	15 Councillors		Director of Housing, Health and Environment / Director of Governance and Licensing
Fa	Functions relating to smoke-free premises Licensing and Enforcement Committee			
G	Power to promote or oppose local or personal Bills Council	60 Councillors		

	Committee	Membership	Functions	Delegation of functions
H	Functions relating to pensions etc. Council	60 Councillors		
I	Miscellaneous Functions (not otherwise already allocated or delegated) Audit and Governance Committee	10 Councillors	Duty to receive and approve of the Authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be) – item 45	
	Council	60 Councillors	Power to make Standing Orders – items 36 and 38	Monitoring Officer
	Council (for Head of Paid Service and Chief Officers)	60 Councillors	Power to appoint staff etc. as referred to in items 37, 39, 40, 43, 44, 44A	Chief Executive for other staff
	Council	60 Councillors	Power to make payments or provide other benefits in cases of maladministration etc. (subject to consultation with the Chair of the Council)(item 48)	Monitoring Officer

1.4. Responsibility for Executive Functions

	Committee	Membership	Functions	Delegation of functions
	Council		Powers relating to Overview and Scrutiny Committees (voting rights of co-opted members)(Item 44B)	
	Planning Committee		Powers relating to the protection of important hedgerows/complaints about high hedges (Item 46, 47/47A)	See delegated powers to officers, Part 3
	Council		Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption	Chief Executive
	Cabinet	10 Councillors	Details of the Cabinet's powers are set out in Section 2 of this Part 3 of the Constitution	Details of the delegations to the Portfolio Holders and staff are set out in Sections 2 and 3 of part 3 of the Constitution

2. Section 2: Terms of reference and delegated powers of committees

2.1. Cabinet

- 2.1.1. **Constitution:** Up to 10 Councillors including the Leader and Deputy Leader, as may be appointed by the Leader. The Cabinet does not need to be politically balanced.
- 2.1.2. **Meetings:** 11 times per year (or more frequently as appropriate).
- 2.1.3. The Cabinet will be the executive arm of the Council with the authority to action policies within the plans, strategies and budget approved by the Council.
- 2.1.4. All decisions and actions taken by the Cabinet or a Portfolio Holder shall comply with the relevant Procedure Rules set out in Part 4 of this Constitution. In particular all decisions taken by the Cabinet or a Portfolio Holder will be as a result of considering and debating a written report which shall contain a summary of the legal, financial and all other relevant implications arising from the proposed decision.
- 2.1.5. Subject to this the Cabinet has the power to take all decisions within its remit that are not already delegated to officers. Only the Cabinet acting collectively may take “key decisions”. All other decisions may be taken by a Portfolio Holder subject to the requirements referred to in this section of the Constitution.
- 2.1.6. The membership of Cabinet is not required to follow the rules of proportionality relating to political parties. The Leader of the Council, as elected by Council, shall chair the Cabinet meetings.
- 2.1.7. The Leader will appoint members of the Cabinet as Portfolio Holders, together with any deputies or assistants. The Leader will normally remain without portfolio.
- 2.1.8. The Leader shall have the authority to change the responsibilities and numbers of Portfolio Holders.
- 2.1.9. If for any reason the Leader is unable to act or the office of leader is vacant, the Cabinet must act in the Leader’s place or must arrange for a Member of the Cabinet to act in the Leader’s place. Members of Cabinet remain in post until such time as the new Leader appoints a new Cabinet.
- 2.1.10. The Leader shall prepare the Forward Plan of key decisions to be made by the Cabinet. For the avoidance of doubt, any reference to partnerships contained below may not include legally binding partnerships.
- 2.1.11. **Terms of reference** are:
- a) To exercise those functions that are not the responsibility of the Council, another Committee or an officer.
 - b) To provide effective strategic leadership to the Council.
 - c) To implement policies as determined by Council, and monitor service delivery.
 - d) To collectively determine key decisions.

- e) To advise the Council on financial and economic policy and to recommend annually, as determined by statute, proposals for the Council Tax. To exercise overall responsibility for the proper administration of the Council's financial affairs under Section 151 of the Local Government Act 1972.
- f) To maintain overall control of the accounts, approved budgets and receive reports on virement requests in accordance with financial regulations.
- g) To recommend the fees and charges relating to licences, registrations and all other matters.
- h) To submit annually to the Council a Performance Plan, to monitor its effectiveness and to establish the Performance Assessment Framework within which the Council will operate.
- i) To approve (in consultation with Audit and Governance Committee), implement and monitor the Council's Code of Corporate Governance.
- j) To receive for consultation purposes the Local Development Scheme, Statement of Community Involvement and Annual Monitoring Report.
- k) To approve Supplementary Planning Documents.
- l) To consider reports from the Council's external auditors, ombudsman and other bodies and to take or propose appropriate action.
- m) To prepare, or consider (new or amended policies) from the Overview and Scrutiny Committees for the consideration of Council.
- n) To ensure adequate training and development for all elected Members.
- o) To let contracts on behalf of the Council in accordance with Contract Standing Orders.
- p) To oversee the Council's corporate accommodation and to ensure the provision of safe, well maintained premises to staff and public and to recommend the acquisition and disposal of such property.
- q) To be responsible for the acquisition, management, maintenance and disposal and letting of all property of the Council and to consider the views of the Council before making a compulsory purchase order.
- r) To be responsible for the review and implementation of the Council's Asset Management Plan and Capital Strategy.
- s) To prepare and advise Council on proposed changes to Procedural Standing Orders, Financial Regulations, Contract Standing Orders, and delegations.
- t) To take any decisions within these terms of reference that are urgent in nature and also to act on behalf of the Council in any cases where urgent decisions are required and such matters cannot conveniently be dealt with by the Council or by another appropriate committee or under the delegated powers of staff.
- u) To advise the Council on proposals for emergency planning and to ensure an adequate response to incidents affecting the district.
- v) To exercise general control over the information, public relations and publicity services of the Council.

- w) To prepare, submit, implement and revise the Council's ICT Strategy.
- x) To respond on behalf of the Council to external reports and consultation papers.
- y) To authorise exceptions to approved policies only where the particular merits of individual cases justify the exceptions being made.
- z) To appoint a discretionary rate relief panel to determine applications for rate relief from charities and non-profit making organisations in accordance with the provisions of the Local Government Act 1988.
- aa) To appoint or nominate persons to outside organisations which relate to housing, leisure, environmental health, community safety and other functions of the Cabinet.
- bb) To agree the council tax base for each financial year.

2.1.12. **Leader's Scheme of Delegation to Portfolio Holders**

Such decisions as the Cabinet or Leader may from time to time delegate to them subject at all times to the following provisos:

- (i) The decision in question is not a "key decision".
- (ii) The power to make the decision has not previously been delegated to an officer.
- (iii) The Portfolio Holder has considered what consultation is necessary with regard to the proposed decision – including the need to consult with local Ward Members.
- (iv) The proposed decision is compliant with the terms and conditions of the existing policy framework.
- (v) Receipt and consideration of a written report containing a summary of the legal, financial and all other relevant implications arising from the proposed decision.
- (vi) Publication of the proposed decision in accordance with the Executive Procedure rules referred to in Part 4 of the Constitution.
- (vii) If the Leader varies the scheme of delegation to Portfolio Holders s/he shall report the changes to the next practicable Council meeting for information.

- 2.1.13. **General Delegations to all Portfolio Holders** (subject to requirement that the matter is within the terms and reference of their respective portfolios):
- a) Authority to issue press releases and deal with the press.
 - b) Authority to approve proposals and schemes in respect of operational matters that are required to implement the policy framework.
 - c) 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 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:
 - i. the carrying out of work in accordance with a Specification and/or Bills of Quantities, or
 - ii. the purchase or sale of vehicles, equipment or machinery surplus to the Council's needs where the consideration exceeds £30,000, or
 - iii. concessions in accordance with detailed particulars provided the accepted sum is within estimates.
 - d) Authority to approve alterations and extensions to schedules/specifications to contracts that do not have the effect of exceeding a previously approved budget sum, subject to legal advice.
 - e) Authority to approve a maximum 5% “over-spend” in respect of expenditure on works for a specified project within an approved budget and virement requests in accordance with Financial Regulations.
 - f) Authority to approve grant aid if within budget.
 - g) Authority to grant or enter into licences, leases and the negotiation of terms following receipt / service of notices under the Landlord and Tenant Act 1954 for the renewal of tenancies provided they are in accordance with the Policy Framework and subject to relevant terms and conditions being negotiated by the Director of Finance where: (i) the term is 125 years or less; and (ii) either the premium, if payable, exceeds £30,001 but is less than £200,000 and/or the annual licence fee / rent is between £15,001 and £100,000
 - h) Authority to agree the variation or release of (a) restrictive covenant(s) benefitting (former) Council owned (non-housing) property where the premium payable exceeds £30,001 and where in accordance with the Policy Framework and subject to relevant terms and conditions being negotiated by the Director of Finance.
 - i) Authority to agree the variation or release of (a) restrictive covenant(s) burdening Council owned (non-housing) property where the premium payable exceeds £30,001 and where in accordance with the Policy Framework and Budget and subject to relevant terms and conditions being negotiated by the Director of Finance.
 - j) Authority to increase or alter fees and charges subject to statutory consultation and/or advertisement procedures where applicable.
 - k) Authority to dispose of freehold (non-housing) property assets which have a market value between £30,001 and £200,000.

2.1.14. Specific Delegations to the Portfolio Holder for Sustainable Homes and Communities are:

- a) Authority to authorise the execution of Consents to Dealing in favour of approved Housing Associations.
- b) Authority to approve requests to purchase (housing) land from the Council (provided the request has the support of all the local Ward Members).
- c) Authority to approve requests by tenants to carry out a business.
- d) Authority (in consultation with Ward Members), to determine applications in all cases (other than those where consent may not be withheld) for consent for resale (pursuant to S.104C of the Housing Act 1957, S.19 of the Housing Act 1980 or S.157 of the Housing Act 1985) of former Council dwellings and to determine applications to remove restrictions imposed under those sections.
- e) Authority to approve Housing Association partners for the provision of rented housing, as provided in the Capital Programme.
- f) Authority to agree funding, in connection with tenant participation, under £500 for individuals and/or groups.
- g) Authority to take decisions within the advisory remit of the Housing Applications Review Panel where the Panel so advises.
- h) Authority, in consultation with the Chair of the East Devon Sports Council (plus the particular sport representative where appropriate), to determine submitted applications for revenue support grants for sports clubs under the recreation strategy in respect of qualifying schemes (a maximum of one scheme per organisation to be approved each year).
- i) Authority to agree the variation or release of (a) restrictive covenant(s) benefitting (former) Council owned (housing) property where the premium is £30,001 or more and where in accordance with the Policy Framework and subject to relevant terms and conditions being negotiated by the Director of Housing, Health and Environment.
- j) Authority to agree the release of (a) restrictive covenant(s) burdening Council owned (housing) property where the premium is £30,001 or more and where in accordance with the Policy Framework and Budget and subject to relevant terms and conditions being negotiated by the Director of Housing, Health and Environment.

2.1.15. Specific Delegations to the Portfolio Holder for Strategic Planning are:

- (a) Authority to give written notice required in accordance with the Town and Country Planning regulations authorising the seeking of deemed planning consent for schemes included within the approved Capital and Revenue Programmes.
- (b) Authority to accept renewal of the contract for advertising the weekly list of planning applications on the basis of two or three years so long as the cost does not exceed the annual rate of inflation published for the previous twelve months.
- (c) Authority to authorise emergency action under the Building Act 1984 and Building Regulations, the Town and Country Planning Act 1990, the Local Government (Misc. Provisions) Act 1976 Planning (Listed Buildings and Conservation Areas) Act 1990

and all associated legislation where such action would result in the expenditure of money by the Council.

2.1.16. Specific Delegations to the Portfolio Holder for Economy and Assets are

- a) Authority to approve the grant of wayleaves and easements (in fee simple or for a term certain) where in accordance with the Policy Framework and subject to relevant terms and conditions being negotiated by the Director of Finance.
- b) Authority to approve the disposal of assets to town and parish councils at below market value in line with the Policy Framework and in accordance with the General Disposal Consent (England) Order 2003.

2.1.17. Specific Delegations to the Portfolio Holder for Finance are:

- a) Authority to approve financial assistance in respect of the following matters:
 - i. grants under the Ring and Ride scheme;
 - ii. grants to the Citizens Advice Bureaux;
 - iii. Village Shop Rate Relief;
 - iv. Relief from Business Rates in respect of Charities/Good Causes and cases of hardship;
 - v. annual grants to individual Tourist Information Centres.
- b) Authority to accept the recommendations of the Independent Remuneration Panel.
- c) Authority to agree the establishment of an Interview Panel and all relevant associated procedures/requirements following the resignation of the Head of Paid Service or a Chief Officer.
- d) Authority to appoint a valuer to advise on the rateable values of properties on which the Council is liable for rates and where considered appropriate, lodge appeals.
- e) Authority to approve/determine revenue support or small capital grants through the Lottery or Arts programmes.
- f) Authority to determine applications for feasibility studies (but not project development) costing up to £5,000 for proposed National Lottery Fund schemes.
- g) Authority to approve temporary changes to the charges applied and operational procedures in respect of the management of the Council's car parks.

2.1.18. Portfolio Teams:

Each Portfolio Holder and the Leader will be advised and assisted in carrying out their responsibilities by a group of Members appointed by the Council. The groups will be informal and flexible to establish all-party working within each portfolio area. Their primary function will be to enable the Leader/Portfolio Holders to initiate the review and development of policies to discuss major issues which have yet to be considered by the Cabinet or the implementation of matters which have already been approved in principle and to advise on budget monitoring. It is the prerogative of the Leader/Portfolio Holder to call meetings of the Portfolio Teams and to frame their agendas – although other Group Members and the Chief Executive will be able to suggest topics for discussion and the Cabinet will be entitled to refer items to a Portfolio Team for debate. Portfolio Teams will not be decision-making bodies and their meetings will therefore not be in public. Portfolio Teams will normally be aligned to Portfolios. Portfolio Teams meetings will be divided as follows:

Leader's

Climate Action and Emergency Response

Coast, Country & Environment

Council and Corporate Coordination

Communications & Democracy

Economy

Finance & Assets

Strategic Planning

Sustainable Homes and Communities

Culture, Leisure, Sports & Tourism

2.2. Overview Committee

- 2.2.1. **Membership:** 13 Councillors (subject to the rules relating to political balance / proportionality). The Chair of the Committee shall be a Councillor from the majority party.
- 2.2.2. **Meetings:** 6 times per year (or more frequently as appropriate).
- 2.2.3. **Quorum:** 5
- 2.2.4. **Terms of Reference:** The role of this Committee is to develop new and review existing policy (other than those falling within the remit of the Strategic Planning Committee) and evaluate its implementation. The committee shall also review service delivery options following consultation exercises and consider formative policy proposals. Full details of the Committee and its terms of reference are set out in detail in Article 7 of this Constitution.
- 2.2.5. The Committee shall have the following powers:
- a) To assist Council and the Cabinet in the development of the budget and overall policy framework and to make proposals to the Cabinet for new or amended policies;
 - b) To receive reports (including any report from the Scrutiny Committee) on the effectiveness of policy implementation and to make further recommendations to Council and / or Cabinet as appropriate;
 - c) To make reports or recommendations to Council and/or any other Council committee or sub-committee or any joint committee or sub-committee on which the local authority is represented with respect to the discharge of any functions of the authority or on matters which affect the authority's area or the inhabitants of that area;
 - d) To comment upon and make recommendations to the Cabinet on external reports and consultation papers;
 - e) Delegated budgetary powers in order to procure specialist information services designed to supplement resources ordinarily available to the Committees.

2.3. Scrutiny Committee

- 2.3.1. **Membership:** 15 Councillors (subject to the rules relating to political balance / proportionality). The Chair shall be a Councillor from the opposition party / group agreed at Annual Council but in the event that no Councillor is proposed by the opposition then the Leader shall retain the right to nominate the Chair.
- 2.3.2. **Meetings:** 10 times per year (or more frequently as appropriate).
- 2.3.3. **Quorum:** 5
- 2.3.4. **Terms of Reference:** The role of this Committee is to evaluate the effectiveness of service delivery and to scrutinise where and when appropriate. The Committee will also monitor the delivery of the Council Plan.

- 2.3.5. The Committee will also develop strong links with partner agencies and act as the Crime and Disorder Committee for the purposes of section 19 of the Police and Justice Act 2006 Full details of the terms of reference are set out in detail in Article 7 of this Constitution.
- 2.3.6. The Committee shall have the following powers:
- a) To make reports or recommendations to Council and/or any other Council committee or sub-committee or any joint committee or sub-committee on which the local authority is represented with respect to the discharge of any functions of the authority or on matters which affect the authority's area or the inhabitants of that area;
 - b) To scrutinise policy decisions and the draft budget to ensure compliance with approved policy objectives and report to Council as appropriate;
 - c) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions of the authority. Where review or scrutiny takes place of a decision made but not yet implemented, the Committee's powers include the ability to recommend the decision be reconsidered by the person or body that made it or to arrange for Council to carry out the review or scrutiny function.
 - d) To review the performance of the Cabinet against relevant performance plans and to report to Council as appropriate.
 - e) To comment upon and make recommendations to the Cabinet on external reports and consultation papers.
 - f) Delegated budgetary powers in order to procure specialist information services designed to supplement resources ordinarily available to the Committees.

2.4. **Housing Review Board (Housing Overview and Scrutiny Committee)**

- 2.4.1. **Membership:** 5 Councillors (subject to the rules relating to political balance / proportionality); 5 tenant and leaseholder representatives; and 2 independent community representatives. The non-councillor members will be co-opted members and shall have the right to vote. Council shall appoint the Chair. The Board will elect its own vice Chair.
- 2.4.2. **Meetings:** 4 times per year (or more frequently as required).
- 2.4.3. **Quorum:** 4
- 2.4.4. **Appointments:** Council Members and co-opted members on the Board will be appointed at the annual Council meeting. Tenant and leaseholder representatives on the Board will initially be selected by interview (unless there is no need because the number of candidates equals the number of places) and serve a four year term. Should a vacancy occur during the four year term, the unsuccessful candidate who received the highest score in the last interview, within the previous six months, will normally be offered the appointment. All tenant and leaseholder appointments are subject to Council approval. Normally non-councillor Board members will serve for a maximum of eight years, subject to annual reappointment by the Council, with the objective that every four years one quarter of the non-councillor members will stand down.

- 2.4.5. **Terms of Reference:** The Housing Review Board is one of the Overview and Scrutiny Committees and will consider matters relating to the Council's landlord and housing management functions. The Board will advise the Council's Cabinet on housing policy and operational practice, where this affects the Council's tenants and leaseholders. The Board will keep under review the housing stock options appraisal and monitor the conditions which will influence the future arrangements for the ownership and management of the Council's housing stock. Council officers and others, where appropriate, will support the work of the Board.

2.5. Licensing and Enforcement Committee

- 2.5.1. **Membership:** 15 Councillors (subject to the rules relating to political balance / proportionality). Serving members of Cabinet are not eligible for appointment to this committee.
- 2.5.2. **Meetings:** 4 times per year (or more frequently as appropriate).
- 2.5.3. **Quorum:** 4.
- 2.5.4. **Terms of Reference:** The role of the committee is to carry out the licensing and enforcement functions of the Council relating to:
- (a) Hackney carriage and private hire vehicles, gaming, entertainment, food and miscellaneous licensing, health and safety and certain deposits on highways as set out in Sections B, C and I(5) of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000;
 - (b) Licensing and enforcement functions relating to the Licensing Act 2003
 - (c) Contaminated land, control of pollution and the management of air quality as set out in Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000;
 - (d) Licensing and enforcement functions relating to the Gambling Act 2005 with the exception of a resolution not to issue a Casino licence and the approval of the licensing policy for gambling (functions of Council).
- 2.5.5. In particular the Committee will consider and determine:
- (a) Applications relating to licences, permits, approvals, orders, consents or similar authorisations, under the above provisions where the relevant officer considers that the matter merits the Committee's attention or is otherwise outside the scheme of delegation to officers.
 - (b) Whether or not the holder of a licence etc., is a fit and proper person to continue to benefit from the grant of the licence etc.
 - (c) Amendments to the hackney carriage fare tariff.
 - (d) The introduction of or amendments to, licence conditions, byelaws, orders, consents, approvals, permits or other similar authorisations.
 - (e) The institution of prosecution proceedings or other enforcement action where the relevant officer considers the matter merits the Committee's attention.

2.5.6. **Licensing Sub-Committee**

2.5.7. **Membership:** 3 Councillors. The sub-committee will be chaired by the Chair or Vice-Chair of the Licensing and Enforcement Committee (if present). It will sit as and when required with councillors drawn from the Licensing and Enforcement Committee. Otherwise the sub-committee will elect their Chair for the hearing on the day.

2.5.8. **Quorum:** 2.

2.5.9. **Role:** To determine all licensing applications where a hearing or committee approval is required and any related function in accordance with the Licensing Act 2003 or Gambling Act 2005 and regulations made thereunder; and to carry out any other licensing function already delegated to the Licensing and Enforcement Committee.

2.5.10. In a Council regular election year when there is a need to hold a hearing in the period between election day and the Annual Meeting of the Council, those Members of the Licensing and Enforcement Committee who are re-elected as Councillors may meet as the Licensing Sub-Committee to exercise any of the functions of the Licensing Sub-Committees and shall elect a Chair for the hearing on the day.

2.6. **Standards Committee**

2.6.1. **Membership:** 13 Councillors comprising Chair of Council (who will be the Chair) and 6 District councillors (subject to the rules relating to political balance / proportionality), 3 non-voting Parish Councillor representatives and 3 non-voting independent members. There shall be substitute members for each political group of the Council entitled to a seat to ensure flexibility in case of any conflict of interest and to ensure political balance.

2.6.2. **Meetings:** 4 times per year (or more frequently as appropriate).

2.6.3. **Quorum:** 4 committee members (of which three shall be Members with voting rights).

2.6.4. **Terms of Reference:** All elected Members (and any co-opted members) are subject to the Code of Conduct for Councillors. The Standards Committee will exercise the roles and functions referred to in Article 9 of the Constitution. It is a committee that is subject to the procedural rules of the Local Government Act 1972 and shall be politically balanced unless full Council votes to the contrary unanimously. In addition the Standards Committee will:

(a) Advise on the discretionary elements of the Local Code; including monitoring and updating.

(b) Advise on the implementation of the Local Code, including the training of Members in matters of conduct and advice to Members on such issues as the treatment of Disclosable Pecuniary Interests and personal interests and more general conduct issues.

(c) To the extent allowed by law make arrangements for Members to receive dispensations to speak on, or participate in, matters in which they have interests.

(d) Appoint such Sub Committees (including Membership thereof) as appropriate to discharge the functions.

- 2.6.5. The Committee will support and be supported by the Council’s Monitoring Officer, reinforcing his/her informal role of helping to maintain standards of conduct by encouragement, advice and persuasion.
- 2.6.6. Council will appoint at least one Independent Person to discharge the relevant functions under the Localism Act 2011 and the Council’s internal procedures.
- 2.6.7. The Council will appoint members of the Standards Committee at its annual meeting.
- 2.6.8. The Committee will report directly to the Council, and reports to Council shall be under the name of the Chair. The Committee shall receive guidance from the Monitoring Officer or his Deputy. The Committee may make recommendations to the Council on changes to the Code of Conduct, procedure, or guidelines relating to the conduct of Members.
- 2.6.9. Assessment Sub Committee**
- 2.6.10. **Membership:** 3 Councillors drawn as necessary from the Standards Committee, and one non-voting Independent Member, one non-voting Parish Member and one Independent Person. The Chair and membership to be rotated and it can be called on an ad hoc basis.
- 2.6.11. **Quorum:** 3 District Councillors,
- 2.6.12. **Terms of Reference:** To consider investigation reports referred to the sub-committee by the Monitoring Officer concerning complaints of breaches of the Code by District councillors or Parish Councillors within East Devon.
- 2.6.13. Hearings Sub Committee**
- 2.6.14. **Membership:** 3 Councillors drawn as necessary from the Standards Committee, and one non-voting independent Member, and one non-voting Parish Council Member. The membership shall be rotated and it can be called on an ad hoc basis. The Chair of the Council shall Chair if sitting. The membership shall not include any member who sat on the Assessment Sub-Committee that considered the complaint at the earlier stage, save where to do so would mean that the Hearing Sub-Committee is in capable of being constituted.
- 2.6.15. **Quorum:** 3 District Councillors.
- 2.6.16. **Terms of Reference:** To consider investigation reports referred to the sub-committee by the Monitoring Officer concerning complaints of breaches of the Code by District councillors or Parish councillors within East Devon.
- 2.7. Strategic Planning Committee**
- 2.7.1. **Membership:** 15 Councillors (subject to the rules relating to political balance / proportionality). No more than 4 may be from the Cabinet.
- 2.7.2. **Meetings:** 4 times per year (or more frequently as appropriate).
- 2.7.3. **Quorum:** 5.
- 2.7.4. **Terms of Reference:** The role of the committee is to:
 (a) To consider and recommend the Local Development Scheme, Statement of Community Involvement and Annual Monitoring Report to Council.

- (b) To consider and recommend Development Plan Documents to Council for submission for examination and subsequent adoption.
- (c) To consider and recommend any Local Development Documents (including Supplementary Planning Documents) which are not Development Plan Documents to Cabinet for adoption.
- (d) To authorise public consultations with regard to planning policy documentation including Development Plan Documents and Supplementary Planning Documents.
- (e) To consider (when appropriate) and advise Cabinet on Neighbourhood Planning matters.
- (f) To consider and adopt any planning policy related document (including evidence and strategy documentation) that is not a Local Development Document.
- (g) To receive reports on planning policy related matters including 5 year land supply, consultations from government, neighbouring authorities and Devon County Council on their planning policies and to approve the Council's response where appropriate.
- (h) To consider and advise Council on matters relating to the Community Infrastructure Levy.
- (i) To provide advice to the Planning Committee on the interpretation of the policies of the Development Plan if requested to do so by either officers or the Planning Committee.
- (j) To designate conservation areas and to agree extensions and alterations to the boundaries of conservation areas.
- (k) To approve the Community Infrastructure Levy Annual Funding Statement
- (l) consideration and approval for publication and submission of the Annual Infrastructure Funding Statement

2.7.5. Cabinet will receive, for consultation purposes, the Local Development Scheme, Statement of Community Involvement and Annual Monitoring Report. Recommendations concerning Supplementary Planning Guidance (and other Local Development Documents which are not Development Plan Documents) shall be made to Cabinet since under regulations dealing with Local Choice functions this must be a function of Cabinet.

2.8. Planning Committee

- 2.8.1. **Membership:** 16 Councillors (subject to the rules relating to political balance / proportionality). The Chair and Vice Chair shall not be from the same Ward and serving members of Cabinet are not eligible for appointment to this committee.
- 2.8.2. **Meetings:** 12 per year (or more frequently as required).
- 2.8.3. **Quorum:** 4.
- 2.8.4. **Terms of Reference:** To exercise on behalf of the Council powers and duties within existing policies and practices as a District Planning Authority (except such matters as are specifically referred to another Committee of the Council) including the following:
 - a) Development Management decisions

- b) Applications for Advertisement Consent (under the Town and Country Planning (Control of Advertisements) Regulations
- c) Tree Preservation Orders
- d) Building Preservation Notices
- e) Enforcement Notices
- f) Building Control
- g) Temporary Markets (powers under S.37 of the Local Government Misc. Provisions Act 1982)
- h) Street Naming
- i) Local Development Orders
- j) Where necessary / appropriate to carry out site inspections before determining a matter.
- k) Remove permitted development rights through Article 4 Directions; Revocation and modification notices, Building Preservation notices and undertake other functions under the Town and Country Planning Acts which are not carried out by officers of the Council or which are not specified as being within the remit of the Strategic Planning Committee.

2.8.5. Where the Cabinet proposes carrying out development on the Council's own land which requires planning permission the Cabinet shall submit its proposals to the Planning Committee for decision. The Planning Committee having carried out the appropriate consultation through the Assistant Director Planning Strategy & Development Management shall then, if it is so minded, grant permission unconditionally or subject to such conditions as may be thought fit. If after due consideration the Planning Committee is not minded to grant planning permission then the matter shall be referred to Council for the Council itself to make a final decision.

2.9. Audit and Governance Committee

2.9.1. **Membership:** 10 Councillors (subject to the rules relating to political balance / proportionality) and a co-opted non-voting Independent Member who shall be suitably qualified to support elected representatives in scrutinising local authority finances.

2.9.2. **Meetings:** 5 per year (or more frequently as required).

2.9.3. **Quorum:** 3.

2.9.4. **Terms of Reference:** The purpose of the Audit and Governance Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority's financial and non-financial performance to the extent it affects the authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process. The Committee shall:

- a) Consider the effectiveness of the authority's risk management arrangements, the control environment and associated anti-fraud and anti-corruption arrangements.

- b) Seek assurance that action is being taken on risk related issues identified by auditors and inspectors.
- c) Be satisfied that the authority's assurance statements, including the Statement of Internal Control, properly reflect the risk environment and any actions required to improve it.
- d) Following review of the effectiveness of the system of internal control, and in consultation with Cabinet approve the annual governance assurance statement.
- e) Approve internal audit's strategy, annual work plan and monitor performance.
- f) Review a summary of internal audit reports and the main issues arising, and seek assurance that action has been taken where necessary.
- g) Receive the annual report of internal audit and review the effectiveness of internal audit.
- h) Consider those reports of external audit and inspection agencies not the province of the Cabinet in addition to those referred to it by the Cabinet.
- i) The monitoring of the use of the Regulation of Investigatory Powers Act.
- j) Ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.
- k) Review the external auditor's opinion and reports to Members, and monitor management action in response to issues raised by external audit.
- l) Approving the Council's annual statement of accounts, income and expenditure and balance sheet or record of receipts and payments.
- m) To receive any issue referred to it by the Chief Executive, Monitoring Officer, Director of Finance, or any Council body.
- n) **Ensuring oversight of information governance across the Council including the creation of an Information Governance Board and Information Governance Working Group, the Board to provide an annual report on its work to the committee.**

2.10. Personnel Committee

- 2.10.1. **Membership:** 15 Councillors (subject to the rules relating to political balance / proportionality). The Leader, Deputy Leader and Portfolio Holder with Human Resources responsibilities shall be members. There shall be substitute members for each political group of the Council entitled to a seat to ensure flexibility in case of any conflict of interest and to ensure political balance and that the Sub Committees can be constituted.
- 2.10.2. The Committee may invite a representative of the Union (Unison) and / or representatives from the body of employees to attend when relevant for them to do so. These attendees will not have any voting rights.
- 2.10.3. **Meetings:** 4 times per year (or more frequently as required)

2.10.4. **Quorum:** 4

2.10.5. **Terms of Reference:**

- a) Council has delegated to the Committee the power to determine the terms and conditions on which employees hold office including procedures for their dismissal (s.112 Local Government Act 1972) and to devise and develop overall employment policies (including relating to Health & Safety, grievances and employee relations, retirements, redundancies), training and development plans.
- b) Consider and make recommendations to Council in relation to the Pay Policy Statement.
- c) Consider and determine collective disputes between the Council as employer and the Union
- d) Monitor the management performance information and develop and monitor implementation of any related organisational improvement plan
- e) Council has delegated the following functions to the Personnel Committee through one of its Sub Committees (as detailed below) to be discharged in accordance with the Officer Employment Procedure Rules and having regard to the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives and Chief Officers;
 - Consider any allegations/complaints regarding the conduct and any capability issues of the Chief Officers.
 - To take appropriate action (including suspension) where appropriate in relation to any of the Chief Officers) save that such action shall not include dismissal which may only be a decision of the Council.
 - To recommend to Council the preferred option(s) for resolution and parameters of any negotiation that may lead to the redundancy of, or severance payment to, any of the Chief Officers including where this arises out of a fixed term contract.
 - To recommend to Council on the appointment of Chief Officers and their remuneration and terms and conditions of service
 - To hear and determine any grievance submitted by the Head of Paid Service or by an employee against the Head of Paid Service provided in either case that it has been referred by the Monitoring Officer.

2.10.6. **Interviewing (Chief Officers) Sub Committee**

2.10.7. **Membership:** 7 Councillors drawn from the membership of the Personnel Committee which shall include at least one member of the Cabinet (subject to the rules relating to political balance / proportionality). Substitute members can be used when necessary.

2.10.8. **Quorum:** 7

2.10.9. **Terms of Reference:** To make recommendations on the appointments of the Chief Officers to the Council (including temporary appointments) when vacancies arise in these posts and to take such other action as it deems necessary leading up to the making of those appointments.

2.10.10. **Investigating and Disciplinary Sub Committee**

2.10.11. **Membership:** 5 Councillors drawn from the membership of the Personnel Committee (subject to the rules relating to political balance / proportionality) none of whom shall have sat on any Grievance Sub Committee relating to the same matter and which shall include at least one member of the Cabinet (which may not be the Leader). Substitute members can be used when necessary.

2.10.12. **Quorum:** 5

2.10.13. **Terms of Reference:** To consider disciplinary matters (including the authority to suspend) in relation to Chief Officers which are recommended to be dealt with by this Committee in the relevant Conditions of Service and the Council's Disciplinary Procedure for Statutory and Chief Officers. The Committee will have detailed regard to the Officer Employment Procedure Rules contained in the Constitution. The Committee will also consider and, in the absence of any appeal, recommend to Full Council any decisions regarding redundancy of Chief Officers.

2.10.14. **Employment Appeals Sub Committee**

2.10.15. **Membership:** 5 Councillors drawn from the membership of the Personnel Committee (subject to the rules relating to political balance / proportionality) none of whom shall have sat on any Investigating and Disciplinary Committee relating to the same matter and which shall include at least one member of the Cabinet (which may not be the Leader). Substitute members can be used when necessary.

2.10.16. **Quorum:** 5

2.10.17. **Terms of Reference:** To determine appeals from the Chief Officers against any decision of the Investigating and Disciplinary Committee involving disciplinary sanctions amounting to less than dismissal. To determine redundancy decisions following an appeal from the decision of the Investigating and Disciplinary Committee with the decision then recommended to Full Council for approval. To consider any appeal by the Head of Paid Service in relation to a grievance following a decision of the Investigating and Disciplinary Committee in accordance with Stage 2 of the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives.

2.10.18. **Grievance Sub Committee**

2.10.19. **Membership:** 5 Councillors drawn from the membership of the Personnel Committee (subject to the rules relating to political balance / proportionality).

2.10.20. **Quorum:** 3

2.10.21. **Terms of Reference:** To determine grievances by / against the Head of Paid Service that cannot be resolved informally in accordance with the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives and Chief Officers

2.11. Panels and Forums

- 2.11.1. Panels and forums may be either permanent or ad hoc groups set up to assist and advise Cabinet or any of the Overview and Scrutiny Committees to deal with such matters as they may deem necessary within their remit or to deal with matters referred to them by the Cabinet.
- 2.11.2. Panels and Forums will normally consist of 7 Councillors, with a quorum of 3.
- 2.11.3. Members of the Cabinet are not permitted to form part of a Panel or Forum appointed by any of the Overview and Scrutiny Committees but may be called upon attend to provide explanation or advice. A Cabinet Member may form part of a Cabinet appointed Panel or Forum.
- 2.11.4. The terms of reference and responsibilities of a Panel or Forum will be defined when they are set up; there shall be explicit consideration whether any specific restriction in terms of eligibility of Members to sit on the panel or in its terms or reference or operation would be helpful in managing potential conflicts of interest, or public perceptions of conflict of interest.
- 2.11.5. A Panel or Forum will normally sit in public. They will not have any direct executive role. They will be chaired by an elected Councillor.
- 2.11.6. **Panels:** These are defined as groups of Councillors and/or staff set up to develop, for example, a particular policy or project. Their life span is likely to be that of the duration of the task they have been set, but they might have a role in continuing monitoring and review.
- 2.11.7. **Forums:** These include representatives of outside interests facilitated by the Council discussing specific areas of activity. Forums may have a permanent role to ensure that specific policies are properly considered, co-ordinated and delivered. They will be an important vehicle for ensuring the involvement of the community in policy development and review. Where recommendations involve expenditure, an assessment of the service improvement which should result should be included, together with funding proposals.

2.12. Joint Bodies

- 2.12.1. At Annual Council, Members are also formally appointed to the following Joint Bodies:
 - Arts and Culture Forum
 - Cranbrook Strategic Delivery Board
 - County Committees including East Devon Highways and Traffic Orders Committee
 - East and Mid Devon Community Safety Partnership
 - Exeter and East Devon Enterprise Zone Board
 - East Devon Traveller Forum
 - Exmouth Beach Management Plan Steering Group
 - Exmouth Queens Drive Delivery Group
 - Heart of the South-West Joint Committee

Lower Exe Mooring Authority Management Committee

Recycling and Waste Partnership Board

Sidmouth Beach Management Plan Steering Group

Sidmouth Port Royal Project Reference Group

STRATA (Joint Executive Committee and Joint Scrutiny Committee)

South East Devon Habitat Regulations Executive Committee

Woodbury, Exmouth and Budleigh Community Health and Wellbeing Board

3. Section 3: Delegated Powers of Officers

General Provisions

- 3.1. In this Constitution references to Senior Officers are references to the Chief Executive (reference to whom shall for the avoidance of any doubt also include any interim Chief Executives), the Monitoring Officer, the Chief Finance Officer and Directors. For the avoidance of doubt it is confirmed that a Director may exercise the delegated powers of the Chief Executive in cases of urgency in his/her absence or other unavailability.
- 3.2. A Senior Officer and (where specified) an Assistant Director or other person is authorised to exercise such powers as are shown in this scheme of delegation including those reasonably implied or reasonably incidental to the matters specified. Every such power shall be exercised in the name of the Council. Where a power is shown to be exercisable by a Senior Officer and an Assistant Director then either of them may exercise the said power.
- 3.3. Exercise of the powers is without prejudice to the right of the Council and/or the Cabinet to withdraw or amend any such power, and the person with a delegated power may decline to exercise it and refer the decision to the appropriate body.
- 3.4. In addition to these delegated powers, powers are also exercisable by staff through Financial Regulations, Contract Standing Orders, and elsewhere in this Constitution.
- 3.5. The delegated powers shall be exercised in accordance with Council policy and Standing Orders, Financial Regulations and any other guidance given by a Senior Officer.
- 3.6. Another officer nominated by either a Senior Officer or Assistant Director may also exercise any power delegated to that Senior Officer or Assistant Director.
- 3.7. The Chief Executive (or in his absence a Director) may also exercise all powers set out in this scheme.
- 3.8. Where a power delegated to an officer is expressed to be exercisable in consultation with the Chair of a Committee, in the absence of that Chair the consultation shall take place with the Vice-Chair.
- 3.9. A reference to any statute or regulation or similar includes any subsequent amendment or replacement.
- 3.10. In the event of any position ceasing to exist following reorganisation, changes of job title or responsibilities the delegated powers set out herein for that role and any specific delegation given by the Council acting through one of its committees shall be exercised by the Senior Officer who has for the time being been allocated the statutory functions relevant to the power being exercised.
- 3.11. The Deputy Monitoring Officer is the Principal Solicitor and the Deputy S.151 Officer is the Financial Services Manager or such officers as the Council may from time to time appoint.

Senior Officers

- 3.12. To take urgent decisions in consultation with either the Leader or Deputy Leader of the Council or the relevant Committee Chair in any case where it is not practicable to refer the matter to a meeting of the Council, the Cabinet or other Committee. Any Senior Officer other than the Chief Executive taking an urgent decision shall notify the Chief Executive at the time of carrying out the consultation. A report on any major decision taken shall subsequently be made and the decision shall in any event be based on a written report that contains an assessment of the legal, financial and all other relevant implications.
- 3.13. To exercise all powers and duties delegated to them so far as the law permits. There is also a delegation to carry out all statutory powers and duties, so far as the law permits, relating to the statutory functions in their remit in the absence of a specific delegation to an officer, Portfolio Holder or committee.
- 3.14. To authorise and issue any documents for the purposes of any of the Council's functions, including all court proceedings.
- 3.15. To take all necessary action for the economic, efficient and effective day to day management, administration and supervision of his/her service subject to compliance with the Council's policies on the management, employment and remuneration of staff (or in their absence the agreement of the Head of Paid Service) including but without prejudice to the generality of the foregoing:
- a) The appointment of staff within the approved budget and in accordance with the Council's grading policy for his/her service;
 - b) The taking of any disciplinary action, including suspension or dismissal of an employee, after consultation with the Head of Paid Service;
 - c) The approval of changes to the establishment structure subject to existing budgetary provision, and the approval of the Head of Paid Service;
 - d) Consent or Refusal of consent to Officers in their respective Services above SCP 30 who make application to engage in any other business or to take up any other additional appointment to the work of the Council.
- 3.16. To administer formal cautions within the Guidelines set out in the Ministry of Justice Guidance 'Simple Cautions for Adult Offenders' effective from 13 April 2015 (or any new Guidelines from time to time issued by the Ministry of Justice) in consultation with the Monitoring Officer or any Solicitor employed by the Council.
- 3.17. To serve such Notices as might be necessary to enable duly authorised persons to obtain entry to premises to permit or facilitate the carrying out of any of the powers or duties of the Council or the Cabinet and in the event of such entry being refused to take such proceedings as might be necessary to effect such entry.
- 3.18. To exercise statutory powers of entry and inspection for the purposes of any functions performed by his/her service.

- 3.19. To require information as to ownership of land or premises and, in the event of such information not being provided to institute such proceedings as might be necessary to obtain such information.
- 3.20. To authenticate any documents necessary for the exercise of the delegated powers described above.
- 3.21. To sign Statements of Truth in civil proceedings as required by Part 22 of the Civil Procedures Rules 1998.
- 3.22. To appoint consultants and contractors within budgetary provision.
- 3.23. Authority to reimburse (up to a limit of £250) a claim for loss or damage to an employee's property arising during the course of their employment.
- 3.24. In consultation with the relevant Portfolio Holder to enter into Memorandums of Understanding where what is covered is within the scope of the service.
- 3.25. In consultation with the relevant Portfolio Holder to submit bids for funding which fall within the scope of the service and, in consultation with the Directors of Governance and Licensing and Finance, to enter into any related documentation for any funding secured.
- 3.26. To make minor amendments to policies to reflect changes in legislation, statutory fees, organisational changes and / or to address any other incidental matter.

Consultation

- 3.27. All officers exercising a delegated power are expected to consult with the appropriate Cabinet Member or Committee Chair where any doubt arises as to the exercise of a function delegated to that Officer.
- 3.28. All officers exercising a delegated power are expected to consult with the local Ward councillors where the exercise of a function delegated to that Officer would significantly affect a person or group of persons resident in that councillors Ward or otherwise be of particular importance or significance to that Ward as opposed to residents of the district generally.
- 3.29. Special arrangements for consultation with Ward Members on planning applications are set out in the delegations to the Chief Executive.

3.30. Powers delegated to the Chief Executive

- 3.30.1. To determine applications for all licences or registrations (other than those specifically falling to be dealt with by the Director of Housing, Health and Environment or Director of Governance and Licensing).
- 3.30.2. In consultation with the Chair or Vice Chair of the Licensing and Enforcement Committee to amend, as necessary from time to time, the regulations prescribing standard conditions for sex establishments.
- 3.30.3. To issue proceedings arising from failure to provide returns and declarations as to expenses in connection with District and Parish Council elections.

- 3.30.4. To exercise those functions relating to elections as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 in paragraphs 2, 7, 10, 12, 13, 14, 16, 17, 18, 19, 20.
- 3.30.5. To exercise those functions relating to community governance as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 in paragraphs 1, 2, 3, 5, 6, 7, 8, 9.
- 3.30.6. To exercise those functions relating to local government pensions as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 in paragraph 1.
- 3.30.7. In consultation with the Leader of the Council and the Portfolio Holder for Finance and Council and Corporate Coordination authority to agree individual staff redundancies (other than any relating to a Chief Officer) in accordance with the Council's adopted policy and procedure. To prepare a quarterly summary of any such redundancies for information to the Cabinet, the Overview and Scrutiny Committees and Audit and Governance Committee.
- 3.30.8. To authorise in writing such Officer or Officers of the District Council as the Chief Executive may from time to time decide as an Authorised Officer or Officers for all or some of the purposes of Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 and for such officer or officers to act in pursuance thereof.
- 3.30.9. To give the Council's consent or consultation response (as appropriate) under Section 31 Anti-Social Behaviour Act to a proposed police authorisation or proposed withdrawal of authorisation under Section 30.
- 3.30.10. To make a closure order in relation to premises where a premises licence or temporary event notice has effect under the Licensing Act 2003 and he believes that a public nuisance is being caused by noise coming from the premises and its closure is necessary to prevent that nuisance; to cancel such closure order; and to authorise an environmental health officer to exercise such power or duty, under sections 40 and 41 of the Anti-Social Behaviour Act 2003.
- 3.30.11. To serve a closure notice on the person having control of or responsibility for the activities carried on at the premises if satisfied the premises is or has been used for the unlicensed sale of alcohol for consumption on or in the vicinity of the premises, and to make application to a justice of the peace for a closure order following service of a closure notice, under sections 19 and 20 of the Criminal Justice and Police Act 2001.
- 3.30.12. To make an order for the temporary appointment of Parish Councillors under section 91 of the Local Government Act 1972.
- 3.30.13. Authority to approve the absence of a Member from attending meetings of the Council for a period longer than 6 months on the provision of a justifiable reason.
- 3.30.14. In consultation with the Chair or Vice-Chair of the Planning Committee, the Parish Council and the Ward Member(s), power to determine requests for street naming.
- 3.30.15. To take appropriate action (including issuing notices and taking relevant decisions) to administer the First Homes scheme in relation to any property secured as such through a S106 agreement in accordance with agreed Council policy.

The following relate to Planning and Building Control and are also exercisable by Assistant Director Planning Strategy and Development Management

- 3.30.16. Authority, in common with other Senior Officers where appropriate and in consultation with the relevant Portfolio Holders, to take appropriate action in those cases where to await Committee authorisation would result in unreasonable delay in taking action to issue or serve such notices, proceedings or licences as are within the purview of the Committee concerned and fall to be dealt with by the Officer in so far as such issue or service is not already authorised or delegated.
- 3.30.17. Authority in consultation with the Chair or Vice-Chair of the Planning Committee emergency action under the Building Act 1984 and Building Regulations, the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Local Government (Misc. Provisions) Act 1976 and all associated legislation including prosecution except where such action would result in the expenditure of money by the Council.
- 3.30.18. Authority to serve notices to recover expenses under section 55 Planning (Listed Buildings and Conservation Areas) Act 1990.
- 3.30.19. Power to serve counter notices of the Council's requirements as to demolition arrangements, in accordance with S.8 of the Building Act 1984, on persons giving notice of intention under the Act to carry out a demolition.
- 3.30.20. Power to determine Building Regulations matters including service of notices, and applications including dispensations and relaxations except where major policy decision or objection from consultee.
- 3.30.21. Power to serve Notices to uncover works under the Building Act 1984 and Building Regulations.
- 3.30.22. Power to take emergency action in relation to dangerous structures.
- 3.30.23. The unquestioned right to bring before the Planning Committee matters which it is considered the Committee should decide or of which they should be made aware.
- 3.30.24. General Authority to enter, survey, examine and inspect premises and land for the purpose of determining whether any powers should be exercised or statutory notices served, monitor the progress of works, ascertain whether the requirements of a notice served or an undertaking accepted or conditions imposed have been complied with and to designate and issue authorisations in writing to officers of the Authority for these purposes as a consequence of the following legislation (as amended): Town and Country Planning Act 1990; Planning (Listed Buildings and Conservation Areas) Act 1990; Building Act 1984; Part 8 of the Anti-Social Behaviour Act 2003 (in respect of high hedges).

Determining planning applications

3.30.25. The types of application are:

- a) 'Minor' Applications which comprise;
 - 1 to 9 dwellings (or the number of dwellings is not specified in the application), for full or outline planning permission (where site area is less than 0.5 Ha.) or for approval of reserved matters for residential development of the same size;
 - Approval of reserved matters for up to 9 dwellings as a phase of a larger development;
 - All types of office development of less than 1000 sq.m. floor area or less than 0.5 Ha;
 - All types of industrial development – general, light, storage and warehousing, research and development of less than 1000 sq.m. floor area or less than 0.5 Ha;
 - All types of retail development of less than 1000 sq.m. or less than 0.5 Ha;
 - Gypsy and traveller sites up to 9 pitches;
 - Small development such as stable blocks outside the curtilage of a dwelling;
 - Other minor developments
- b) 'Major' Applications which comprise;
 - Applications for the following which exceed the size limitations set out under 'Minor' applications;
 - Residential development;
 - Offices, research and development;
 - All industrial development;
 - All retail and commercial development;
 - Gypsy and traveller sites;
 - Large scale leisure and recreation proposals;
 - Other major applications
- c) 'Other' Applications comprise;
 - Householder (excludes flats) extensions or development within the curtilage of a dwelling;
 - Changes of use (where no operational development is involved or such work is Permitted Development);
 - Advertisement Consent (including those dealt with by Quality Councils);
 - Listed Building Consent for internal and external alterations and demolition;
 - Conservation Area Consent;
 - Notifications relating to Trees in Conservation Areas;
 - Works to TPO trees;
 - Agricultural notifications for new buildings and agricultural or forestry related works (but not dwellings);
 - Certificates of appropriate alternative development;
 - Notifications under the Hedgerow Regulations;

- Telecommunication notifications under the General Permitted Development Order;
- Hazardous substances notifications

3.30.26. **Ways of determining applications:** Applications can be determined solely by officers under delegated powers, by officers under delegated powers in consultation with the Chair (or Vice Chair in the absence of the Chair) of Planning Committee (“Chair’s Delegations”) or by the Planning Committee. Subject to paragraph 3.27.27 (Applications that must be determined by Committee) below applications shall be determined as follows;

- ‘Other’ Applications: If, prior to a decision being taken, the Ward Member expresses a contrary view from the officer recommendation and such view is on the basis of material planning considerations then the Ward Member will receive a copy of the draft report and the application will be considered at Chair’s Delegations where the Chair shall decide if the application is to be referred to the Planning Committee or whether it shall be determined at Chair’s Delegations. Where the Ward Member is in agreement with the officer recommendation notwithstanding any contrary views to the officer recommendation expressed by consultees, Parish Councils/Town Councils, neighbours or other interested parties the application will be determined under delegated powers by the Assistant Director Planning Strategy and Development Management.
- ‘Minor’ Applications: If both the Town Council / Parish Council and the Ward Member agree with the officer recommendation then the application is delegated to the Assistant Director Planning Strategy and Development Management. If, prior to the decision being taken, the Ward Member expresses a contrary view to the officer recommendation then the application shall be considered by the Planning Committee. If the Ward Member is in agreement with the officer recommendation but the Town Council / Parish Council expresses a contrary view then the application will be determined at the Chair’s Delegations.
- ‘Major’ Applications: May be determined at Chair’s Delegations where officers have recommended the application for approval on the basis it is in accordance with the development plan or for refusal on the basis it is considered contrary to adopted policies and in either case where, prior to the decision being taken, no contrary view has been expressed by the Ward Member or the Town or Parish Council. Otherwise the application should be determined by the Planning Committee.
- NOTE: In the event that a planning application in which the Council has a financial interest is capable of being determined under delegated powers that decision may only be taken by the Assistant Director Planning Strategy and Development Management

3.30.27. **Applications that must be determined by the Planning Committee** are where:

- Applicant is a district councillor or an officer (of any service within the Council) or is a close relative of a district councillor or an officer (of any service within the Council);

- The application relates to land owned by a district councillor or an officer (of any service within the Council);
- Application where the Assistant Director Planning Strategy and Development Management is recommending a material departure from adopted policy (applications which are not material departures include where (i) the relevant local plan policy to which a departure is proposed is out of conformity with the National Planning Policy Framework; or (ii) the application relates to an already approved scheme where the principle of development is accepted, is still capable of implementation and only minor changes are proposed; or (iii) the application relates to the conversion of listed buildings and the proposal complies with paragraph 79 of the NPPF in terms of representing the optimal viable use of a heritage asset; or (iv) extensions to residential curtilages within the countryside; or (v) the application relates to a scheme where the principle of development is accepted through the prior approval procedure);
- There are financial implications for the Council (e.g. EDDC is the applicant/landowner) and the officer recommendation is in conflict with any comments received on the application from a member of the public, a statutory consultee, a Town or Parish Council or a Ward Member;
- Any application referred at the discretion of the Assistant Director Planning Strategy and Development Management and / or at the request of the Chair of Planning Committee following Chair's Delegations.
- Note: 'close relative' in this section means either; (i) a spouse or civil partner, a person living with the district councillor or officer as husband or wife or living with them as if they are civil partners, or (ii) a parent, sibling or child (or the spouse / civil partner or someone living with them in that capacity of any of these persons) of the district councillor or the officer.
- Note: Non-material amendment applications are excluded from the operation of this paragraph.

3.30.28. Ward Members have the following opportunities to comment on applications:

- Where a Ward Member has commented on an application within the initial 21 day consultation process, s/he will receive a further 3 working days consultation with the draft report following which the application will be determined in accordance with the delegated powers detailed above;
- Ward Members will automatically be sent the draft report if the Officer's view is contrary to the view of the Town/Parish Council on 'minor' applications with an invitation to the Chair's Delegations where the matter will be discussed;
- Ward Members will be sent a copy of a draft report and given notification of any application in their Ward which will be discussed at a Chair's Delegations with at least 3 working days' notice

3.30.29. Other planning delegations to Assistant Director Planning Strategy and Development Management are :

- Appropriate assessment under the Habitats Regulations;
- Environmental Impact Assessment screening and scoping opinions;
- Notifications under Circular 14/90 (overhead lines and electrical plant);
- Notifications by other statutory bodies for permitted development works;
- Certificates of lawful use for existing development, following consultation with the Director of Governance and Licensing;
- Certificates of lawful use for proposed development;
- Non-material and minor amendment applications;
- Discharge of conditions;
- Footpath diversion orders, unless there is an objection to the diversion from a Ward Member, in which case the application shall be referred to the Planning Committee;
- Consultation responses to other authorities on development and policy proposals;
- Service of planning contravention notices;
- Obtaining independent viability appraisals;
- Obtaining independent agricultural appraisals;
- To determine all applications for prior approval under the Town and Country Planning (General Permitted Development) (England) Order 2015 other than where there is an objection from a ward member in relation to one or more of the relevant technical issues being considered under that application in which case the application be determined in consultation with the Chair of the Planning Committee;
- To agree to requests from external bodies and council departments, in consultation with the Chair of Planning Committee and the relevant Ward Member(s), to withdraw requests for planning obligations where these have previously been a requirement of a resolution of the council but have not yet formed part of an engrossed Section 106 agreement and the relevant body or council department no longer consider it to be necessary. [No amendments as a result of viability issues to be considered under the delegated powers];
- Deeds of variation where the change complies with the adopted policy of the Council, unless a ward member takes a contrary view to the officers within 3 working days of receipt of a draft report detailing officers' views. In the event of a contrary view being taken the matter will be reported to the Chair's Delegations for decision. Where any change included in a deed of variation does not comply with policy the decision on the variation will be considered at the level of the original decision on the application;
- To amend and add to the conditions and heads of terms contained within any report on an application considered by the Planning Committee or the Chair's Delegations where such changes do not conflict with the purpose of the draft condition or heads of terms, unless a Ward member takes a contrary view to the officers within 3 working days of receipt of a draft report detailing officers' views. In the event of a

contrary view being taken the matter will be reported to the Chair's Delegations for decision;

- To determine which non-designated heritage asset should be included on the Council's Local List.
- Deeds of variation to amend mortgagee exemption clauses in line with the securitisation working group template clause in consultation with the Chair of the Planning Committee.
- To suggest modifications to planning policy documents to the Planning Inspectorate as required to address concerns and issues raised by the Inspector through the plan examination process.
- to agree and enter into planning performance agreements, service level agreements and similar performance related documentation.

- 3.30.30. Telecommunication notifications: Where the Assistant Director Planning Strategy and Development Management/Ward Member/Town/Parish are in agreement (or no comment received within the response period) the decision is delegated to the Assistant Director Planning Strategy and Development Management. If any contrary view has been submitted from any of these parties these notifications are to be considered at the Chair's Delegations.
- 3.30.31. County Matter applications: Where there are no objections raised by Planning Officers such applications to be delegated to the Assistant Director Planning Strategy and Development Management. In the case of an objection by Planning Officers this to be subject to consultation with the Chair or Vice Chair in his absence and Ward Member(s) for consideration and decision under delegated powers.
- 3.30.32. Neighbourhood Areas: Authority to designate, in consultation with the Leader of the Council and Ward Member(s), Neighbourhood Areas where the area proposed to be designated is contiguous with the Parish boundary and there are no strategic sites contained within the area proposed to be designated.
- 3.30.33. Legal action covers
- No formal consultation with Parish Councils.
 - The decision whether to take enforcement action and issue related notices to be delegated to the Assistant Director of Planning Strategy and Development Management in consultation with the Director of Governance and Licensing.
 - The decision to take direct action and court injunctions is delegated to Assistant Director Planning Strategy and Development Management in consultation with the Director of Governance and Licensing and Chair/Vice Chair.
 - Issuing of a Stop Notice to be delegated to the Assistant Director Planning Strategy and Development Management in consultation with the Director of Governance and Licensing.
 - To confirm no further action is to be taken where a material breach of the legislation has been identified to be delegated to Assistant Director Planning Strategy and

Development Management in consultation with Chair/Vice Chair Parish Councils and Ward Members to be notified of any agreed action or where no action is to be taken.

3.30.34. Community Infrastructure Levy covers:

- Authority to progress the service of notices in connection with the operation of the Community Infrastructure Levy Regulations 2010 for the collection of monies;
- Authority to determine whether to take any enforcement action under Community Infrastructure Levy Regulations 2010 following the non-payment of any liability

3.30.35. Notes on interpretation of delegated planning powers are:

- Expressions of “concern” or “preference” are not material planning reasons, or objections, neither are requests for “Site Inspection” or “reference to Committee”
- A decision of approval cannot be delegated if it involves a substantial departure from the provisions of the Development Plan and requires reference to the Secretary of State

Matters which the Assistant Director Planning Strategy and Development Management, in consultation with the Chair/Vice-Chair of the Planning Committee, consider are of such interest, importance or controversy that the Planning Committee should determine them can be so referred.

3.31. **Powers delegated to the Monitoring Officer**

3.31.1. To decide whether or not in relation to remedies in the Complaints Procedure, financial compensation should be paid.

3.31.2. To grant dispensations to Members to allow them to participate in matters where they have a Disclosable Pecuniary, Other Registerable and / or Non-Registerable Interest under the Code of Conduct on the following grounds:

- (a) That without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- (b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.

3.31.3. To discharge those functions related to Standards and the Localism Act 2011 as approved by Council on 27 June 2012 and as may be subsequently varied by Council.

3.31.4. To discharge duties relating to the Community Right to Challenge set out in the report to Cabinet dated 28 November 2012.

3.31.5. To update the Constitution as and when required to:

- (a) comply with any statutory requirements, and;
- (b) to make changes to the Councillors listed in Article 2 and details in the name and description of area of wards and number of councillors to reflect any in year changes;
- (c) revise Article 6 in relation to any changes made to portfolio holders, assistant portfolio holders, portfolio names and areas of responsibility and make any consequential amendments to the Leader’s Scheme of Delegation to Portfolio Holders and Delegated Powers of Officers so that any specific powers align to changed portfolios.

3.31.6. To revise the Membership of Committees to reflect the wishes of any group to make minor in year changes to their appointments.

- 3.31.7. To establish and revise Portfolio Teams as necessary in consultation with Group Leaders and to revise as appropriate the makeup of the Panels, Forums and Joint Bodies when there are changes to the Portfolios or Assistant Portfolio positions in year.

3.32. Powers delegated to the Director of Finance

- 3.32.1. To provide all necessary information regarding the Council Tax base and precepts except where the determination must be made by the Council.
- 3.32.2. To implement systems and procedures across the Council necessary to comply with the Director of Finance's role as the Authority's Chief Finance Officer (s151 officer) including the operation of an internal audit function.

The following relate to Revenues and Benefits and are also exercisable by Assistant Director Revenues and Benefits

- 3.32.3. The administration and payment of Housing Benefit (rent allowances and rent rebates) and the Council Tax Reduction Scheme and all related functions.
- 3.32.4. The administration, collection and recovery of Council Tax and all related functions.
- 3.32.5. The administration, collection and recovery of Business Rates and all related functions.
- 3.32.6. The administration, collection and recovery of Housing Benefit overpayments.
- 3.32.7. To carry out officer reviews of council tax, housing benefit and Council Tax Reduction Scheme decisions in accordance with regulations.
- 3.32.8. To undertake Housing Benefit, Council Tax Reduction and other fraud investigations linked to Council Services and to make appropriate determinations including issuing sanctions and penalties, and to take such proceedings as may be necessary subject to consulting with the Director of Governance and Licensing where appropriate.
- 3.32.9. The administration, collection and recovery of sundry debts due to the Council and all related functions.
- 3.32.10. To take such proceedings as may be necessary to recover monies due to the Council subject to consulting with the Director of Governance and Licensing.
- 3.32.11. To write off bad and irrecoverable debts relating to the Revenue and Benefits function within financial limits determined by the Director of Finance.
- 3.32.12. To award discretionary Council Tax and Business Rate reliefs and Government Grant Schemes which are in line with agreed Council Policy or in line with Government Guidance which falls outside existing policy in consultation with the Finance Portfolio Holder and where costs are recovered from Government.
- 3.32.13. To appoint enforcement agents for the recovery of outstanding debts.

The following relates to general matters and civil parking enforcement and are also exercisable by the Financial Services Manager

- 3.32.14. To write off bad and irrecoverable debts and stores other than those which might involve action by the External Auditor.

- 3.32.15. To raise and repay loans to the Council in accordance with the Treasury Management Strategy and at such rates of interest as appear reasonable.
- 3.32.16. To make investment in respect of fund balances in accordance with the Treasury Management Strategy and at such rates of interest as appear reasonable.
- 3.32.17. To make payments on behalf of the Council as necessary.
- 3.32.18. In consultation with Senior Officers to effect such insurances as are considered necessary.
- 3.32.19. To determine any matters in relation to applications for grants that are ancillary to the scheme approved by the Council.
- 3.32.20. Authority to take any action in connection with civil parking enforcement, including the service of notices and the removal of vehicles.
- 3.32.21. To exercise the Council's powers and duties under the Traffic Management Act 2004 and Road Traffic Regulation Act 1984.
- 3.32.22. To manage, patrol and collect income from Council car parks.
- 3.32.23. Authority to amend the Parking Places Orders including charges for car parking permits and car parking tariffs except where the changes are more than minor and where any objections made to such changes cannot be overcome or where the charges / tariffs would be increased by more than 5%.
- 3.32.24. In consultation with the portfolio holder, agree alternative temporary uses of car parks.
- 3.32.25. In consultation with the portfolio holder, to offer special rate car parking charges.
- 3.32.26. Authority to enter into lease arrangements for individual car parking spaces in the Council's car parks.

The following relates to Authority for Court Attendance

- 3.32.27. Authority under Section 223 of the Local Government Act 1972 for the following officers to prosecute or defend on the Council's behalf, or to appear on the Council's behalf in proceedings for the recovery of Council Tax or Non-Domestic Rates before a Magistrates Court: Director of Finance Assistant Director Revenues and Benefits Manager and Team Leader posts within Revenues and Benefits Further officers may be authorised by the Chief Executive, Monitoring Officer or Deputy Monitoring Officer.

The following relate to Property matters and are also exercisable by the Assistant Director Place, Assets & Commercialisation

- 3.32.28. Authority to serve notices under the Landlord and Tenant Act 1954 where there is no reason to oppose an application for the renewal of a tenancy and the proposed new tenancy falls within the criteria set out in paragraph 3.29.32 below.
- 3.32.29. Authority (after consultation with the relevant Portfolio Holder) to serve notices under the Landlord and Tenant Act 1954 where there is no reason to oppose an application for the renewal of a tenancy and the proposed new tenancy falls within the criteria set out paragraph 3.29.34 below.

- 3.32.30. Authority (after consultation with the relevant Portfolio Holder) to serve notices under the Landlord and Tenancy Act 1954 opposing the renewal of a tenancy agreement.
- 3.32.31. Authority to negotiate renewal terms following receipt of a notice under the Landlord and Tenant Act 1954 offering the Council a new tenancy where the term/premium payable/rent payable under the Council's proposed new tenancy fall within the limits set out in paragraph 3.29.32 below.
- 3.32.32. Authority (after consultation with the relevant Portfolio Holder) to negotiate renewal terms following receipt of a notice under the Landlord and Tenant Act 1954 offering the Council a new tenancy where the term/premium payable/rent payable under the Council's proposed new tenancy fall within the limits set out in paragraph 3.29.34 below.
- 3.32.33. Authority to end a tenancy in favour of the Council whether or not it is protected under the Landlord and Tenant Act 1954.
- 3.32.34. Authority to serve a notice under the Landlord and Tenant Act 1954 requesting a new tenancy where the term/premium payable/rent payable under the Council's proposed new tenancy fall within the limits set out paragraph 3.29.32 below.
- 3.32.35. Authority (after consultation with the relevant Portfolio Holder) to serve a notice under the Landlord and Tenant Act 1954 requesting a new tenancy where the term/premium payable/rent payable under the Council's proposed new tenancy fall within the limits set out paragraph 3.29.34 below.
- 3.32.36. Authority to accept the early surrender of a licence/lease of Council property.
- 3.32.37. Authority to grant landlord's approval to minor modifications and alterations to Council property where the property is leased out.
- 3.32.38. Authority to grant wayleaves and easements to public utility companies and statutory undertakers where they are determinable upon 12 months' notice or less or there is a 'lift and shift' clause agreed.
- 3.32.39. Authority to grant or enter into licences and leases providing they are in accordance with the Policy Framework and Budget, where; a. the term is 7 years or less, and b. if a premium is payable it is £30,000 or less, and c. the annual licence fee/rent is £15,000 or less.
- 3.32.40. Authority to grant landlord's approval to assignments and sub-lettings where acceptable references have been received and where the lease allows for such assignments and sub-lettings.
- 3.32.41. Authority (after consultation with the relevant Portfolio Holder) to grant or enter into licences and leases provided they are in accordance with the Policy Framework and the Budget, where a. the term is more than 7 years but does not exceed 125 years, and b. if a premium is payable it is £30,000 or less, and c. the annual licence fee/rent is £15,000 or less.
- 3.32.42. Authority (after consultation with the relevant Portfolio Holder) to dispose of property assets which have a market value which does not exceed £30,000.
- 3.32.43. Sale of vehicles, equipment or machinery surplus to the Council's needs where the consideration does not exceed £30,000.

- 3.32.44. Authority to negotiate and agree revised licence fees/rents pursuant to licence fee/rent review clauses contained in licences/leases.
- 3.32.45. Authority to grant express tenancies at will.
- 3.32.46. Authority to negotiate and agree a premium for the; a. variation or release of (a) restrictive covenant(s) benefitting (former) Council owned (non-housing) property, or b. variation or release of (a) restrictive covenant(s) burdening Council owned (non-housing) property, and where in either case the premium payable is £10,000 or less and in the case of (b) it is within the Policy Framework and Budget.
- 3.32.47. Authority (after consultation with the relevant Portfolio Holder) to negotiate and agree a premium for the; a. variation or extinguishment of (a) restrictive covenant(s) benefitting (former) Council owned (non-housing) property, or b. release of (a) restrictive covenant(s) burdening Council owned (non-housing) property, and where in either case the premium payable exceeds £10,000 but is £30,000 or less and in the case of (b) it is within the Policy Framework and Budget.
- 3.32.48. Authority (after consultation with the relevant Portfolio Holder) to obtain/grant wayleaves or easements (in fee simple or for a term certain) to non-public utility companies or non-statutory undertakers over Council property where the premium payable does not exceed £30,000.
- 3.32.49. Authority to grant garden licences and access licences where the licence period is for a fixed period and thereafter continues from month to month until determined by either side on one months' notice.
- 3.32.50. Authority to negotiate and agree dilapidation terms with an outgoing tenant.
- 3.32.51. Authority (after consultation with the relevant Portfolio Holder) to acquire property assets for a previously approved project where the consideration payable does not exceed £30,000.
- 3.32.52. Authority to approve tenant's charging Council property.
- 3.32.53. Authority, in consultation with the relevant Portfolio Holder, to agree variations to leases.
- 3.32.54. Authority (after consultation with the relevant Portfolio Holder) to negotiate and accept or decline the transfer of property offered to the Council in accordance with the terms of a planning obligation (S106 agreement) provided such transfer is in accordance with the Policy Framework and the Budget.
- 3.33. **Powers delegated to the Director of Governance and Licensing**
- 3.33.1. The Director of Governance and Licensing, Licensing Manager, Senior Licensing Officer, Licensing Officers and Assistant Licensing Officers be authorised persons for the purposes of Section 13 of the Licensing Act 2003 (authority to carry out inspections etc.).
- 3.33.2. The authority to make any decision under the Licensing Act 2003 (Hearings) Regulations 2005 and any amendment thereof and to the Council's Procedure for Hearings which does not have to be decided under the Act or Regulations by a committee or sub-committee.

- 3.33.3. Authority to make determination of premises licence or variation of premises licence, provisional statement, club premises certificate or variation of club premises certificate under the Licensing Act 2003 provided that no relevant representations have been made or where any relevant representation which has been made has been resolved through written agreement between the parties to amend the application and the determination is in accordance with the terms of the written agreement.
- 3.33.4. Authority to make the determination of applications to vary or remove the designated premises supervisor or application for or to renew a personal licence, transfer a premises licence, consideration of interim authority notice under the Licensing Act 2003 provided that (with the exception of requests to be removed as the designated premises supervisor) no notice of objection has been given by the Senior officer of police.
- 3.33.5. Authority to decide whether a representation is frivolous or vexatious under the Licensing Act 2003.
- 3.33.6. All other functions under the Licensing Act 2003 and regulations made there under not already delegated to a committee of the Council.
- 3.33.7. The authority to grant permits subject to a condition restricting their number in respect of amusements with prizes machines in premises licensed for the sale of alcohol for consumption on the premises following the second appointed day under the Licensing Act 2003 or such earlier date as legislation may provide.
- 3.33.8. The Director of Governance and Licensing, Licensing Manager, Senior Licensing Officer, Licensing Officers and Assistant Licensing Officers be authorised persons for the purposes of Section 304 of the Gambling Act 2005 (authority to carry out inspections and enforcement functions etc.).
- 3.33.9. The Director of Governance and Licensing authority to make minor changes to the procedure for hearings under the Gambling Act 2005 to comply with changes to relevant regulations or for efficient administration.
- 3.33.10. Authority to carry out all functions under the Gambling Act 2005 which have not been delegated to a committee of the Council.
- 3.33.11. Authority to make determination of premises licence or variation of premises licence, provisional statement or application for club gaming/club machine permits under the Gambling Act 2005 provided in all cases that no representations/objections have been made or have been withdrawn.
- 3.33.12. Authority to make the determination of applications for other permits, of consideration of temporary use notice, and of cancellation of licensed premises gaming machine permits, all under the Gambling Act 2005.
- 3.33.13. The Director of Governance and Licensing and Licensing Manager delegated power to issue and renew all Hackney Carriage and Private Hire licences to applicants, subject to all Members of the Council being given 7 days' notice of officers proposals under delegation in cases where drivers have 6 to 9 penalty points issued in one year or 9 penalty points in a three period, as exempt information, and if after this period a representation has been made by a Member, the decision be made in consultation with the Chair of Committee.

- 3.33.14. The power to approve, in consultation with the Chair or Vice Chair of the Licensing and Enforcement Committee, the type of Specialist Classic Cars which may be licensed for private hire in respect of applications for initial licensing of such cars being more than four years old from the date of first registration as shown on the registration document.
- 3.33.15. The Director of Governance and Licensing be appointed as the authorised officer for the purpose of Part II of the Local Government (Miscellaneous Provisions) Act 1976 to sign any licences granted by the Council under the Town Police Clauses Act 1847 or under Part II of the 1976 Act.
- 3.33.16. Without prejudice to the power granted to an authorised officer (or constable) under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976, in any case which the Director of Governance and Licensing considers to be of such urgency that the matter cannot wait until the next meeting of the Licensing and Enforcement Committee to suspend or revoke the licence of a hackney carriage driver, private hire driver, hackney carriage vehicle, private hire vehicle or private hire operator on any of the grounds specified in the Local Government (Miscellaneous Provisions) Act 1976.
- 3.33.17. The power to authorise in writing such officer or officers of the District Council as he or she may from time to time decide as an authorised officer or as authorised officers for all or some of the purposes of Part II of the 1976 Act and for such officer or officers to act in pursuance thereof or the Town Police Clauses Act 1847.
- 3.33.18. Authority to the Director of Governance and Licensing and Licensing Manager, Senior Licensing Officer and Licensing Officer to act as authorised officers for the purposes of paragraph 25(3) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, [as supplemented by paragraph 25A] which give authority to exercise the powers in paragraph 25(1) and (2) of the said schedule in relation to a sex establishment in the District of East Devon and to act as authorised officers for the purposes of Part II of the Local Government (Miscellaneous Provisions) Act 1976, to act in pursuance of that Part of the 1976 Act or the Town Police Clauses Act 1847 other than in connection with the signing of licences granted by the Council.
- 3.33.19. To take legal proceedings against persons who contravene the Public Health (Shell Fish) Regulations.
- 3.33.20. In consultation with the Director of Housing, Health and Environment, to institute legal proceedings for all dog related offences.
- 3.33.21. Power to serve a Planning Contravention Notice and in the event of non-compliance with any requirement of the Notice to institute proceedings in respect thereof.
- 3.33.22. Subject to the applicant showing housing need, to exercise in consultation with the Director of Housing, Health and Environment, the Council's discretion in giving a voluntary waiver of the right to recover improvement grants for breach of conditions, under the Housing Act 1974 (other than a nominal 5 pence to satisfy the requirements June 2020 94 of S.73(v) of the Housing Act 1974) where this would encourage a Building Society to lend money on an unimproved property.
- 3.33.23. To give consent to the sale of land in mortgage to the Council and to determine whether the consideration there from shall be applied to the mortgage debt.

- 3.33.24. To give consent in cases where such consent may not be withheld, to applications for resale (pursuant to S.104C of the Housing Act 1957 or S.19 of the Housing Act 1980) of former Council dwellings.
- 3.33.25. To determine those cases where the prospective occupiers of any housing association accommodation applying to acquire the freehold, comply with the requirement of Section 157 of the Housing Act 1985 and to submit applications for Portfolio holder consent in appropriate cases where the applicant does not comply.
- 3.33.26. To agree terms (to reflect the matters referred to in paragraph 4 of the Chief Executive's report to the Committee on 19 January, 1994) for covenants to be entered into on the sale of Council Housing flats, or in respect of former Council Housing flats, for the enforcement of covenants given by other flat owners in the same building.
- 3.33.27. To determine applications, in accordance with the Council's policy (Housing Committee Minute No. 5 of 14.6.95 refers), to postpone – where postponement is discretionary – the Council's charge in respect of discount on sale price of Council houses.
- 3.33.28. In consultation with the Director of Finance, authority to institute legal proceedings where fraudulent applications for benefit are suspected.
- 3.33.29. Authority to serve notices to commence possession proceedings in cases of serious infringement of tenancy conditions and where necessary to take legal proceedings to seek possession.
- 3.33.30. In consultation with the Director of Housing, Health and Environment authority to institute legal proceedings in all cases where landlords of houses in multiple occupation fail to comply with the statutory notices within the time specified in the notice.
- 3.33.31. To take immediate necessary action, including legal proceedings, against gypsies and travellers or other itinerants as and when they take, or where the relevant officer has sufficient reason to believe they are about to take, unauthorised possession of Council Land.
- 3.33.32. In consultation with the Finance Portfolio Holder, to take all appropriate action to settle or otherwise deal with all claims and litigation involving the Council where such action is in pursuance of legal advice and it is inappropriate (through unacceptable delay) to report the matter to the Cabinet.
- 3.33.33. Unless set out elsewhere within this Section to take or defend any or all legal action in the name of the Council including enforcing access to premises for the purpose of carrying out any statutory duty or power.
- 3.33.34. The power to serve statutory notices on behalf of the Council and to take proceedings in the name of the Council.
- 3.33.35. Authority in consultation with the Director of Housing, Health and Environment and Assistant Director Planning Strategy and Development Management to enter into deeds of variation to existing planning agreements where revisions are sought to affordable housing obligations where the revisions are necessary to enable prospective purchasers to satisfy lenders requirements to secure borrowing provided that such amendments do not alter the number of affordable houses to be provided nor the tenure split of the affordable housing.

- 3.33.36. Authority to issue consents under Part III of the Local Government (Miscellaneous Provisions) Act 1982 (street trading consents).
- 3.33.37. Determination of reviews for listing or compensation under the Community Right to Bid (asset register) provisions of the Localism Act 2011.

3.34. **Powers Delegated to the Director of Housing, Health and Environment**

The following relate to Environmental Health and Streetscene and are also exercisable by the Assistant Director Environmental Health and Assistant Director Streetscene

- 3.34.1. General Authority to Enter, Examine, Inspect and Enforce: To enter, survey, examine and inspect premises and vehicles, inspect animals, take samples, determine whether any powers should be exercised or statutory notices served, monitor the progress of works, ascertain whether the requirements of a notice served or an undertaking accepted have been complied with, and exercise any other power which is necessary to enforce the legislation contained in the following relevant statutory enactments (or amendments made thereto) (or Regulations or Orders made there under or under any European Community legislation enforced by the Authority as a consequence of the following and any other public health legislation):

Animal Boarding Establishments Act 1963
Animal Health & Welfare Act 1984
Animal Welfare Act 2006
Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
Anti-Social Behaviour Act 2003
Anti-Social Behaviour Crime and Policing Act 2014
Breeding and Sale of Dogs (Welfare) Act 1999
Building Act, 1984
Caravan Sites and Control of Development Act 1960
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Control of Pollution Act 1974
Control of Pollution (Amendment) Act 1989
Criminal Justice & Police Act 2001
Criminal Justice and Public Order Act 1994
Dangerous Dogs Act 1991
Dangerous Wild Animals Act 1976
Deregulation Act 2015
Dogs Act 1906
Energy Conservation Act 1981
Environment Act 1995
Environmental Protection Act 1990
Food and Environment Protection Act 1985
Food Safety Act 1990
Gaming Act 1968
Guard Dogs Act 1975
Health Act 2006
Health Protection (Notification) Regulations 2010
Health Protection (Local Authority Powers) Regulations 2010
Health Protection (Part 2A Orders) Regulations 2010
Health and Safety at Work etc. Act 1974
Housing Acts and Housing Grants, Construction and Regeneration Act 1996
Housing and Planning Act 2016

Hypnotism Act 1952
Law of Property Act 1925
Landlord and Tenant Act 1985
Licensing Act 2003
Local Government Act 1972
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Mobile Homes Act 2013
National Assistance Act 1948
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Offices, Shops and Railway Premises Act 1963
Pet Animals Act 1951
Pesticides Act 1998
Petroleum Acts 1928 and 1936
Pollution Prevention & Control Act 1999
Prevention of Damage by Pests Act 1949
Protection of Animals Act 1911 (amended)
Public Health Acts 1875, 1936 and 1961
Public Health (Amendment) Act 1890
Public Health (Aircraft) Regulations 1979
Public Health (Control of Disease) Act 1984
Riding Establishments Acts 1964 and 1970
Scrap Metal Dealers Act 2013
Slaughter of Poultry Act 1967
Sunbeds (Regulation) Act 2010
Sunday Entertainment Act 1972
Sunday Trading Act 1994
Water Industry Act 1991
Zoo Licensing Act 1981
Legislation relating to the control, licensing, registration or issue of permits for food hawkers, Sunday entertainment, takeaway food shops

- 3.34.2. Statutory Notices and licences: To determine licence and registration applications and to impose or vary conditions, serve statutory notices including “Minded To” notices, fixed penalty notices, to vary notices, require information, execute work in default and discharge all the powers and duties of inspectors and authorised officers under the:

Animal Boarding Establishments 1963
Animal Welfare Act 2006
Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018
Antisocial Behaviour Act 2003
Antisocial Behaviour Crime and Policing Act 2014
Breeding and Sale of Dogs (Welfare) Act 1999
Building Act 1984
Caravan Sites and Control of Development Act 1960
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Control of Pollution Act 1974
Criminal Justice and Police Act 2001
Criminal Justice and Public Order Act 1994
Dangerous Dogs Act 1991
Dangerous Wild Animals Act 1976
Environmental Protection Act 1990
Guard Dogs Act 1975
Health Act 2006 Health Protection (Notification) Regulations 2010
Health Protection (Local Authority Powers) Regulations 2010
Health Protection (Part 2A Orders) Regulations 2010
Housing Act 2004
Housing and Planning Act 2016
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Mobile Homes Act 2013
National Assistance Act 1948
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Pet Animals Act 1951
Pollution Prevention & Control Act 1999
Prevention of Damage by Pests Act 1949
Public Health Acts including 1936 & 1961
Public Health (Control of Disease) Act 1984
Refuse Disposal (Amenity) Act 1978
Riding Establishments Acts 1964 and 1970
Scrap Metal Dealers Act 2013
Water Industry Act 1991
Zoo Licensing Act 1981

And all Regulations and Orders made under the above Acts

- 3.34.3. Note: applications for licences for dangerous wild animals shall be in consultation with the Chief Executive to decide the terms of the insurance policy.
- 3.34.4. Authority to order emergency works or vary contracts where there is a necessity to do so at short notice.
- 3.34.5. Purchase of stores and equipment and acceptance of tenders up to limit imposed by Standing Orders.
- 3.34.6. To act in respect of controlling alcohol from unlicensed premises by closure under Sections 19 to 23 of Criminal Justice and Police Act 2001.
- 3.34.7. **Authorisations:** To authorise, in writing, veterinary surgeons, dog wardens and pest control operatives and other officers to act on behalf of the Authority in respect of animal welfare or pest control legislation.
- 3.34.8. To authorise the Consultant in Public Health Medicine (or any person with the authority to deputise) to sign any notices and take necessary action on behalf of the Council for the purposes of Section 47 of the National Assistance Act 1948 as amended.
- 3.34.9. To appoint the 'Proper Officer' and authorise other appropriately qualified and appointed persons for the purposes of legislation relating to the control of communicable diseases.
- 3.34.10. To appoint such medical practitioners including suitably qualified persons designated by Public Health England and who appear on the current Public Health out of hours duty rota to act as "authorised officers" under the Public Health (Aircraft) Regulations 1979.
- 3.34.11. To designate and issue authorisations in writing to officers of the Authority and to others, as the legislation may provide, to enter inspect and/or act under those powers thereby delegated to them by all or some of the legislation set out in paragraph 3.33.1 (General Authority to Enter, Examine, Inspect and Enforce) and 3.33.2 (Statutory Notices and licences) of this section and any statutory amendment or replacement thereof or under any other public health legislation having regard to the qualifications and experience of the Officer.
- 3.34.12. In addition to paragraph 3.31.11 above the ability to appoint as 'Inspectors' persons having suitable qualifications as are appropriate for the exercise of any or all of the powers specified in the Health and Safety at Work Act 1974 to be carried out by Inspectors and to specify which of the powers may be exercisable by the duly appointed Inspector.
- 3.34.13. **Registrations and Approvals:** To determine applications relating to registration or approval of food premises, persons carrying on the business of acupuncture, tattooing, ear piercing and electrolysis together with premises used for that purpose, and premises where rag flock is stored, used or manufactured.
- 3.34.14. The licensing of persons for the sale of milk using special designations.
- 3.34.15. To determine applications under Part 2 of the Clean Air Act 1993 (furnaces and heights of chimneys).

- 3.34.16. Authority on receipt of satisfactory report from a veterinary surgeon to issue a licence under Section 1 of the Dangerous Wild Animals Act 1976 and to decide the terms of the insurance policy in conjunction with the Senior Executive.
- 3.34.17. To determine applications made for "Authorisation" under Part I of the Environmental Protection Act 1990.
- 3.34.18. Authority to grant the following :
- a) Use of foreshore in accordance with approved scale of charges;
 - b) Licences or occasional lettings of any property controlled by the Council (in consultation with the Assistant Director Place, Assets and Commercialisation as to terms) and to determine conditions (if any) to be imposed;
 - c) Applications for Boat and Boatmen's Licences;
 - d) To determine applications for non-recurring cemetery grants.
- 3.34.19. To seek an injunction restraining offenders from violating the Council's Parking Places Orders where unlicensed or scrap vehicles or vehicles undergoing repair continue to be placed on the Council's car parks despite efforts to stop this.
- 3.34.20. To determine applications and to impose or vary conditions relating to licences for scrap metal dealers under the Scrap Metal Dealers Registration Act 2013.
- 3.34.21. **Restoration or Continuation of Services:** To exercise, after consultation with the Director of Finance, the powers contained in Section 33 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3.34.22. **Drains and Sewers:** To deal with notices of intention to repair, alter or reconstruct underground drains or sewers. To require work for the proper provision of soil pipes and ventilation pipes, to require disconnection of disused drains.
- 3.34.23. To administer those parts of the Local Government (Miscellaneous Provisions) Act 1976 concerning the provision of sanitary accommodation at places of entertainment (sections 20 and 21) and the removal of obstructions from private sewers (Section 35).
- 3.34.24. To serve Notices on the owners or occupiers of land of the Council's intention on behalf of the South West Water Authority to lay a sewer in accordance with S.153 of the Water Act, 1989.
- 3.34.25. Authority to require that sewers be constructed so as to form part of a general system.
- 3.34.26. Authority to repair private drains.
- 3.34.27. Authority to connect private drains with public sewers.
- 3.34.28. Authority to require drains to be disconnected from the public sewer.
- 3.34.29. Authority to alter the drainage system of premises.
- 3.34.30. Authority to cleanse cesspools.
- 3.34.31. Authority to grant or withhold consent for the erection of buildings over public sewers or combined drains.

- 3.34.32. Authority to serve Notices under Section 24 of the Public Health Act 1936 in respect of the power to recover on behalf of the Water Company the cost of maintaining certain lengths of public sewer.
- 3.34.33. Authority to require the cleansing of culverts, streams, ditches and ponds including the service of Notices under the Land Drainage Acts.
- 3.34.34. Noise Control and Environmental Protection:** To determine applications for prior consent for work on construction sites.
- 3.34.35. The exercise of any power or duty necessary to enforce Part II A of the Environmental Protection Act 1990 (Contaminated Land Provisions) as amended by the Environment Act 1995.
- 3.34.36. The exercise of any power or duty necessary to administer Part IV of the Environment Act 1995 in so far that it deals with air quality reviews and those powers of entry under section 108 in so far as they relate to the authority's enforcement functions under Part I and Part II A of the Environmental Protection Act 1990 (integrated pollution control and contaminated land).
- 3.34.37. Consents for noise levels under s.61, 65 and 67 of the Control of Pollution Act 1974.
- 3.34.38. Inspection of premises to ensure that standard conditions of public entertainment licences are complied with.
- 3.34.39. To all Environmental Health Officers authority :
- a) to take emergency enforcement action for noise nuisances under the Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993);
 - b) Where a statutory notice under Section 81(3) of the Environmental Protection Act 1990 in respect of a noise nuisance has been served and the nuisance might be abated by the seizure of equipment, authority to seize and remove such equipment;
 - c) To serve notices under Section 80 of the Environmental Protection Act 1990;
 - d) To inspect, seize and/or destroy animals under the Dangerous Wild Animals Act 1976.
 - e) To serve Community Protection Notices under Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014
- 3.34.40. Under the Noise Act 1996 authority to all Environmental Health Officers :
- a) To enter property and seize equipment under Section 10 of the Noise Act 1996;
 - b) To serve notices under Section 3, 8 and 9 of the Noise Act 1996 and when necessary apply to a Magistrate for a warrant to carry out the terms of the notice.
- 3.34.41. Under the Clean Neighbourhoods and Environment Act sections 77 to 79 authority to all Environmental Health Officers to enter premises and take others with them to deal with sounding intruder alarms.
- 3.34.42. Within the policy approved by the Council to arrange for the destruction of rats, mice and other pests.
- 3.34.43. To provide a pest control service.
- 3.34.44. To carry out the Council's functions under the Scrap Metal Dealers Act 2013.

- 3.34.45. Food Safety:** To act in matters arising under the Food Safety Act 1990 and European Communities Act 1972 and any regulations or orders insofar as those responsibilities are allocated to the Authority.
- 3.34.46. To exercise powers of entry, survey, examination, inspection and seizure and to serve statutory notices including “Minded To” notices and notices relating to the detention and seizure of suspected food (Section 9(3)), the service and removal of improvement June 2020 101 notices (Section 10), the service and removal of prohibition orders (Section 11) and the service and removal of emergency prohibition orders (Section 12). (Food Safety Act 1990).
- 3.34.47. To nominate Officers for security clearance at Lympstone Commando Training Centre in connection with the Food Safety Act 1990.
- 3.34.48. To appoint Public Analysts for the purposes of the Food Safety Act 1990.
- 3.34.49. To administer that part of the Local Government (Misc. Provisions) Act 1982 concerning control of refreshment premises but to submit reports to the relevant Committee regarding proposals to make a Closing Order to vary or revoke such an Order.
- 3.34.50. Health and Safety:** To act in matters arising under the Health and Safety at Work etc., Act 1974.
- 3.34.51. To exercise powers of entry, survey, examination, inspection and seizure and to serve statutory notices including “Minded To” notices.
- 3.34.52. To exercise the powers of an inspector specified in Sections 20, 21, 22, 25 and 38 of the 1974 Act and the relevant statutory provisions of the Acts mentioned in Schedule 1 to the 1974 Act which are specified in the third column of that Schedule.
- 3.34.53. To exercise the powers of any health and safety regulations, orders or other instruments of a legislative character made or having effect under any provision so specified as enforced from time to time.
- 3.34.54. To authorise other people to accompany the Inspectors appointed by East Devon District Council for its enforcement functions under the provisions of the Health and Safety at Work etc. Act, 1974.
- 3.34.55. To act in matters arising under the Food and Environment Protection Act 1985 – Part III in relation to Pesticides legislation, as amended by the Pesticides Act 1998.
- 3.34.56. To agree procedures and arrangements for formulating a plan for communicable disease control in East Devon.
- 3.34.57. To act in matters arising under the Food and Environment Protection Act 1985 – Part III in relation to Pesticides legislation, as amended by the Pesticides Act 1998.
- 3.34.58. To lead and advise on matters of Health and Safety affecting the Council.
- 3.34.59. To secure the necessary care and attention for residents who are suffering from grave chronic disease or are aged, infirm or physically incapacitated and living in unsanitary conditions under Section 47 of the National Assistance Act 1948 as amended.
- 3.34.60. **Health and Safety Enforcement Authority Responsibility:** To exercise powers under the Health and Safety (Enforcing Authority) Regulations including the power to transfer and assign enforcement responsibility.

- 3.34.61. **Sunday Trading:** To exercise the Council's powers under the Sunday Trading Act 1994.
- 3.34.62. **Water Industry Act 1991:** To act in matters arising under the Water Industry Act 1991 and exercise the powers of the Council with regard to wholesomeness or sufficiency of public and private water supplies.
- 3.34.63. **Control of Dogs:** To act for the purpose of Section 149 of the Environmental Protection Act 1990, and to submit to tender the duties and functions of the appointed officer and other responsibilities including those in the Dangerous Dogs Act 1991 and any services that may be provided by contractors under the Clean Neighbourhoods and Environment Act 2005.
- 3.34.64. **Waste functions:** To consider and approve on their merit individual recycling credit applications from commercial organisations.
- 3.34.65. Authority to submit tenders, appoint staff and acquire plant and equipment to undertake contracts awarded.
- 3.34.66. To operate refuse and recycling collection in accordance with contract requirements and to vary refuse and recycling collection schedules for bank holidays and other operational reasons.
- 3.34.67. To progress the Devon Integrated Waste Strategy.
- 3.34.68. To make decisions in relation to the Council's waste management in consultation with the elected Member representatives of the Recycling and Waste Partnership Board :
 - a) The contractual agreement/arrangement with the preferred supplier;
 - b) The selection of any options for securing further efficiency savings in the new contract;
 - c) Establishing detailed arrangements for achieving the full delivery of the Waste Strategy over the life of the contact;
 - d) Any Partnership arrangements with the preferred contractor.
- 3.34.69. **Streetscene functions:** To carry out street cleansing in accordance with adopted standards (currently the Code of Practice for Litter and Refuse).
- 3.34.70. To manage and maintain the Streetscene including public conveniences, cemeteries, street furniture and fixtures.
- 3.34.71. To undertake grounds maintenance and the management of the Councils parks and gardens, beaches and open spaces.
- 3.34.72. To commission and appoint consultants and contractors to undertake works on Council assets / land.
- 3.34.73. To undertake engineering projects on public assets.
- 3.34.74. To undertake flood prevention and coastal defence works.
- 3.34.75. To implement emergency responses and recovery operations in accordance with the Emergency Plan.
- 3.34.76. Authority to serve Notices for the removal of abandoned vehicles or boats, to remove derelict vehicles or boats abandoned in the open air and to dispose of derelict vehicles or boats.

- 3.34.77. Power:
- a) to remove any boats or winches habitually obstructing the three metre wide boat access corridor across the beach at Port Royal, Sidmouth, and
 - b) to recover the associated costs (including those of transport and storage) from the owner.
- 3.34.78. Authority to exercise powers relating to the removal of things so deposited on highways as to be a nuisance.
- 3.34.79. Coastal protection:** The granting of consent, levying of charges and taking of enforcement action under the Coastal Protection Act 1949.
- 3.34.80. Private Sector Housing:**
- 3.34.81. With the agreement of the Chief Executive or Director of Governance and Licensing authority to institute legal proceedings in all cases where landlords of houses in multiple occupation or private rented housing fail to comply with the statutory notices within the time specified in the notice.
- 3.34.82. To undertake enforcement of housing standards and exercise the powers of a Housing authority.
- 3.34.83. To serve improvement notices (and suspended improvement notices), prohibition orders (and suspended and emergency prohibition orders), hazard awareness notices and to take emergency remedial action under Housing Act 2004.
- 3.34.84. To make demolition orders (s.265 Housing Act 1985) and clearance areas (s.289 Housing Act 1985).
- 3.34.85. In consultation with the Director of Governance and Licensing authority to institute legal proceedings in cases where owners or occupiers fail to comply with statutory notices within the time specified in the notice.
- 3.34.86. In consultation with the Director of Governance and Licensing the authority to exercise the powers in relation to banning orders under the Housing and Planning Act 2016 including applying for a banning order, instituting legal proceedings in cases where there has been a breach of a banning order and updating any database of rogue landlords and property agents.
- 3.34.87. In consultation with the Director of Governance and Licensing authority to impose and enforce financial penalties as an alternative to prosecution under Housing Act 2004 and Housing and Planning Act 2016.
- 3.34.88. The authority to exercise the powers in relation to rent repayment orders under the Housing and Planning Act 2016 70. To institute the undertaking of works in default in appropriate circumstances.
- 3.34.89. To grant, refuse, vary, revoke licences for Houses in Multiple Occupation (HMO) subject to mandatory licensing as appropriate; to add licence conditions (in line with statutory guidance) and to serve Temporary Exemption Notices. To serve/revoke HMO declarations.

- 3.34.90. To determine applications for disabled facilities and other home improvement grants and administer or cause to be administered any loan or other scheme set out within the policy agreed by the Council and to authorise interim and final payments of approved grants.
- 3.34.91. To make applications to the Residential Property Tribunal for rent repayment orders.
- 3.34.92. To make/vary/revoke interim (special interim) and final management orders.
- 3.34.93. To serve/vary/revoke overcrowding notice if having regard to the rooms available, an excessive number of persons as being/likely to be accommodated in a property.
- 3.34.94. To take action to bring empty homes back into use including make interim and final empty dwelling management orders.
- 3.34.95. Authority to service notice under Section 76 of the Building Act 1984 where any premises are in such a state as to be prejudicial to health or a nuisance and there would be unreasonable delay if the procedure prescribed by Sections 93-96 of the Public Health Act 1936 was followed.
- 3.34.96. Authority to determine Closing Orders or cancel Demolition Orders on completion of satisfactory remedial work.
- 3.34.97. Authority to commission Home Improvement Agency services.
- 3.34.98. To organise and implement arrangements for the sampling and risk assessment of private water supplies, including charging and taking enforcement action where water quality presents a risk to health.
- 3.34.99. To enforce the redress schemes for lettings agency work and property management work.

The following relate to Countryside functions and are also exercisable by Assistant Director Countryside:

- 3.34.100. To manage local and community nature reserves in accordance with the adopted management plans.
- 3.34.101. To set charges for visitors events and the marketing and promotion of activities on nature reserves.
- 3.34.102. To organise and run events and activities to protect habitat and encourage learning about the importance of the natural environment.
- 3.34.103. To appoint and supervise volunteers to support the work on nature reserves.
- 3.34.104. To lead for the Council on matters affecting the Areas of Outstanding Natural Beauty.
- 3.34.105. To act as client officer for LED and monitor performance.
- 3.34.106. To lead on arts development and culture.
- 3.34.107. To agree operational matters in respect of theatres and galleries (including bookings and programmes) provided within budget or where income to the Council is increased.

- 3.34.108. Production of AONB Management Plans under the Countryside and Rights of Way Act 2000.
- 3.34.109. To take action to conserve and enhance the natural beauty of an AONB under the National Parks and Access to the Countryside Act 1949.
- 3.34.110. Exercise powers and duties for the protection of wildlife under the Wildlife and Countryside Act 1981.
- 3.34.111. To appoint wardens and manage public access to Local Nature Reserves and run education and information programmes under the National Parks and Access to the Countryside Act 1949 and Wildlife and Countryside Act 1981.
- 3.34.112. Carry out works to a Local Nature Reserve.
- 3.34.113. Entering into management or access agreements over land under the National Parks and Access to the Countryside Act 1949 and Wildlife and Countryside Act 1981.
- 3.34.114. Tree Preservation Orders:** Authority for the making of provisional Tree Preservation Orders.
- 3.34.115. In consultation with the Assistant Director Planning Strategy and Development Management authority for confirming/non-confirming, modifying, varying or revoking Tree Preservation Orders where there is no objection within 28 days of the relevant notification being given.
- 3.34.116. In consultation with the Assistant Director Planning Strategy and Development Management the authority to non-confirm Tree Preservation Orders where there is an objection within 28 day of the relevant notification being given.
- 3.34.117. In consultation with the Assistant Director Planning Strategy and Development Management and the Chair/Vice Chair of the Planning Committee authority for confirming, modifying, varying or revoking Tree Preservation Orders where there is an objection within 28 day of the relevant notification being given.
- 3.34.118. To enter, survey, examine and inspect premises and land for the purpose of determining whether any powers should be exercised or statutory notices served, ascertain whether an offence has been committed and the taking of samples from any tree or hedgerow or samples of soil and issue authorisations in writing to officers of the Authority for these purposes as a consequence of the following legislation (as amended); Chapter 1 of Part VIII of the Town and Country Planning Act 1990 Hedgerow Regulations 1997.
- 3.34.119. Representation:** To object on behalf of the Authority to the granting of any licence, registration or consent, or to a variation of a licence, registration or consent already granted, when it is considered appropriate to make such a representation.
- 3.34.120. To make representations to any Government Department, the Office of Fair Trading or any other body which has a power to prohibit or restrict any trading activity with a view to such powers being exercised when it is considered appropriate to make such a representation.
- 3.34.121. To issue export certificates.

- 3.34.122. Legal Proceedings:** To appear on behalf of the Authority in proceedings including making application for a warrant and for an Order for the forfeiture of any goods or documents.
- 3.34.123. Climate change:** To undertake periodic carbon footprinting exercises to inform the Climate Strategy and Action Plan and to implement those actions and projects approved by Cabinet or to carry out such actions which are necessary to help inform Cabinet and / or Council decision taking.

The following relate to Housing and are also exercisable by Assistant Director Housing

- 3.34.124. To assume responsibility for the Council's Housing Strategy and enabling role.
- 3.34.125. To prepare housing strategies and policies for adoption and oversee implementation.
- 3.34.126. To maintain an up to date Housing Revenue Account Business Plan and ensure that housing finances are adequate to operate the landlord activities.
- 3.34.127. To comply with the requirements of the Housing Regulator (currently the Homes and Communities Agency).
- 3.34.128. To negotiate and advise on affordable housing provision in respect of planning applications.
- 3.34.129. To initiate and work up development schemes for Council homes for approval.
- 3.34.130. To organise and discharge the Council's housing advice and housing options activities.
- 3.34.131. To discharge the Council's homeless duties under Part VII of the Housing Act 1996.
- 3.34.132. To determine homeless applications and homeless reviews under Part VII of the Housing Act 1996.
- 3.34.133. To allocate housing in accordance with the Council's policies and procedures under Part VI of the Housing Act 1996.
- 3.34.134. Hearing appeals by individuals against initial bandings/priorities allocated under the Choice Based Lettings Scheme.
- 3.34.135. To determine the medical and social priority for housing applications.
- 3.34.136. Approval of an applicant's need for a move to a particular locality under the Choice Based Lettings Scheme.
- 3.34.137. Any exceptional or unforeseen housing issues requiring a decision which fall outside the Council's adopted allocation criteria.
- 3.34.138. Agreeing changes to Devon Home Choice and monitoring of the Choice Based Lettings Scheme.
- 3.34.139. To carry out statutory reviews of decisions to refuse an application to be put on the Housing Register.
- 3.34.140. To determine additional preference groups and allocation priorities under the Housing Act 1996.
- 3.34.141. To approve transfers within Council housing (mutual exchanges) and nominations to Registered Social Landlords.

- 3.34.142. To discharge the Council's functions in connection with the Right to Buy under the provisions of Part V of the Housing Act 1985 with the exception of section 157 consents.
- 3.34.143. Authority to deny the Right to Buy in respect of those elderly persons dwellings meeting the requirements of the Housing Act 1985.
- 3.34.144. To discharge the Council's housing management functions under Part II of the Housing Act 1985. 44. To approve applications for the Cash Incentive, Tenant Improvement, Community Initiatives, Rent Deposit and Shared Ownership Schemes.
- 3.34.145. To issue introductory, secure, flexible and non-secure tenancy agreements and take action where tenants fail to adhere to the tenancy conditions, including demoting tenancies.
- 3.34.146. Planning and implementing major, annual, cyclical and responsive maintenance programmes of work to Council homes within the approved budgets.
- 3.34.147. Authority to enter into contracts including the appointment, liaison and monitoring of contractors and consultants working on Council homes.
- 3.34.148. Authority to assist people unable to arrange maintenance of gardens on non-sheltered estates where the dwellings are occupied by disabled elderly and any special cases.
- 3.34.149. Authority to obtain land and property surrendered by tenants.
- 3.34.150. Authority to negotiate Housing Revenue Account property disposals (including shared ownership properties where the lease provides for the leaseholder to purchase the freehold of the property during the lease term).
- 3.34.151. Authority to approve a licence/lease/easement/wayleave of Housing Land subject to terms and conditions to be agreed.
- 3.34.152. Authority to consent to use of a Community Centre, subject to terms to be agreed.
- 3.34.153. Authority to initiate action for breach of tenancy conditions, including rent arrears and estate management issues.
- 3.34.154. In connection with the Access to Personal Files Act 1987, to supply such information and take such action as necessary to comply with the relevant Housing Regulations.
- 3.34.155. To ensure that tenants are appropriately involved in decisions which impact on the management and maintenance of their homes.
- 3.34.156. To let bungalows to persons of below pensionable age when difficulties arise in finding a suitable tenant[s].
- 3.34.157. The signing of tenancy Agreements on behalf of the Council including the letting of garages, gardens and hard standings.
- 3.34.158. The assessment of Rent following modernisation and conversion or in respect of newly acquired or constructed dwellings within the policy approved by the Council.
- 3.34.159. Implementation of rent increases for homes, gardens and garages.
- 3.34.160. Approval of alterations to buildings, erection of sheds, greenhouses, installation of telephones, satellite antennae, aerials and hard standings.

- 3.34.161. To determine applications in connection with the installation of Home Safeguard equipment and setting of charges for equipment hire, purchase and monitoring.
- 3.34.162. To determine transfer applications by tenants on management grounds.
- 3.34.163. To set charges for community centres, garden maintenance and other housing related services where permitted by law and where not already covered by a specific service charge.
- 3.34.164. To set statutory service charges under the Housing Acts.
- 3.34.165. In consultation with the Director of Governance and Licensing the authority to make offers to purchase land and property within approved budgets (such offers to be subject to contract).
- 3.34.166. In consultation with the Portfolio Holder for Sustainable Homes and Communities and the Chair of the Housing Review Board the authority to purchase land and property for the Housing Revenue Account (including use of Right to Buy receipts) subject to the funds being from within approved budgets.
- 3.34.167. Authority to negotiate and agree a premium for the; a. variation or release of a restrictive covenant(s) benefitting (former) Council owned (housing) property, or b. variation or release of a restrictive covenant(s) burdening Council owned (housing) property, and where in either case any premium payable is £10,000 or less and in the case of (b) it is within the Policy Framework and Budget.
- 3.34.168. Authority (after consultation with the relevant Portfolio Holder) to negotiate and agree a premium for the; c. variation or extinguishment of a restrictive covenant(s) benefitting (former) Council owned (housing) property, or d. release of a restrictive covenant(s) burdening Council owned (housing) property, and where in either case any premium payable exceeds £10,000 but is £30,000 or less and in the case of (b) it is within the Policy Framework and Budget.

The following relate to Health

- 3.34.169. To lead on health and wellbeing and public health issues / strategies for the Council.
- 3.34.170. To act as lead officer for safeguarding children and vulnerable adults.

3.35. Powers delegated to the Assistant Director Place, Assets & Commercialisation

Authority to make listing and compensation decisions relating to the Community Right to Bid (asset register) provisions under the Localism Act 2011.

3.36. **Proper Officers.**

3.36.1. The following to act as Proper Officers for the following purposes:

Local Government Act 1972

Section No	Item	Proper Officer
13	Parish Trustee	Chief Executive
39	Registration of Electors	Chief Executive
41	Returning Officer	Chief Executive
83	Declaration of Acceptance of Office - Officer before whom made and to whom delivered	Chief Executive, Monitoring Officer or Deputy Monitoring Officer
84	Receipt of Notice of Resignation of Member	Chief Executive
88(2)	Convening of meeting for Election of Chairman following casual vacancy in that office.	Chief Executive
96(1) and (2)	Receipt of general notice and recording of disclosures of financial interest	Chief Executive
Section 100B (2)	Exclusion from public inspection of the whole of any report or any part which the meeting is not likely to consider in public.	Senior Officer initiating the report
Section 100B (7) (c)	To decide whether any newspaper should be supplied with other documents supplied to Members of the Council.	Senior Officer having custody of the document
Section 100C(2)	Making a written summary of the proceedings or part thereof, to provide a reasonable, fair and coherent record without disclosing exempt information.	Chief Executive
Section 100D (1)(a)	Compilation of lists of background papers to reports	Initiating Senior Officer
Section 100D (5) (a)	Identification of background papers	Initiating Senior Officer
Section 100F (2)	Papers to be withheld from Members on account of the exempt information they contain	Chief Executive
115	Accountability of Officers	Director of Finance
146	Transfer of Securities	Director of Finance
191	Ordnance Survey Act	Chief Executive

Section No	Item	Proper Officer
210(6)	Charities	Chief Executive
212	Registrar of Local Land Charges	Chief Executive
214	Grant of Exclusive Rights of Burial	Chief Executive
223	Appearance of Local Authorities in Legal Proceedings	Chief Executive/ Director of Governance and Licensing
225	Deposit of documents	Chief Executive
229	Photographic copies of documents (certification)	Chief Executive
Schedule 6 Para(1)	Deputy to registration officer	Director of Governance and Licensing
236(9) and (10) and 238	Bye-laws	Chief Executive
248	Roll of Freemen of Existing Boroughs	Chief Executive
Schedule 12 Para 4(1) Part 1	Summons to attend Principal Council Meetings	Chief Executive
Schedule 14 Para's 13 and 15	Action under the Public Health Acts	Consultant in Public Health Medicine
Schedule 14 Para 25(7)	Certificate of Resolutions	Chief Executive
Schedule 16 Para 26	Receipt of Deposit of Lists of protected buildings	Chief Executive
Schedule 22 Para 17	Notices etc. under the Housing Act, 1985	Director of Housing, Health and Environment

Other Acts

Section No	Item	Proper Officer
(Misc. Provisions) Act 1976 S. 41 Local Government (Misc. Provisions) Act 1976	Signing of Certificates	Chief Executive (or a person authorised in that behalf by him)
S.20 Local Government (Misc. Provisions) Act 1976	Signing and service of Notices	Director of Housing, Health and Environment
S.47 National Assistance Act 1948	Persons in need of care and attention	Consultant in Public Health and Medicine (or an alternative medical Officer authorised by him)
S19 Local Government (Misc. Provisions) Act 1982	Signing documents for registration of food hawkers	Director of Housing, Health and Environment
S.93 Public Health Act 1936	Sign Notices	Director of Housing, Health and Environment
S.1 Public Health (Recurring Nuisances) Act 1969	Sign Notices	Director of Housing, Health and Environment
SS.58, 60, 66 & 80 Control of Pollution Act 1974	Sign Notices	Director of Housing, Health and Environment
S.19(2) Health and Safety at Work Act 1974	Signing appointments and authorisation of 'Inspectors' and other persons	Director of Housing, Health and Environment
	Functions for which no other Officer has been designated as the proper officer.	Chief Executive

Representation of the People Act 1983

Section No	Item	Proper Officer
Section 82(4)	Declaration as to election expenses	Chief Executive

Local Government and Housing Act 1989

Section No	Item	Proper Officer
Section 2(2) and (3)	Officer with whom lists and revised lists of politically sensitive posts are to be deposited.	Chief Executive
Sections 15-17	All purposes under Part III of the Local Government (Committees and Political Groups) Regulations, 1990.	Chief Executive

Local Authorities (Standing Orders) (England) Regulations 2001	Proper Officer
Appointment and Dismissal of Chief Officers	Chief Executive (or if it relates to the Chief Executive then the Monitoring Officer)

Localism Act 2011

Section No	Item	Proper Officer
Part	Receiving complaints of breach of the Member Code of Conduct	Monitoring Officer

Part 4: Rules of Procedure

4.1 Procedural Standing Orders

Introduction

These Standing Orders regulate the proceedings of the Council Meetings and a range of Committee meetings. All the Standing Orders apply to meetings of the Council. Rules 4 to 26 (except where clearly inappropriate – for example Standing Order 18.1) shall apply to meetings of Committees. The word “Committee” includes the Cabinet, the Overview and Scrutiny Committees and all the bodies referred to in Article 8 of this Constitution. In addition, where a Panel or a Forum that includes Council Members in its membership has been established then Rules 4 to 27 shall be deemed to apply.

The word “he” is deemed to include references to “she” or the feminine form of address where appropriate. If a Member requires any advice on the operation of these Standing Orders; any advice on the statutory provisions that affect Council and Committee meetings; or any advice on the declaration of interests at meetings, then he/she should contact the Chief Executive, the Monitoring Officer / Director of Governance and Licensing or the Democratic Services Manager before the meeting and they will be pleased to assist.

1. Annual meeting of the Council

1.1. Timing and business

In a year when there is an ordinary election of Councillors, the annual meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the annual meeting will take place in May. The annual meeting will:

- a) elect a person to preside if the Chair of Council or the Vice Chair of Council is not present;
- b) elect the Chair of Council;
- c) elect the Vice Chair of Council;
- d) approve the minutes of the last meeting;
- e) receive any announcements from the Chair;
- f) elect the Leader of the Council (at the first Annual Meeting following elections);
- g) note the appointment of the Deputy Leader and the Cabinet by the Leader;
- h) confirm the largest opposition party as the formal opposition (or in the event of equal numbers determine which group should fulfil the role);
- i) appoint the three Overview and Scrutiny Committees, a Standards Committee and such other committees (except the Cabinet) as the Council considers appropriate to deal with matters that are neither reserved to the Council nor are executive

functions (as set out in Part 3, Table 1 of this Constitution) (Note: as from May 2011 the Leader appoints the Cabinet);

- j) agree the scheme of delegation as set out in Part 3 of this Constitution;
- k) approve a programme of ordinary meetings of the Council for the year; and
- l) consider any business set out in the notice convening the meeting.

1.2. **Selection of Councillors on Committees and Outside Bodies.**

1.2.1. At the annual meeting, the Council meeting will:

- a. decide which committees to establish for the municipal year;
- b. decide the size and terms of reference for those committees;
- c. decide the allocation of seats to political groups in accordance with the political balance rules (although this shall not apply to the Cabinet);
- d. receive nominations of Councillors to serve on each committee and outside body; and
- e. appoint to those committees and outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet.

2. **Ordinary meetings**

2.1. Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's Annual Meeting. Ordinary meetings will:

- a) elect a person to preside if the Chair and Vice Chair are not present;
- b) deal with any business required by statute to be done before any other business;
- c) approve the minutes of the last meeting;
- d) deal with business expressly required by statute to be done;
- e) receive any communications or announcements from the Chair, the Leader; or a Portfolio Holder;
- f) the Leader or a Portfolio Holder shall answer any questions asked by Members of the Council by virtue of Rule 9;
- g) deal with any business from the last Council meeting;
- h) receive reports from the Cabinet and the Council's committees and receive questions and answers on any of those reports;
- i) receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- j) consider motions; and
- k) consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's budget and policy framework and reports of the Overview and Scrutiny Committees for debate.

2.2. The Council may vary the order of business so as to give precedence to any business which, in the opinion of the Chair, is of a special urgency, but such a variation shall not displace business falling under items (a) and (b) in this rule.

3. Extraordinary meetings

3.1. Calling extraordinary meetings

Those listed below may request the proper officer to call Council meetings in addition to ordinary meetings:

- a. the Council by resolution;
- b. the Chair of the Council;
- c. the Monitoring Officer having first notified the Chair of the Council; and
- d. any five Members of the Council if they have signed a requisition containing the motion to be considered presented to the Chair of the Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

3.2. Business

At an extraordinary meeting the business to be conducted shall be limited to a single item of business or motion full details of which shall be set out on the summons calling the meeting.

4. Time and place of meetings

- 4.1. The time and place of meetings will be determined by the Chief Executive and notified in the summons.

5. Notice of and summons to meetings

- 5.1. The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. Normally at least five clear days before a meeting, the Chief Executive will send a summons signed by him or her by post to every Member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

6. Chairing of meeting

- 6.1. The person presiding at the meeting may exercise any power or duty of the Chair. Where these rules apply to committee and sub-committee meetings, references to the Chair also include the Chair of committees and sub-committees.
- 6.2. Specifically in respect of the Planning Committee where the Committee is considering a matter in the Chair's ward, then for that matter only the Vice Chair shall take on the role of Chair of the meeting. Once the matter has been considered then the Chair and Vice Chair shall continue in their normal roles.

7. Quorum

- 7.1. The quorum of a meeting will be one quarter of the whole number of Members or such other number as may be specified in the Terms of Reference relevant to that committee (as set out in Section 2 of Part 3). During any meeting if the Chair counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

8. Questions and statements by the public

- 8.1. Subject to 8.2, there shall be a fifteen minute period at the commencement of Council and Committee meetings for members of the public to ask questions or make statements, with the exception of the Licensing and Enforcement Sub Committee, the Standards Hearings Sub Committee, Interviewing (Chief Officer) Sub Committee, Employment Appeals Sub Committee, Investigating and Disciplinary Sub Committee, Grievance Sub Committee and the Planning Committee. Each individual questioner exercising a right during the public question time to be restricted to speaking for a total of 3 minutes; where there is an interest group of objectors or supporters, a spokesperson should be appointed to speak on behalf of the group. The public speaking arrangements for Planning Committee are as approved by Council in July 2014. Public speaking arrangements for the Strategic Planning Committee will generally be as stated above however alternative arrangements appropriate to the content of the meeting will put in place at the discretion of the Chair in consultation with Democratic Services, Legal Services and the Assistant Director Planning Strategy & Development Management.
- 8.2. Where a question does not relate to an agenda item, and a response is required from a member or an officer, the question must be submitted to Democratic Services two working days before the meeting to give time for a response to be prepared. Where such advance notice is given, the questioner may ask a supplementary question at the meeting, if it is relevant to the original question.
- 8.3. At all meetings of the Cabinet, the Overview and Scrutiny Committees and Audit and Governance Committees, members of the public have the general right to make statements and/or ask questions in respect of all agenda items that are not to be considered in Part B [the part of the meeting to which the public is not admitted]. The normal procedure to be that after a report has been introduced by the relevant Portfolio holder and/or officer the Chair will enquire of any member of the public whether they wish to speak in respect of the matter and/or ask questions. In each case, contributions from members of the public will be limited to 3 minutes.

- 8.4. The Chair of any meeting has the right and discretion to control question time to avoid disruption, repetition and wasting of meeting time.

9. Questions by Members

9.1. On reports of the Cabinet or the Overview and Scrutiny Committees

A Member of the Council may ask the Leader, a Portfolio Holder or the Chair of the Overview and Scrutiny Committees any question without notice upon an item of the report of the Cabinet or relevant Committee when that item is being received or under consideration by the Council.

Where the 15 minute public question period at Rule 8 is not exhausted by the public, councillors may ask questions without notice of the Leader and/or Portfolio holders.

9.2. Questions on notice at full Council

Subject to Rule 9.3, a Member of the Council may ask: the Chair; the Leader or a Portfolio Holder Member of the Cabinet; or the Chair of any Committee or Sub-Committee a question on any matter in relation to which the Council has powers or duties or which affects the district.

9.3. Notice of questions

A Member may only ask a question under Rule 9.2 if either: (a) they have given at least 3 working days' notice in writing of the question to the Chief Executive; or (b) the question relates to urgent matters, they have the consent of the Chair to whom the question is to be put and the content of the question is given to the Chief Executive by noon on the day of the meeting.

9.4. Response

An answer may take the form of: (a) a direct oral answer; (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

9.5. Supplementary question

A Member asking a question under Rule 9.2 may ask one supplementary question without notice of the Member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

10. Motions on notice

10.1. Notice

Except for motions which can be moved without notice under Rule 11, written notice of every motion, signed by at least 5 Members, must be delivered to the Chief Executive not later than 10 clear days before the date of the meeting. These will be entered in a book open to public inspection.

Notwithstanding the above, where a notice of motion would have the effect of removing the Leader from office this must be signed by at least 15 Councillors.

10.2. Motion set out in agenda

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

10.3. Clarification of motion on notice

Where a motion on notice has been submitted in accordance with this standing order, and prior to the despatch of the agenda, the Chief Executive may seek to clarify the purpose and/or wording of such a motion (such action may include recommending its rewording) so as to ensure that any such motion, if approved, is compliant with the Council's legal and administrative powers.

10.4. Referral of motion to relevant committee

Where the wording of the motion is not immediately relevant to the business of the Council, the presumption is that it will be referred to the relevant committee or the relevant committee of the three Overview and Scrutiny Committees in the first instance to enable research to be properly carried out into the issue to facilitate a relevant and informed debate.

10.5. Portfolio holder response to motion

The Leader, at his discretion, may invite a Portfolio Holder to respond to a motion or a question (under Procedural Rule 9.2).

10.6. Scope

Motions must be about matters for which the Council has a responsibility or which affect the district.

11. Motions without notice

11.1. The following motions may be moved without notice:

- a) to appoint a Chair of the meeting at which the motion is moved;
- b) in relation to the accuracy of the minutes;
- c) to change the order of business in the agenda;
- d) to refer something to an appropriate body or individual;
- e) to appoint a committee or Member arising from an item on the summons for the meeting;
- f) to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- g) to withdraw a motion;
- h) to amend a motion;
- i) to proceed to the next business;

- j) that the question be now put;
- k) to adjourn a debate;
- l) to adjourn a meeting;
- m) to suspend a particular Council procedure rule;
- n) to exclude the public and press in accordance with the Access to Information Rules;
- o) to not hear further a Member named under Rule 18.3 or to exclude them from the meeting under Rule 18.4; and
- p) to give the consent of the Council where its consent is required by this Constitution.

12. Rules of debate

12.1. No speeches until motion seconded

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

12.2. Right to require motion in writing

Unless notice of the motion has already been given, the Chair may require it to be written down and handed to him/her before it is discussed.

12.3. Secunder's speech

When seconding a motion or amendment, a Member may reserve their speech until later in the debate.

12.4. Content and length of speeches

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed 5 minutes without the consent of the Chair.

12.5. When a Member may speak again

A Member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- a) to speak once on an amendment moved by another Member;
- b) to move a further amendment if the motion has been amended since he/she last spoke;
- c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- d) in exercise of a right of reply;
- e) on a point of order; and
- f) by way of personal explanation.

12.6. Amendments to Motions

(a) An amendment to a motion must be relevant to the motion and will either be: (i) to refer the matter to an appropriate body or individual for consideration or reconsideration; (ii) to leave out words; (iii) to leave out words and insert or add

others; or (iv) to insert or add words; as long as the effect of (ii) to (iv) is not to negate the motion.

- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (c) If an amendment is not carried, other amendments to the original motion may be moved.
- (d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (e) After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

12.7. Alteration of motion

- a) A Member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- b) A Member may alter a motion that he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- c) Only alterations that could be made as an amendment may be made.

12.8. Withdrawal of motion

A Member may withdraw a motion that he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

12.9. Right of reply

- a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it. The proposer of the amendment shall also be entitled to reply.
- c) A Member exercising a right of reply shall not introduce new matter.

12.10. Motions that may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

- a) to withdraw a motion;
- b) to amend a motion;

- c) to proceed to the next business;
- d) that the question be now put;
- e) to adjourn a debate;
- f) to adjourn a meeting;
- g) to exclude the public and press in accordance with the Access to Information Rules;
and
- h) to not hear further a Member named under Rule 18.3 or to exclude them from the meeting under Rule 18.4.

12.11. Closure motions

a) A Member may move, without comment, the following motions at the end of a speech of another Member:

- (i) to proceed to the next business;
 - (ii) that the question be now put;
 - (iii) to adjourn a debate;
- or (iv) to adjourn a meeting.

b) If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

c) If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

d) If a motion to adjourn the debate or to adjourn the meeting is seconded, and the Chair thinks the item has not been sufficiently discussed or cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

12.12. Point of order

A Member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final.

12.13. Personal explanation

A Member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Member that may appear

to have been misunderstood in the present debate. The ruling of the Chair on the admissibility of a personal explanation will be final.

13. Previous decisions and motions

13.1. Motion to rescind a previous decision

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least 15 Members.

13.2. Motion similar to one previously rejected

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 15 Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

14. Voting

(Note: Under S.106 of the Local Government Finance Act 1992, any Member who is two months or more in arrears with Council Tax payments must declare the fact and not vote at any meeting at which budget or Council Tax matters are being discussed).

14.1. Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

14.2. Chair's casting vote

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

14.3. Show of hands

Unless a ballot or recorded vote is demanded under Rules 14.4 and 14.5, the Chair will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

14.4. Ballots

The vote will take place by ballot if 15 Members present at the meeting demand it. The Chair will announce the numerical result of the ballot immediately the result is known.

14.5. Recorded vote

If the meeting so decides (prior to a vote being taken) the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. A demand for a recorded vote will override a demand for a ballot.

14.6. Budget decisions – mandatory recorded vote

Immediately after any vote is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting. 'Budget decision' is defined in Regulation 12 of the Local Authorities (Standing Orders) England) Regulations 2001.

14.7. Right to require individual vote to be recorded

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting. (This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations).

14.8. Voting on appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

14.9. Removal of Leader

If Council passes a resolution to remove the Leader from office, an election shall be held for a new Leader either at that meeting or at a subsequent Council meeting.

15. Minutes**15.1. Signing the minutes**

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

15.2. No requirement to sign minutes of previous meeting at extraordinary meeting

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes. This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations.

16. Record of attendance

All Members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

17. Exclusion of public

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or Rule 19 (Disturbance by Public).

18. Members' conduct

18.1. Standing to speak

When a Member speaks at full Council they must stand and address the meeting through the Chair. If more than one Member stands, the Chair will ask one to speak and the others must sit. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.

18.2. Chair standing

When the Chair stands during a debate, any Member speaking at the time must stop and sit down. The meeting must be silent.

18.3. Member not to be heard further

If a Member persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the Member be not heard further. If seconded, the motion will be voted on without discussion.

18.4. Member to leave the meeting

If the Member continues to behave improperly after such a motion is carried, the Chair may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

18.5. Disclosable pecuniary interest

Unless a dispensation has been granted, a Member shall not participate in any discussion of, or vote on, any matter in which they have a disclosable pecuniary interest and having first declared to the meeting the existence and nature of that interest shall withdraw from the room where the meeting is being held at the commencement of the consideration of that business, or (if later) the time at which the interest becomes apparent. Where the disclosable pecuniary interest is sensitive (as defined on the Member Code of Conduct) the Member need not disclose the nature of that interest but must still state there is a disclosable pecuniary interest and otherwise follow the requirements of the previous paragraph.

18.6. General disturbance

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as he/she thinks necessary.

19. Disturbance by public

19.1. Removal of member of the public

If a member of the public interrupts proceedings or is found to be recording the proceedings of the meeting in contravention of the appropriate Regulations, the Chair will warn the person concerned. If they continue to interrupt or record the meeting in contravention of the appropriate Regulations, the Chair will order their removal from the meeting room and the forfeiture of the unauthorised recording.

19.2. Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.

20. Suspension and amendment of Council Procedure Rules

20.1. Suspension

All of these Council Rules of Procedure except Rule 14.6 and 15.2 may be suspended by motion on notice or without notice if at least one half of the whole number of Members of the Council are present. Suspension can only be for the duration of the meeting.

20.2. Amendment

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

21. Motions affecting persons employed by the Council

If any question arises at a meeting of the Council to which the Local Government Act 1972 applies by virtue of Section 100(A)(4) concerning the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by the Council, such question shall not be the subject of discussion until the Council has decided whether or not the power of exclusion of the public under Section 100(A)(4) of the Local Government Act 1972 shall be exercised.

22. Sealing of documents

The Common Seal of the Council shall not be affixed to any document unless the sealing has been authorised by a resolution of the Council, or of a Committee, or authority of a Portfolio Holder or officer to which the Council [or, where appropriate, the Leader] have delegated their powers in this behalf. A resolution of the Council, a Committee or the decision of a Portfolio Holder or of an officer acting pursuant to the powers delegated to him shall be a sufficient authority for sealing any document necessary to give effect to the resolution or decision. The seal shall be attested by the Chief Executive or Director of Governance and Licensing or the Principal Solicitor. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for

the purpose and shall be signed by the person or by persons who shall have attested the seal. Where any document will be a necessary step in legal proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises or the Council shall have given the necessary authority to some other person for the purpose of such proceedings, be signed by the Chief Executive or the Director of Governance and Licensing.

23. Inspection of documents

A Member of the Council may for the purposes of his duty as a Member but not otherwise inspect any document that contains material relating to any business to be transacted, or which has been considered, at a meeting of the Council. If copies are available they shall be supplied on request. A Member shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which he is professionally interested; or has a personal and prejudicial interest within the meaning of the Code of Conduct for Members as set out in this Constitution. This standing order shall not preclude the Chief Executive or Director of Governance and Licensing from declining to allow inspection of any document which is or in the event of legal proceedings would be protected by privilege arising from the relationship of solicitor and client or where it appears to the Chief Executive that a document discloses exempt information of a description set out in Section 100F(2) of the Local Government Act 1972. All minutes of the Council or of any Committee shall be open for the inspection of any Member of the Council during office hours.

24. Inspection of land, premises etc.

A Member of the Council unless authorised to do so by the Council or a Committee, shall not have the right to inspect any lands or premises which the Council have the right or duty to inspect, or enter upon or issue any order respecting any works which are being carried out by or on behalf of the Council.

25. Proceedings at meetings

No person shall disclose "confidential information" or "exempt information" in any circumstances without the prior permission of the Council. This Standing Order shall not however forbid disclosure of the resolution or any recommendation which has been made or other contents of the relevant minute. In the event of any Member of the Council disclosing such information, he shall be liable to investigation by the Monitoring Officer and report to the Standards Committee.

26. Reports of Committees

All Standing Committees shall submit a report to the Council on matters dealt with by that Committee. Such report shall be sent to each Member of the Council prior to the meeting at which the report will be considered. The minutes of the proceedings of a Committee shall not be the subject of discussion or debate at any Council meeting

unless either a notice of Motion has been given in accordance with Standing Order No.10, or a Member has submitted to the Chief Executive before the meeting a "called minute" slip or the Chair, at his discretion so allows.

27. Attendance when not a Committee Member

- 27.1.** A Member of the Council who has proposed a motion which has been referred to any Committee shall have notice of the meeting of the Committee at which it is proposed to consider the motion, and if he attends, shall have an opportunity of explaining it.
- 27.2.** A Member of the Council may attend all proceedings of any Committee of the Council.
- 27.3.** A Member of the Council who wishes to raise any matter appropriate to a Committee of which he is not a Member, may do so by giving notice in writing to the Chief Executive at least two clear days before the next ordinary meeting of the appropriate Committee. The Member may also attend a special meeting if the matter in which he is interested is to be discussed by that special meeting. Such notice shall contain particulars of the matter that he wishes to raise. He shall then have the right to explain and discuss the matter.
- 27.4.** Any Member of the Council attending a meeting of which he is not a Member shall not be able to propose or second any motion nor to vote at that meeting. Except as otherwise provided in this Standing Order he shall not be entitled to speak at that meeting (except with the consent of the meeting).

4.2 Access to Information Procedure Rules

1. Scope

These rules apply to all public meeting of the Council, the Cabinet, and all Committees and Sub Committees.

2. Additional rights to information

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law. These rules do not limit or diminish or limit the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 2018.

3. Rights to attend meetings

Members of the public may attend all meetings subject only to the exceptions in these rules.

4. Notices of meeting

The Council will normally give at least five clear days' notice of any meeting by posting details of the meeting at the Council Offices, Blackdown House, Heathpark Industrial Estate, Border Road, Honiton, Devon, EX14 1EJ (the designated office), such other place where the meeting may be held, and on its web site (www.eastdevon.gov.uk)

5. Access to agenda and reports before the meeting

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and on its web site at least five clear days before the meeting or when notice of the meeting is given. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors) will be open to inspection from the time the item was added to the agenda.

6. Supply of copies

The Council will supply copies of: (a) any agenda and reports which are open to public inspection; (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and (c) if the Chief Executive thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs.

7. Access to minutes etc. after the meeting

The Council will make available copies of the following for six years after a meeting: (a) the minutes of the meeting or records of decisions taken, together with reasons, for all

meetings of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information; (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record; (c) the agenda for the meeting; and (d) reports relating to items when the meeting was open to the public.

8. Background papers

8.1. List of background papers

The officer submitting a report will set out in the report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion: (a) disclose any facts or matters on which the report or an important part of the report is based; and (b) which have been relied on to a material extent in preparing the report but do not include published works or those which disclose exempt or confidential information (as defined in Rule 2.10).

8.2. Public inspection of background papers

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers. Background papers relating to executive decisions will normally also be available on the Council's website.

9. Summary of public's rights

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at and available to the public at the Council's main offices and on the Council's web site.

10. Exclusion of access by the public to meetings

10.1. Confidential information – requirement to exclude public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

10.2. Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6. (Article 6 refers to "the interests of morals, public order or national security in a

democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary... in special circumstances where publicity would prejudice the interests of justice”).

10.3. Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by any enactment or Court Order.

10.4. Meaning of exempt information

Exempt information means information falling within the following categories, if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information:

Category	Relevant Definitions
1 Information relating to any individual	
2 Information which is likely to reveal the identity of an individual	
3 Information relating to the financial or business affairs of any particular person (including the authority holding that information)	“financial or business affairs” includes contemplated, as well as past or current, activities
4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority	“labour relations matter” means a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act) or; b) any dispute about a matter falling within paragraph a) about “employee” means a person employed under a contract of service “office-holder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority
5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	
6 Information which reveals that the authority proposes: a) to give under any enactment a notice under or by virtue of which requirements are imposed in person; or b) to make an order or direction under any enactment	
7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	

Information falling within any of paragraphs 1-7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Acts 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993

11. Exclusion of access by the public to reports

If the Chief Executive thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

12. Application of rules to the Cabinet

Rules 13-24 apply to the Cabinet and its committees (if any). If the Cabinet meets to take a key decision it must also comply with Rules 1-11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 12 of this Constitution. Rules 1-11 do not apply to meetings of the Cabinet whose sole purpose is for officers to brief the Cabinet and at which no key decision shall actually be taken.

13. Procedure before taking key decisions

13.1. Notice of Key Decision

Subject to Rules 15 (general exception) and 16 (urgency) below, no key decision may be taken unless:

- 13.1.1. a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;
- 13.1.2. at least 28 clear days have elapsed since the publication of the "Notice of Key Decision"; and
- 13.1.3. where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

13.2. Contents of Notice of Key Decision

The Notice of Key Decision will state that a key decision is to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers, area committees

or under joint arrangements in the course of the discharge of an executive function. It will describe the following particulars:

- 13.2.1. the matter in respect of which the decision is to be made;
- 13.2.2. where the decision maker is an individual, his/her name and title, if any and where the decision maker is a body, its name and a list of its membership;
- 13.2.3. the date on which, or the period within which, the decision is to be made;
- 13.2.4. a list of the documents submitted to the decision maker for consideration in relation to the matter;
- 13.2.5. the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- 13.2.6. that other documents relevant to those matters may be submitted to the decision maker; and
- 13.2.7. the procedure for requesting details of those documents (if any) as they become available.

13.3. Publication of the Notice of Key Decision

The Notice of Key Decision must be made available for inspection by the public at Blackdown House, Heathpark Industrial Estate, Border Road, Honiton, Devon, EX14 1EJ and on the council website. Exempt information need not be included in a Forward Plan and confidential information cannot be included.

14. The Forward Plan

The Council is not required by law to publish a Forward Plan. However, the Notice of Key Decision and a Notice of Private Meeting of Cabinet published by the Council set out not just details of specific key decisions, but also details of key decisions over a four month period. In this Constitution, such notices are together referred to as the "Forward Plan". The Forward Plan does not have to include exempt information and should not include confidential information.

15. General Exception

- 15.1.** If a Notice of Key Decision has not been published, then subject to Rule 16 (special urgency), the decision may still be taken if:
 - 15.1.1. the decision must be taken by such a date that it is impracticable to publish a Notice of Key Decision;
 - 15.1.2. Chief Executive has informed the Chair of the Overview Committee, or in his absence the Vice-Chair, in writing, or if there is no such person, each Member of that committee in writing, by notice, of the matter about which the decision is to be made;
 - 15.1.3. the Chief Executive has made copies of that notice available to the public at the offices of the Council and at www.eastdevon.gov.uk; and
 - 15.1.4. at least 5 clear days have elapsed since the Chief Executive complied with 15.1.2 and 15.1.3.
- 15.2.** As soon as reasonably practicable after the Chief Executive has complied with Rule 15.1, he must make available at Blackdown House, Heathpark Industrial Estate, Border Road,

Honiton, Devon, EX14 1EJ and publish on the council website (if any) the reasons why compliance with Rule 13 is impractical.

16. Special Urgency

16.1. If by virtue of the date by which a key decision must be taken Rule 15 (general exception) cannot be followed, then the key decision can only be taken if the decision maker obtains the agreement of the Chair of the Overview Committee and the Monitoring Officer that the taking of the decision cannot be reasonably deferred. If there is no Chair of the Overview Committee, or if the Chair of the Overview Committee is unable to act, then the agreement of the Chair of the Council, or in his/her absence the Vice Chair will suffice.

16.2. As soon as reasonably practicable after the decision maker has obtained agreement under Rule 16.1 he must make available at Blackdown House, Heathpark Industrial Estate, Border Road, Honiton, Devon, EX14 1EJ and publish on the council website (if any) a notice setting out the reasons why the meeting is urgent and taking the decision cannot reasonably be deferred.

17. Report to Council

17.1. When the Overview Committee or the Scrutiny Committee thinks that a key decision has been taken which was not:

17.1.1. the subject of a Notice of Key Decision; or

17.1.2. the subject of the general exception procedure; or

17.1.3. the subject of an agreement with the Chair of the Overview Committee, or the Chair or Vice Chair and the Monitoring Officer under Rule 16;

it may require the Cabinet to submit a report to the Council within such reasonable time as the Overview Committee or the Scrutiny Committee specifies. The report must include details of the decision and the reasons for the decision, the decision maker, and the reasons, if any, for the Cabinet believing that the decision was a key decision. The power to require a report shall be raised by resolution passed at a meeting of the Committee following receipt and consideration of any relevant explanation by a Member of the Cabinet.

17.2. Cabinet's report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual Member or body making the decision, and if the Leader of the Council is of the opinion that it was not a key decision the reasons for that opinion.

17.3. Annual reports on special urgency decisions

In any event the Leader of the Council will submit annual reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding twelve months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

18. Record of Decisions

After any meeting of the Cabinet or any of its Committees, whether held in public or in private, the Chief Executive or, where no Officer was present, the person presiding at the meeting, will produce a written record of every decision taken at that meeting as soon as practicable. The record will include:

18.1. a record of the decision including the date it was made;

18.2. a record of the reason for the decision;

18.3. details of any alternative options considered and rejected by the decision making body at the meeting at which the decision was made;

18.4. a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and

18.5. in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

All decisions shall be treated as made but not implemented (unless they are the subject of Rule 16 and their implementation cannot wait) for the purposes of the "call-in" procedure in Rule 15 of the Overview and Scrutiny Procedure Rules.

19. Meetings of the Cabinet to be held in public

19.1. Meetings of the Cabinet and its committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information would be disclosed.

20. Notice of Private Meetings of the Executive

20.1. Members of the Cabinet or its committees will be entitled to receive five clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

20.2. At least 28 clear days before a private meeting, the decision-making body must:

20.2.1. make available at the offices of the Council a notice of its intention to hold the meeting in private (a "Notice of Private Meeting"); and

20.2.2. publish that notice on the Council's website.

20.3. At least five clear days before a private meeting, the decision-making body must:

- 20.3.1. make available at the offices of the Council a further notice of its intention to hold the meeting in private; and
- 20.3.2. publish that notice on the Council’s website.

- 20.4. Notice under paragraph 20.3 must include:
 - 20.4.1. a statement of the reasons for the meeting to be held in private;
 - 20.4.2. details of any representations received by the decision-making body about why the meeting should be open to the public; and
 - 20.4.3. a statement of its response to any such representations.

- 20.5. Where the date by which a meeting must be held makes compliance with this Rule impractical, the meeting may only be held in private where the decision-making body has obtained agreement from:
 - 20.5.1. the Chair of the Overview Committee; or
 - 20.5.2. if there is no such person, or if the Chair of the Overview Committee is unable to act, the Chair of the Council; or
 - 20.5.3. where there is no chair of either the Overview Committee or of the Council, the Vice Chair of the Council, that the meeting is urgent and cannot reasonably be deferred.

- 20.6. As soon as reasonably practicable after the decision-making body has obtained agreement under paragraph 20.5 to hold a private meeting, it must:
 - 20.6.1. make available at the office of the Council a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and
 - 20.6.2. publish that notice on the Council’s website.

21. Key Decisions by Portfolio Holder Members of the Cabinet

21.1. Reports intended to be taken into account

Where a Portfolio Holder Member of the Cabinet receives a report which he intends to take into account in making any key decision, then he will not make the decision until at least 5 clear working days after receipt of that report.

21.2. Provision of copies of reports to the Overview Committee and Scrutiny Committee

On giving of such a report to an individual decision maker, the person who prepared the report will give notice by means of an email to Members, and a copy of it shall be given (where appropriate) to the local Ward Members.

21.3. Record of individual decision

As soon as reasonably practicable after a Cabinet decision has been taken by a Portfolio Holder Member of the Cabinet or a key decision has been taken by an officer, he will prepare, or instruct the Chief Executive to prepare, a report containing:

- 21.3.1. a record of the decision including the date it was made;
- 21.3.2. record of the reasons for the decision;

- 21.3.3. details of any alternative options considered and rejected by the Member when making the decision;
- 21.3.4. a record of any conflict of interest declared by any executive Member who is consulted by the Member which relates to the decision; and
- 21.3.5. in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by Portfolio Holder Members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political or mayor's assistant. The decision shall be treated as made but not implemented for the purposes of the "call-in" procedure in Rule 15 of the Overview and Scrutiny Procedure Rules.

21.4. Inspection of documents following executive decisions

- 21.4.1. Subject to Rule 21.4.2, after a meeting of a decision-making body at which an executive decision has been made, or after a Portfolio Holder Member or an officer has made an executive decision the Chief Executive must ensure that a copy of
 - (a) any records prepared in accordance with Rules 18 or 21; and
 - (b) any report considered at the meeting or, as the case may be, considered by the Portfolio Holder Member or officer and relevant to a decision recorded in accordance with Rules 18 or 21 or, where only part of the report is relevant to such a decision, that part, must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the Council, and on the Council's website.
- 21.4.2. Nothing in these rules is taken to authorise or require the disclosure of confidential or exempt information.
- 21.4.3. Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule 21.4.1, those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper to the Council of postage, copying or other necessary charge for transmission.

22. Joint Committees

These Rules apply to the Council's Joint Committees as follows:

- 22.1. If all the members of a joint committee are members of the Cabinet in each of the participating authorities, then its access to information regime is the same as that applied to the Executive.
- 22.2. If the joint committee contains members who are not on the Cabinet of any participating authorities then the access to information rules in Part VA of the Local Government Act 1972, as applicable to meetings of the full Council and its committees will apply.

23. The Overview and Scrutiny Committees and Sub-Committees - Access to Documents

23.1. Rights to copies

Subject to 23.2 below, any of the three Overview and Scrutiny Committees and their Sub-Committees will be entitled to copies of any document which is in the possession or control of the Cabinet or any of its Committees and which contains material relating to:

- (a) any business transacted at a meeting of the Cabinet or its Committees;
- (b) any decision taken by a Portfolio Holder Member of the Cabinet; or
- (c) any decision taken by an Officer of the Council in accordance with executive arrangements.

The Cabinet must provide the document no later than 10 clear days after receipt of the request.

23.2. Limit on rights

None of the Overview and Scrutiny Committees nor their Sub-Committees will be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision the Committee are reviewing or scrutinising or intend to scrutinise;
- (c) the advice of a political or mayoral assistant.

24. Additional rights of access for Members

24.1. Material relating to key decisions

All Members of the Council will be entitled to inspect any document 5 clear days before the meeting (except those available only in draft form) which are in the possession or under the control of the Cabinet and which contain material relating to any business to be transacted at a public meeting. Any document that is in the possession of the Cabinet and contains material relating to business transacted at a private meeting, or contains material relating to an executive decision made by an officer must be made available when the meeting concludes or immediately after the officer has taken the decision. A document is not required to be made available for inspection if it appears to the proper officer that it discloses exempt information other than paragraphs 3 and 6. All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet that relates to any key or other decision or any business to be transacted at a public meeting.

24.2. A Member shall not knowingly inspect or request a copy of any document relating to a matter in which he:

- (a) is professionally interested; or
- (b) has a disclosable pecuniary interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

24.3. This shall not preclude the Director of Governance and Licensing from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either the Freedom of Information Act or the Data Protection Act.

24.4. Nature of rights

These rights of a Member are additional to any other right he/she may have including the rights referred to in Standing Order 24 and applicable pursuant to the common law rights based on a “need to know”.

NOTE: These rules reflect The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

4.3 Budget and Policy Framework Procedure Rules

1. The framework for executive decisions

The Council will be responsible for the adoption of the budget and policy framework as set out in Article 4. Once a budget or an element of the policy framework is in place, it will be the responsibility of the Cabinet to implement it.

2. Process for developing the framework

The process by which the budget and policy framework shall be developed is:

- 2.1. After consulting stakeholders in a manner appropriate to the matter under consideration, the Cabinet will draw up initial proposals in relation to any plan, strategy or budget that forms part of the Council's budget and policy framework. Once drawn up the Chief Executive will serve copies of them on the chairs of the Overview and Scrutiny Committees together with dates when the Cabinet will consider them further.
- 2.2. The Overview and Scrutiny Committees will be convened to consider the draft proposals and whether any further consultation is appropriate. If so the Overview and Scrutiny Committees will carry out any necessary consultation and will reflect any representations made to it in its response to the Cabinet within the time scale set for decision by the Cabinet.
- 2.3. The Cabinet will finalise its proposals for the Council to consider having taken into account the comments from the Overview and Scrutiny Committees. The report to Council will show the Cabinet's response to those comments.
- 2.4. The Council will consider the proposals of the Cabinet and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place.
- 2.5. The Council's decision shall be dated and shall state either that the decision shall be effective immediately (if the Council accepts the Cabinet's proposal without amendment) or (if the Cabinet's proposal is not accepted without amendment), that the Council's decision will become effective on the expiry of 5 working days after the publication of the notice of decision, unless the Leader formally objects in that period.
- 2.6. If the Leader objects to the decision of the Council, he/she shall give written notice to the Chief Executive to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. Where such notification is received, the Chief Executive shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.

- 2.7.** The Council meeting must take place within 10 working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.
- 2.8.** The Council shall at that meeting make its final decision on the matter on the basis of a simple majority. The decision shall be made public in and shall be implemented immediately.
- 2.9.** In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework that may be undertaken by the Cabinet, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the budget and policy framework are reserved to the Council.

NOTE: Rule 2 is a summary of Part II to Schedule 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 to which detailed reference should be made if required.

3. Decisions outside the budget or policy framework

- 3.1.** Subject to the provisions of paragraph 5 (virement) the Cabinet, individual Portfolio Holder Members of the Cabinet and any officers discharging executive functions may only take decisions that are in line with the budget and policy framework. If it is proposed to make a decision that is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to 4 below.
- 3.2.** Where there is doubt as to the vires of a proposed decision advice shall be sought from the from the Monitoring Officer and the Chief Financial Officer as to whether the decision would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 shall apply.

4. Urgent decisions outside the budget or policy framework

- 4.1.** The Cabinet, a Portfolio Holder Member of the Cabinet or an officer may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency and: i) it is not practical to convene a quorate meeting of the full Council; and ii) the Chair of the Overview Committee agrees that the decision is a matter of urgency. The reasons why it is not practical to convene a quorate meeting of full Council and the Chair of the Overview Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chair of the

Overview Committee the consent of the Chair of the Council, and in the absence of both the Vice-Chair, will be sufficient.

- 4.2.** Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency

5. Virement

Virement can be authorised by the Cabinet or a Chief Officer within the limits set by Council. Details are set out in the Financial Regulations in Part 4.6 of this Constitution, which supplement Rule 2.9 of these Rules.

6. In-year changes to policy framework

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Cabinet, a Portfolio Holder Member of the Cabinet or an officer must be in line with it. No changes to any policy and strategy that make up the policy framework may be made by those bodies or individuals except those changes: (a) that will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint; (b) necessary to ensure compliance with the law, ministerial direction or government guidance; (c) in relation to the policy framework in respect of a policy that would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration.

7. Call-in of decisions outside the budget or policy framework

- 7.1.** Where Scrutiny Committee is of the opinion that a decision of the Cabinet is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and Chief Financial Officer.
- 7.2.** In respect of functions that are the responsibility of the Cabinet, the Monitoring Officer's report or the Chief Financial Officer's report shall be to the Cabinet with a copy to every Member of the Council. Regardless of whether the decision is delegated or not, the Cabinet must meet to decide what action to take in respect of the report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that the decision was a departure, and to the Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
- 7.3.** If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Financial Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 10 working days of the request by the Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Financial Officer. The Council may either:
- 7.3.1.** endorse a decision or proposal of the executive decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- 7.3.2.** amend the Council's financial regulations or policy concerned to encompass the decision or proposal of the body or individual responsible for that executive function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- 7.3.3.** where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the executive to reconsider the matter in accordance with the advice of either the Monitoring Officer or the Chief Financial Officer.

4.4 Executive Procedure Rules

1. Operation of the Cabinet

1.1. Who may make executive decisions?

Executive decisions may be made by: (i) the Cabinet as a whole; (ii) an individual Portfolio Holder Member of the Cabinet; (iii) an officer.

1.2. The Council's scheme of delegation and executive functions

The Council's scheme of delegation will be subject to adoption by the Council and may only be amended by the Council except for the scheme of delegations for executive functions which is determined by the Leader. The scheme of delegations is set out in Part 3 of this Constitution.

1.3. Conflicts of Interest

1.3.1. Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

1.3.2. If every Member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

1.3.3. If the exercise of an executive function has been delegated to an individual Portfolio Holder Member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the Cabinet or otherwise as set out in the Council's Codes of Conduct in Part 5 of this Constitution.

1.4. Cabinet meetings

The Cabinet will meet at least 11 times per year at times to be agreed by the Council. The Cabinet shall meet at the Council's main offices or another location to be agreed by the Cabinet.

1.5. Public meetings of the Cabinet

All meetings of the Cabinet will be held in public. Items will be considered in private session only if they qualify under the grounds to exclude the public set out in the Access to Information Procedure Rules.

1.6. Quorum

The quorum for a meeting of the Cabinet shall be three.

1.7. Executive Decisions

Executive decisions to be taken by the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.

2. Conduct of Executive Meetings

2.1. Who presides?

If the Leader is present he/she will preside. In his absence, then the Deputy Leader shall preside. If both are absent the Cabinet will elect a Chair for the meeting.

2.2. Who may attend?

Councillors who are not members of the Cabinet may attend and observe the proceedings of the Cabinet. They may speak at the meetings if the Leader (or other person presiding) consents to it. The Senior Officers are entitled to attend and to participate in all meetings of the Cabinet. The public and press can observe any proceedings of the Cabinet held in public session.

2.3. What business will be conducted at the Cabinet's meetings?

At each meeting of the Cabinet the following business will be conducted:

2.3.1. consideration of the minutes of the last meeting;

2.3.2. matters referred to the Cabinet (whether by the Overview and Scrutiny Committees or by the Council) for reconsideration in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;

2.3.3. consideration of reports from the Overview and Scrutiny Committees; and

2.3.4. matters set out in the agenda for the meeting, and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

2.4. Consultation

All reports to the Cabinet from any Member of the Cabinet or an officer on proposals relating to the budget and policy framework shall contain details of the nature and extent of consultation with stakeholders and the relevant Overview and Scrutiny Committee, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

2.5. Who can put items on the Cabinet's agenda?

The following may require an item to be considered at the next available meeting of the Cabinet: The Leader or any other Member of the Cabinet; The Council, or any Committee of the Council; any Senior Officer. In addition any Member of the Council (not on the Cabinet) may request the Leader that an item be considered by the Cabinet and it will be considered only at the discretion of the Leader.

2.6. Requirement for Written Report when making a decision

All reports to the Cabinet, or to an individual Portfolio Holder Member of the Cabinet, recommending the making of a key decision or any other decision in respect of an

executive function shall be in writing. The report shall contain a summary of the purpose of the report together with other required information. In addition the report shall contain an assessment of the legal and financial implications (if any) arising from the report.

4.5 Overview and Scrutiny Procedure Rules

1. Arrangements for Overview and Scrutiny Committees

The Council shall have an Overview Committee, a Scrutiny Committee and a Housing Review Board as set out in Article 7 ('the Overview and Scrutiny Committees').

2. Who may sit on an Overview and Scrutiny Committee?

All Councillors except members of the Cabinet may be members of the Overview and Scrutiny Committees. However, no Member may be involved in scrutinising a decision in which he/she has been directly involved.

3. Co-optees

The Overview Committee and the Scrutiny Committee shall be entitled to recommend to Council the appointment of up to 2 people as non-voting co-optees. The Housing Review Board may recommend to Council up to 7 co-optees (five tenant and leaseholder representatives and two independent community representatives who may vote).

4. Meetings of the Overview and Scrutiny Committees

There shall be at least 6 ordinary meetings of the Overview Committee, 10 ordinary meetings of the Scrutiny Committee and 5 of the Housing Review Board in each civic term. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview Committee and Scrutiny Committee meeting may be called by the Chair of the relevant Committee, by any 5 Members of the Committee or by the Chief Executive if he considers it necessary or appropriate.

5. Quorum

The quorum for each Committee shall be as follows: Overview Committee 5 Councillors; Scrutiny Committee 5 Councillors; Housing Review Board 4 Committee Members.

6. Who Chairs the Overview and Scrutiny Committees meetings?

The Chair for each meeting shall be the Chair of the relevant Committee appointed by Council at the Council's Annual Meeting; or in the absence of the Chair, the Vice Chair of the relevant Committee appointed by Council at the Council's Annual Meeting; or failing that, a Member elected by the meeting in the absence of both the Chair and Vice Chair. The Chair and Vice Chair shall work together to ensure the proper conduct of the Overview and Scrutiny Committees.

7. Work Programme

The Overview and Scrutiny Committees/sub-committees will be responsible for setting their own work programme and in doing so they shall take into account the wishes of

Members on that Committee who are not members of the largest political group on the Council.

8. Agenda items

- 8.1.** Without prejudice to paragraph 15 below, any Member (whether a member of the Overview and Scrutiny Committees or not) may request an item be considered by one of the committees by completing a proposal form. The relevant committee shall then decide whether to progress matter to scoping and inclusion on the Forward Plan.
- 8.2.** The Chair of the relevant Overview and Scrutiny Committee shall retain the discretion to permit inclusion of an item on the agenda for the next available meeting of the Committee following a request by a Member of that Committee.

9. Policy review and development

- 9.1.** The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- 9.2.** In addition the Overview and Scrutiny Committees may make proposals to the Cabinet for the development of other matters in so far as they relate to matters within their terms of reference.
- 9.3.** The Overview and Scrutiny Committees may hold inquiries and investigate the available options for future direction in policy development and may, subject to budgetary provision, appoint advisers and assessors to assist them in this process. Overview and Scrutiny Committees will invite the relevant Members of the Cabinet to any such inquiries and investigations.

10. Reports from Overview and Scrutiny Committees

The views of an Overview and Scrutiny Committee may be reported to the Cabinet and/or the Council, and the Chair of the respective Committee shall be entitled to address the meeting on that Committee's views.

11. Making sure that Overview and Scrutiny Committees' reports are considered by the Cabinet

- 11.1.** The agenda for the Cabinet meetings shall include an item for the consideration of reports from the Overview and Scrutiny Committees.
- 11.1.1.** Where an individual Member of the Cabinet has been delegated a decision making power;
- 11.1.1.1.** the Overview and Scrutiny Committees may submit a report of their views on the matter to be decided to the Cabinet and to the individual Member; and
- 11.1.1.2.** the individual Member shall not make the decision if he/she disagrees with the views of the Committee until the matter has been considered by the Cabinet.
- 11.2.** Overview and Scrutiny Committees will in any event have access to the Forward Plan. Where an item is not the subject of detailed proposals from the Overview and Scrutiny

Committees following a consideration of possible policy/service developments, the Committee will normally be able to respond to the Cabinet's consultation process in relation to any key decision.

12. Rights of the Overview and Scrutiny Committees' members to documents

12.1. In addition to their rights as Councillors, members of the Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

12.2. Nothing in this paragraph prevents more detailed liaison between the Cabinet and any of the Overview and Scrutiny Committees as appropriate depending on the particular matter under consideration.

13. Members and officers giving account

13.1. Each of the Overview and Scrutiny Committees may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions relevant to the terms of reference of that Committee. As well as reviewing documentation it may require any Member of the Cabinet, the Chief Executive, any Chief Officer, Director and/or any Manager to attend before it to explain in relation to matters within their remit:

13.1.1. any particular decision or series of decisions;

13.1.2. the extent to which the actions taken implement Council policy; and/or

13.1.3. their performance.

And, subject to there being no reasonable reason to the contrary, it is the duty of those persons to attend if so required.

13.2. Where any Member or officer is required to attend any of the Overview and Scrutiny Committees under this provision, the Chair of that Committee will inform the Chief Executive. The Chief Executive will inform the Member or officer in writing giving at least 5 working days' notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.

13.3. Where the Member or officer is unable to attend on the required date, then that Committee shall in consultation with the Member or officer arrange an alternative date for attendance.

13.4. Notwithstanding the generality of the paragraphs above, all the Portfolio Holders shall, at least once in each civic year, provide a written report to Scrutiny on the activities they have undertaken within the remit of their Portfolio and shall, if requested by the Scrutiny Committee, attend a meeting of the Scrutiny Committee to answer questions

on the content of the report.

14. Attendance by others

Any of the Overview and Scrutiny Committees may invite people other than those people referred to in paragraph 13 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and shall invite such people to attend. Attendance is of course entirely optional.

15. Call-in

15.1. Call-in may be exercised by the Scrutiny Committee. A “call-in” is where the Scrutiny Committee reviews a decision made by the Cabinet or one of its Members before the decision is implemented. Call-in should only be used in exceptional circumstances and in the interests of good administration. A decision cannot be called in more than once.

15.2. Procedure for Call-In:

- 15.2.1. A decision is made by the Cabinet or a Portfolio Holder but the decision does not come into effect until a Call-In period has elapsed.
- 15.2.2. Within two working days of the decision being made, the Chief Executive will notify all Council Members of the decision. The notice will include the date of the notification, and the date the decision will come into effect if there is no Call-In on it. The “effective date” of the decision which will be 09.00 am on the day after the expiry of three clear working days from the notification to Members. (Saturdays, Sundays and Bank Holidays are excluded). (For example, in respect of a decision made by the Cabinet on a Wednesday, notification will be given to all Members by Friday of the same week, and the effective date of the decision will be 09.00 am on the following Thursday).
- 15.2.3. A request for a Call-In of the decision must be received by the Chief Executive between the date of notification to Members and the effective date of the decision.
- 15.2.4. For the call-in to be valid, the request must satisfy all of the following provisions:
- 15.2.4.1. Be in writing (on paper or e-mail);
- 15.2.4.2. Specify the relevant decision that is to be the subject of the call-in and state the reasons for the call-in;
- 15.2.4.3. Be supported by at least five Councillors, one of whom shall be the Chair or Vice Chair of the Scrutiny Committee.
- 15.2.5. Once the Chief Executive is satisfied that the request is a valid request, he shall arrange for a Scrutiny Committee to meet as soon as possible on a date which is acceptable to the Chair of the Committee and a Chief Officer.

- 15.2.6. If having considered the decision, the Scrutiny Committee is still concerned about it, the Committee may refer it back to the decision-maker for reconsideration, setting out in writing the nature of its concerns, or refer the matter to full Council.
- 15.2.7. If referred to the decision-maker, they shall consider the concerns, amending the decision or not, before adopting a final decision.
- 15.2.8. If within one calendar month from the date of the request for the call-in, a Scrutiny Committee does not meet, or does meet but does not refer the matter back to the decision-maker, or to full Council, the decision shall take effect on the date of the Scrutiny Committee meeting, or on the expiry of the one-month period, whichever is the earlier.
- 15.2.9. If the matter was referred to full Council, and the Council does not object to the decision, the decision will be effective immediately thereafter.
- 15.2.10. However, if the Council does object to the decision, it may:
 - 15.2.10.1. overrule the decision if it is contrary to the Policy Framework or the Budget, or
 - 15.2.10.2. refer it back to the decision-maker with the views of the Council in this case the decision-maker shall, within 14 working days, consider the Council's views and make a final decision, and the decision shall then be implemented.

15.3. Exceptions to Call-in:

In order to ensure that call-in is not abused, nor causes unreasonable delay certain limitations are placed on its use. These are:

- 15.3.1. only decisions involving expenditure or reductions in service over a value of £10,000 may be called in;
- 15.3.2. If in the opinion of the Chief Executive the power of call-in is being abused with the apparent intention of unreasonably disrupting the Council's decision making process he may refuse to accept any or all requests.

16. Urgent Decisions

The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent whether under Rule 16 of the Access to Information Procedure Rules or otherwise.

17. The Party Whip

When considering any matter in respect of which a Member of any of the Overview and Scrutiny Committees is subject to a party whip the Member must declare the existence of the whip, and the nature of it before the commencement of the committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

18. Procedure at Overview and Scrutiny Committee Meetings

- 18.1.** The Overview and Scrutiny Committees shall consider the following business:
- 18.1.1. minutes of the last meeting;
 - 18.1.2. consideration of any matter referred to the Committee for a decision in relation to call in of a decision;
 - 18.1.3. responses of the Cabinet to reports of the Overview and Scrutiny Committees; and
 - 18.1.4. the business otherwise set out on the agenda for the meeting.
- 18.2.** Where any of the Overview and Scrutiny Committees conducts investigations (for example, with a view to policy development), that Committee may also ask people to attend to give evidence at committee meetings that are to be conducted in accordance with the following principles:
- 18.2.1. that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
 - 18.2.2. that those assisting the Committee by giving evidence be treated with respect and courtesy; and
 - 18.2.3. that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- 18.3.** Following any investigation or review, that Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.
- 18.4.** NOTE: References in this Part to 'Members of the Cabinet' does not include the Assistant Portfolio Holders.

4.6 Financial Regulations

Within these Regulations Director of Finance means the officer with the statutory responsibility for the proper administration of the Council's financial affairs in accordance with S151 of the Local Government Act 1972, i.e. Chief Finance Officer.

1. Status of financial regulations

1.1. Purpose

1.1.1. These Financial Regulations (Regulations) provide the governance framework for managing the Council's financial affairs.

1.2. Status

1.2.1. The Local Government Act 1972 (Section 151) makes the Chief Finance Officer (Director of Finance) responsible for the proper administration of the Council's financial affairs. These Regulations are issued pursuant to these responsibilities.

1.3. Scope

1.3.1. The regulations set out the Council's requirements in respect of:

- financial management roles and responsibilities
- financial planning and budgeting
- financial monitoring and control
- internal control and audit
- financial systems and procedures
- external arrangements

1.3.2. The regulations apply to the control of both the General Fund finances and the Housing Revenue Account.

1.3.3. Appendix 1 to the Regulations comprises the 'Schedule of Financial Authority to Officers' which sets out the approved financial limits within which officers may conduct the Council's business.

1.4. Compliance

1.4.1. These Regulations apply to every member and officer of the Council and to anyone acting on its behalf. Failure to comply may constitute misconduct and lead to formal disciplinary action.

1.4.2. All Council members and officers have a general responsibility for taking reasonable action to provide for the security of assets under their control and for ensuring that the use of these resources is legal, properly authorised, and achieves value for money. In doing so, proper consideration must be given at all times to matters of probity and propriety in managing the assets, income and expenditure of the Council.

1.5. Maintaining the regulations

1.5.1. The Director of Finance is responsible for:

- 1.5.1.1. Maintaining and updating these Regulations and the Schedule of Financial Authority to Officers.
- 1.5.1.2. Ensuring that any revisions affecting the powers of members are approved by the Council.
- 1.5.1.3. Reviewing and reissuing Financial procedures/instructions as necessary to support the effective operation of these Regulations.

2. Financial management roles and responsibilities

2.1. Principles

- 2.1.1. A transparent framework of financial management responsibilities and decision making is essential to the effective management of the Council's financial affairs.
- 2.1.2. All members and officers have a common duty to abide by the highest standards of integrity and propriety when making decisions about the use of public monies.

2.2. Members

- 2.2.1. Members responsibilities' for the overall management of the Council's financial affairs are exercised through:
 - 2.2.1.1. Full Council, which is responsible for approving the Council's overall policy framework and the budget within which the Cabinet operates, setting Prudential Indicators for capital finance and treasury management, setting limits for virements and approving the Council's treasury management and investment strategies;
 - 2.2.1.2. The Cabinet, which is responsible for proposing the policy framework and budget to the Council and for discharging executive functions in accordance with December 2020 157 it. Executive decisions can be delegated to a committee of the Cabinet, or by the Leader to an individual Cabinet member or an officer;
 - 2.2.1.3. Audit and Governance Committee, which is responsible approving the Annual Statement of Accounts for publication, oversight of the Council's governance arrangements and audit and anti-fraud activity;
 - 2.2.1.4. Overview and Scrutiny Committees, which oversee the budget process including its implementation.

2.3. The Director of Finance

- 2.3.1. The Director of Finance has statutory and delegated duties in relation to the financial administration and stewardship of the Council. The statutory responsibilities cannot be overridden and arise from:
 - Section 151 of the Local Government Act 1972
 - The Local Government Finance Act 1988
 - The Local Government and Housing Act 1989
 - The Accounts and Audit Regulations 2015
 - The Local Authorities Goods and Services Acts 1970
 - The Local Government Acts 2000 and 2003
 - The Localism Act 2011

- 2.3.2. Responsibilities of the Director of Finance include:
- 2.3.2.1. The proper administration of the Council's financial affairs including all arrangements concerning financial planning, financial control, accounting, taxation, income, debt management, insurance, investments, banking, loans, leasing, borrowing and the payment of creditors, salaries and wages.
 - 2.3.2.2. Preparing the Revenue Budget and reporting to the Council on the robustness of the estimates and the adequacy of reserves.
 - 2.3.2.3. Preparing the Capital Programme, ensuring effective forward planning and sound financial management in its compilation.
 - 2.3.2.4. Ensuring that accurate and timely financial information is available to enable effective budget monitoring and reporting and taking action if overspends or shortfalls in income emerge.
 - 2.3.2.5. Reporting to full Council if it is likely that any proposed action or decision will lead to unbudgeted or unlawful expenditure or activity.
 - 2.3.2.6. Advising on the systems of internal control necessary for sound financial management and decision making and to ensure that public funds are properly safeguarded and used economically, efficiently, and effectively.
 - 2.3.2.7. Maintaining an adequate and effective internal audit function and an effective Anti-Fraud and Corruption strategy.
 - 2.3.2.8. Preparing the Council's Risk Management Strategy and advising on the management of strategic, financial and operational risks.
 - 2.3.2.9. Determining the accounting procedures and records for the Council and ensuring that they are applied consistently.
 - 2.3.2.10. Preparing the Council's Annual Statement of Accounts and Governance Statement in accordance with all applicable codes of practice on local authority accounting.
 - 2.3.2.11. Preparing and implementing an effective Treasury Management Strategy and effecting all investments and borrowings within the limits imposed by the Council.
 - 2.3.2.12. Advising on, monitoring and reporting on performance in relation to Prudential Indicators set by the Council for capital expenditure, external debt and treasury management.
 - 2.3.2.13. Ensuring that effective asset management arrangements are in place.
 - 2.3.2.14. Advising on the risks and financial implications associated with joint working, external funding and trading opportunities.
- 2.3.3. The Director of Finance may allocate his/her day-to-day responsibilities to an appropriate representative in accordance with the Scheme of Delegated Authority to Officers and the Schedule of Financial Authority to Officers.

2.4. Budget Managers

- 2.4.1. Whilst the Director of Finance has overall responsibility for the finances of the Council, budget managers are responsible for the day-to-day management of their respective budget areas. Their responsibilities in relation to financial management include:

- 2.4.1.1. Promoting and ensuring compliance with these Regulations and associated financial instructions/procedures and taking corrective action in the event of any non-compliance.
- 2.4.1.2. Preparing annual Revenue Budget estimates and Capital Programme estimates in accordance with the guidance issued by Cabinet and the Director of Finance.
- 2.4.1.3. Ensuring that the financial implications of all proposals are properly reflected within all decision making reports and that these have been agreed with the Director of Finance or his/her nominated representative.
- 2.4.1.4. Managing service delivery and containing expenditure within the agreed revenue and capital budgets.
- 2.4.1.5. Maintaining sound systems of internal control and implementing agreed internal and external audit recommendations.
- 2.4.1.6. Complying with the Council's Anti-Fraud and Corruption Strategy and reporting suspected fraud and financial irregularities to the Director of Finance for possible investigation.
- 2.4.1.7. Complying with the Council's Risk Management Strategy and notifying the Director of Finance immediately of significant risks to the Council's financial position.
- 2.4.1.8. Ensuring that all financial transactions are recorded through the main accounting system.
- 2.4.1.9. Assisting cash flow through timely billing of income due, monitoring income received and taking appropriate action in the event of non-payment.
- 2.4.1.10. Assisting cash flow through minimising advance payments wherever possible.
- 2.4.1.11. Ensuring that all expenditure incurred complies with the requirements of Contract Standing Orders and procurement rules and has the necessary budgetary approval.
- 2.4.1.12. Controlling resources and containing staff numbers within approved establishment and budget levels and ensuring that all employee appointments and payments are properly authorised in compliance with the Council's policies.
- 2.4.1.13. Ensuring the proper security and safe custody of all assets under their control.
- 2.4.1.14. Ensuring that the risks and financial implications associated with joint working, external funding and trading opportunities are properly evaluated and that no such arrangements are entered into without the necessary approvals.
- 2.4.1.15. Ensuring that financial authorities are operated in accordance with the limits contained within the Schedule of Financial Authority to Officers and that a written record of authorised officers is maintained.

2.5. All Officers

- 2.5.1. In addition to the specific responsibilities set out above the Council expects all officers to:
 - 2.5.1.1. Act in good faith, impartially and in accordance with their positions of trust.
 - 2.5.1.2. Exercise due care in relation to all resources, assets, income and expenditure within their care or control.
 - 2.5.1.3. Ensure that proper records and documentation are maintained of the Council's assets and financial transactions

- 2.5.1.4. Comply with these Regulations, the associated Financial Instructions/Procedures and any additional guidance issued to ensure the effective control of the Council's resources.
- 2.5.1.5. Co-operate in audits of the Council's financial systems.
- 2.5.1.6. Report any suspected financial irregularities for investigation.

3. Financial planning and budgeting

3.1. Principles

- 3.1.1. The purpose of financial planning is to set out and communicate the Council's objectives, resource allocations and related performance targets and to provide an agreed basis for subsequent management control, accountability and reporting.
- 3.1.2. Budgets are needed so that the Council can plan, authorise, monitor and control the way money is allocated and spent. It is unlawful for the Council to budget for a deficit.
- 3.1.3. The Council's budget sets agreed parameters around the annual activities and functions of service areas and is constructed within the context of the Financial Plan (which includes the Medium Term Financial Plan). It reflects the priorities of the Council.
- 3.1.4. The Capital Programme sets out the resource allocations to be made to capital schemes that have the approval of Council. Capital expenditure involves acquiring or enhancing fixed assets with a long term value to the organisation, such as land, buildings, major items of plant, equipment and vehicles.
- 3.1.5. To enable members to make informed decisions, all Cabinet and Committee reports must incorporate a separate section on 'financial implications', which will be prepared by the Finance Team. Reports must show the costs or savings of proposals together with any approved budget provision, future commitments, potential risks, tax implications and any other financial consequences which may arise from the options and recommendations.

3.2. Revenue Budget

- 3.2.1. The Director of Finance is responsible for:
 - 3.2.1.1. Ensuring that an annual Revenue Budget and Council Tax Report is prepared in the context of a Medium Term Financial Plan for consideration by Cabinet and approval by Council.
 - 3.2.1.2. Maintaining a financial planning and resource allocation process that properly reflects the Council's policy framework and strategic objectives.
 - 3.2.1.3. Advising the Cabinet on the format of the budget and its responsibility for issuing guidance on budget preparation taking due account of:
 - legal requirements
 - medium-term planning prospects
 - the Council Plan and priorities
 - available resources
 - spending pressures
 - government initiatives and public policy requirements

- internal policy directives

- 3.2.1.4. Advising the Council on the budget proposals in accordance with his/her responsibilities under S151 of the Local Government Act 1972.
- 3.2.1.5. Advising the Cabinet and Council on a prudent level of reserves for budget purposes and ensuring any appropriate contingency provisions are maintained.
- 3.2.1.6. Considering and approving or rejecting requests for the creation of earmarked reserves.
- 3.2.1.7. Approving or rejecting transfers to or from reserves, or the re-designation of existing reserves.
- 3.2.1.8. Undertaking the statutory consultation with Non-Domestic Rates (NDR) payers.
- 3.2.1.9. Issuing detailed procedures on the preparation of Revenue Budget estimates.
- 3.2.2. Budget managers are responsible for:
 - 3.2.2.1. Preparing annual Revenue Budget estimates in accordance with the guidance issued by Cabinet and the detailed procedures issued by the Director of Finance, ensuring that these reflect agreed priorities and advising Cabinet Members on service implications.
 - 3.2.2.2. Establishing detailed budgets for each service area in advance of the financial year and requiring such budgets to be managed by responsible named budget managers.
 - 3.2.2.3. Integrating financial and budget plans with service planning.
 - 3.2.2.4. Ensuring that any approved withdrawals from reserves are applied for their intended purposes.

3.3. Capital Programme

- 3.3.1. No expenditure may be incurred on a capital project unless it has been approved by Council. The formulation and monitoring of capital projects for recommendation to Cabinet is through the Budget Setting and Capital Allocation Panel which is chaired by the Portfolio Holder for Finance. This Group meets quarterly and is responsible for:
 - 3.3.1.1. The strategic development of the Council's capital programme and capital strategy in accordance with the Council Plan.
 - 3.3.1.2. To consider any proposal for the use of capital against Council's priorities.
 - 3.3.1.3. To review potential risk and Value for Money issues on any proposal for the use of capital.
 - 3.3.1.4. To recommend a programme of capital spend within the confines of financing available.
 - 3.3.1.5. To provide a forum for establishing and providing robust challenge and debate around the capital programme.
 - 3.3.1.6. To monitor the performance of projects in accordance with the Council's Project Management Guidelines and programmes within the Council's capital programme.
 - 3.3.1.7. To ensure that investments in projects are backed up with a business case in accordance with the Project Management Guidelines.
- 3.3.2. The Director of Finance is responsible for:
 - 3.3.2.1. Ensuring that a five year rolling Capital Programme is prepared on an annual basis for consideration by the Budget Setting and Capital Allocation Panel and approved by Cabinet and Council.

- 3.3.2.2. Issuing strategic guidance on budget preparation and issuing detailed guidelines which take account of legal, regulatory and code of practice requirements, medium-term planning prospects, affordability and whole life costing.
- 3.3.2.3. Ensuring that the revenue implications of the programme are contained within the Revenue Budget and Medium Term Financial Plan.
- 3.3.2.4. Ensuring that all schemes relying on the use of prudential borrowing powers are properly appraised and provide value for money.
- 3.3.2.5. Reporting to Cabinet on the overall position and the availability of resources to support the Capital Programme.
- 3.3.2.6. Issuing procedures on the preparation of capital budget estimates.
- 3.3.2.7. Ensuring that sources of funding (general fund, HRA, capital grants, self-financing etc.) are identified for the entire programme.
- 3.3.2.8. Ensuring that any schemes requiring in year approval (outside of the annual capital programme) are reviewed by the Budget Setting and Capital Allocation Panel and approved by Cabinet and Council
- 3.3.2.9. Maintaining a record of the current capital budget and expenditure on the Council's financial systems and ensuring compliance with financial reporting standards.
- 3.3.2.10. Reporting to Cabinet and the Capital Strategy and Allocation Group on the performance against the capital programme and budget.
- 3.3.3. Budget managers are responsible for:
 - 3.3.3.1. Complying with the guidance issued by the Director of Finance regarding preparation of the capital programme.
 - 3.3.3.2. Ensuring all General Fund capital schemes and schemes included in the Housing Revenue Account are properly appraised with rigorous business cases documented in line with the Council's Project Management Guidelines.
 - 3.3.3.3. Undertaking robust financial management of schemes on a day to day basis and ensuring the scheme remains value for money.
 - 3.3.3.4. Undertaking an annual review of their schemes within the Capital Programme and consequential revenue expenditure, for inclusion in the Medium Term Financial Plan.
 - 3.3.3.5. Monitoring and reporting on a monthly basis on capital expenditure and receipts against approved capital budgets, on project slippage and variations, on additions/deletions and on any changes in projected expenditure in line with the monitoring process set down by the Director of Finance.
 - 3.3.3.6. Ensuring that adequate records and audit trails are maintained in respect of all capital contracts.
 - 3.3.3.7. Complying with the requirements of the Project Management Guidelines for business case sign off, progress updates and providing specific information in relation to a scheme when requested.

3.4. Financial Implications of Decisions

- 3.4.1. The Director of Finance is responsible for:
 - 3.4.1.1. Issuing guidance in relation to the presentation of financial implications within the Council's decision making processes.

- 3.4.1.2. Ensuring the adequacy of the financial implications information presented within individual decision making reports and appropriate sign-off.
- 3.4.2. Managers are responsible for:
 - 3.4.2.1. Ensuring that all decision making reports properly set out the financial implications of the proposed actions, through the provision of adequate information to finance to allow this section to be prepared.
 - 3.4.2.2. Ensuring they act in accordance with guidance issued by the Director of Finance.
 - 3.4.2.3. Arranging for all financial implications to be validated and formally signed-off by the Director of Finance, or his/her nominated representative, prior to their progression through the approval process.

4. Financial monitoring and control

4.1. Principles

- 4.1.1. To ensure the Council does not exceed its overall budget, each service area is required to manage its own income and expenditure within the cash limited budgets allocated to them to be spent on agreed service activities and functions. The Council's approval of the revenue estimates constitutes authority to incur expenditure, subject to compliance with the approved policies and regulations of the Council and any other limitation that may be imposed.
- 4.1.2. Any forecasted revenue overspends or income shortfalls should be mitigated through a compensating underspend or overachievement of income elsewhere. Any underspend cannot be carried forward from one year to the next without the approval of the Director of Finance and should generally be restricted to specific items of a 'one off' nature where monies will be spent for an identified purpose in the following financial year.
- 4.1.3. The term virement refers to transfers of budgets between or within cost centres. Virements may only be used in the very specific circumstances set out in the Regulations and the Schedule of Financial Authority to Officers.

4.2. Control of revenue budgets

- 4.2.1. The Director of Finance is responsible for:
 - 4.2.1.1. Maintaining a robust framework of budget management and control that ensures that:
 - Budget management is exercised within annual cash limits and the Medium Term Financial Plan
 - Revenue expenditure is recorded on the Council's financial systems in accordance with legal, regulatory and code of practice requirements
 - Accurate and timely information is available to managers and budget holders that enables budgets to be monitored and controlled effectively
 - All officers responsible for committing expenditure comply with these Regulations
 - Each cost centre is allocated to a named budget manager determined by the relevant service manager

- Significant variances from budget are investigated and reported by budget managers on a regular basis.

4.2.1.2. Monitoring and controlling income and expenditure against budget allocations at a Council-wide level.

4.2.1.3. Reporting regularly to the Cabinet on performance against budget, delivery of savings programmes and available reserves.

4.2.2. Budget managers are responsible for:

4.2.2.1. Ensuring that effective budgetary control arrangements exist and are observed within their respective services in compliance with these Regulations.

4.2.2.2. Ensuring spending remains within the relevant cash limits by controlling income and expenditure, monitoring performance and taking corrective action where variations from budget are forecast.

4.2.2.3. Ensuring that expenditure is coded correctly and committed only against approved budget lines.

4.2.2.4. Forecasting accurately on a monthly basis throughout the financial year; regularly reporting performance, variances and forecasts to the Director of Finance, Cabinet and as required to the Scrutiny Committee and Audit and Governance Committee.

4.2.2.5. Ensuring any risks or issues relating to over- or under-spends within their areas are escalated to finance on a timely basis.

4.3. Virements

4.3.1. The Director of Finance is responsible for:

4.3.1.1. Controlling and administering the virement mechanism in accordance with guidance and limits set by Council. As a general rule revenue virement is only permissible in the following circumstances:

- to correct any errors made in the initial loading of the budget onto the main accounting system to reflect a structural reorganisation
- to distribute centrally held budgets, e.g. savings targets and inflation provisions to reflect major changes in policy, subject to appropriate approval
- to reflect receipt of additional grant or other funding
- to reflect technical adjustments at the discretion of the Director of Finance
- to reflect any changes in corporate priorities

4.3.1.2. Recording approved virements in the Council's financial systems and reflecting the impact of these in regular monitoring reports to Cabinet.

4.3.2. Budget Managers are responsible for:

4.3.2.1. Ensuring all proposed virements comply with the limits and approval requirements set out in the Schedule of Financial Authority to Officers.

4.3.2.2. Notifying all proposed virements in writing to the Director of Finance or his/her representative.

5. Internal control and audit

5.1. Principles

- 5.1.1. Sound systems of internal control are essential to the proper economic, efficient and effective use of resources, the achievement of objectives and the safeguarding of public funds.
- 5.1.2. Legislation requires that the Council provides for both internal and external audit. External Audit provides an independent assessment of the Council's financial statements and the adequacy of its arrangements for securing value for money. Internal audit evaluates and reports on the adequacy of the Council's control systems in securing the proper, economic, efficient and effective use of resources. Internal Audit is provided through South West Audit Partnership (SWAP).
- 5.1.3. There is a basic expectation that members and all officers will act with integrity and with due regard to matters of probity and propriety and comply with all relevant rules, regulations, procedures and codes of conduct, including those in relation to receipt of gifts and hospitality and declaration of conflicts of interest.
- 5.1.4. The Council will not tolerate fraud or corruption in the administration of its responsibilities, whether perpetrated by members, officers, customers of its services, third party organisations contracting with it, or other agencies or individuals with which it has any business dealings.
- 5.1.5. Risk management is an integral part of effective management and planning. It is concerned with identifying and managing key obstacles to the achievement of objectives.

5.2. Internal Control

- 5.2.1. The Director of Finance is responsible for:
 - 5.2.1.1. Advising on effective systems of internal control to ensure that public funds are properly safeguarded and used economically, efficiently and in accordance with statutory and other authorities that govern their use.
 - 5.2.1.2. Conducting an annual review of the effectiveness of the system of internal control and publishing the results of this within the Council's Annual Governance Statement.
- 5.2.2. Budget Managers are responsible for:
 - 5.2.2.1. Complying with the controls set down in these Regulations and Financial Instructions/Procedures issued.
 - 5.2.2.2. Taking corrective action in respect of any non-compliance by staff with relevant rules, regulations, procedures and codes of conduct.
 - 5.2.2.3. Implementing effective systems of internal control including adequate separation of duties, clear authorisation levels and appropriate arrangements for supervision and performance monitoring.
 - 5.2.2.4. Planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their objectives, standards and targets.

5.3. Internal and External Audit

5.3.1. The Director of Finance is responsible for:

5.3.1.1. Maintaining an adequate and effective Internal Audit service in accordance with the Accounts and Audit Regulations.

5.3.1.2. Ensuring that the statutory requirements for External Audit are complied with and that the External Auditor is able to effectively scrutinise the Council's records.

5.3.1.3. Ensuring that audit plans and results are reported to the Audit and Governance Committee.

5.3.2. All Officers are responsible for:

5.3.2.1. Ensuring that the appointed auditors have access to all documents and records for the purposes of the audit and are afforded all facilities, co-operation and explanation deemed necessary.

5.3.2.2. Cooperating in the production of annual audit plans by highlighting any areas of risk that may benefit from audit review.

5.3.2.3. Implementing audit recommendations within agreed timescales.

5.4. Preventing Fraud and Corruption

5.4.1. The Director of Finance is responsible for:

5.4.1.1. Developing and maintaining an anti-fraud and corruption strategy that stipulates the arrangements to be followed for preventing, detecting, reporting and investigating suspected fraud and irregularity.

5.4.1.2. Advising on the controls required for fraud prevention and detection.

5.4.1.3. Appointing a Money Laundering Reporting Officer to ensure that systems are in place to counter opportunities for money laundering and that appropriate reports are made.

5.4.2. All Officers are responsible for:

5.4.2.1. Complying with the Council's Anti-Fraud and Corruption Strategy.

5.4.2.2. Ensuring that there are sound systems of internal control within their service areas for fraud prevention and detection.

5.4.2.3. Reporting cases of suspected fraud or irregularity to internal audit for investigation and complying with the Council's whistleblowing policy.

5.4.2.4. Implementing audit recommendations within agreed timescales.

5.4.2.5. Reporting any vulnerabilities or suspicions of money laundering in accordance with guidance issued by the Money Laundering Reporting Officer.

5.5. Risk Management

5.5.1. The Director of Finance is responsible for preparing the Council's risk management strategy and advising on the management of strategic, financial and operational risks.

5.5.2. Managers are responsible for:

5.5.2.1. Implementing the Council's risk management strategy.

5.5.2.2. Integrating risk management within business planning and performance management arrangements.

5.5.2.3. Mitigating, monitoring and reporting on risks.

5.5.2.4. Maintaining and testing business continuity plans.

6. Financial systems and procedures

6.1. Principles

- 6.1.1. Good systems and procedures are essential to the effective management and administration of the Council's financial affairs. This includes:
- 6.1.1.1. Accounting: The main accounting system provides the prime source of financial data for management accounts, statutory accounts and government returns. It is essential that this system complies with legislation and proper accounting practice and that all information is recorded accurately, completely and in a timely manner and that any errors detected promptly and rectified.
- 6.1.1.2. Income: Effective systems are necessary to ensure that all income due is collected, receipted, recorded and banked properly. Where possible income should be collected in advance to improve cash flow and avoid costs of debt collection. Debts should only be written off once all reasonable avenues have been exhausted or where it would prove uneconomical to pursue.
- 6.1.1.3. Expenditure: Expenditure may only be incurred where budgetary provision is available and must comply with the Council's Contract Standing Orders, procurement guidance and approved payment processes. Purchase orders must be raised to ensure that the expenditure is recorded as a commitment in the Council's main accounting system.
- 6.1.1.4. Banking: All transactions through the Council's bank accounts must be properly processed, recorded and reconciled.
- 6.1.1.5. Treasury management: Effective strategies must be maintained for the investment of cash balances and for borrowing to fund the Capital Programme.
- 6.1.1.6. Taxation: Effective systems must be in place to ensure that all tax liabilities and obligations are properly reported and accounted for and that losses, fines and penalties avoided.
- 6.1.1.7. Asset management: The Council's assets must be properly recorded, safeguarded from loss/harm and utilised effectively, and any disposals undertaken in a controlled manner.
- 6.1.1.8. Insurance: Appropriate insurance cover is necessary to protect the Council from financial claims arising from unforeseen events such as damage to property or injury to employees or to the public.
- 6.1.1.9. Recharges and internal trading accounts: The Council is required to allocate all of its back-office costs to service areas in compliance with accounting codes of practice.

6.2. Responsibilities

- 6.2.1. The Director of Finance is responsible for:
- 6.2.1.1. Determining the Council's main accounting system for the preparation of the Council's accounts and for monitoring all income and expenditure.
- 6.2.1.2. Determining any financial systems which may sit outside of the main accounting system and ensuring that these are sound and properly integrated and interfaced.
- 6.2.1.3. Issuing guidance on the use and maintenance of the main accounting system and related financial systems and ensuring that supporting records and documents are retained.

- 6.2.1.4. Ensuring that regular balance sheet and holding account reconciliations are undertaken.
- 6.2.1.5. Preparing the Council's consolidated accounts, balance sheet and governance statement for audit and publication and issuing guidance (including a detailed timetable and plan) to ensure achievement of statutory deadline.
- 6.2.2. Budget Managers are responsible for:
 - 6.2.2.1. Ensuring that the main accounting system is used to accurately record financial transactions in accordance with guidance issued by the Director of Finance.
 - 6.2.2.2. Ensuring an adequate audit trail of financial information and compliance with the Council's policies in respect of the retention of documents.
 - 6.2.2.3. Ensuring that the implementation of any service financial system has the express approval of the Director of Finance and is adequately documented, tested and interfaced with the main accounting system.
 - 6.2.2.4. Complying with the timetables required by the Director of Finance to enable the production of consolidated accounts, budgets and statutory information.

6.3. Income

- 6.3.1. The Director of Finance is responsible for:
 - 6.3.1.1. Administering all invoicing, credit notes, income collection and debt recovery or, where local arrangements for such have been agreed, approving all procedures, systems and documentation used.
 - 6.3.1.2. Ensuring that claims for Government grants and other monies are made properly and promptly.
 - 6.3.1.3. Ensuring that all monies received are properly receipted and recorded and banked promptly.
 - 6.3.1.4. Administering the process for writing off irrecoverable debts, and monitoring and reporting on write off levels.
 - 6.3.1.5. Recommending and implementing the Council's debt management policy
- 6.3.2. Budget Managers are responsible for:
 - 6.3.2.1. Ensuring that fees and charges for services are reviewed at least annually, consulting with the Director of Finance and Cabinet Members on the financial effect of the review, and obtaining Cabinet Member approval to any proposal to introduce new charges.
 - 6.3.2.2. Collecting payment at point of sale wherever possible to improve cash flow.
 - 6.3.2.3. Timely initiation of 'sales orders/sundry debts' in respect of all fees and charges due.
 - 6.3.2.4. Administering any local systems for invoicing, income collection and debt recovery as directed by the Director of Finance.
 - 6.3.2.5. Providing operational data and information to ensure that claims for Government grants and other monies are made properly and promptly.
 - 6.3.2.6. Authorising the write off of irrecoverable debts on the recommendation of the Director of Finance and subject to the requirements set out in the Schedule of Financial Authority to Officers.

6.4. Expenditure – Procurement

6.4.1. The Director of Finance is responsible for:

6.4.1.1. Issuing guidance on the ordering, certification and payment for all works, goods and services, subject to the provisions of the procurement code.

6.4.1.2. Processing all payments due on receipt of a valid invoice or contract certificate which satisfies VAT regulations, and confirmation that works, goods and services have been received.

6.4.1.3. Agreeing any exceptions to the requirement to raise purchase orders for all works, goods and services.

6.4.1.4. Administering procurement cards and credit cards and processing payments.

6.4.1.5. Agreeing the use of any pre-loaded payment cards.

6.4.1.6. Ensuring that effective procurement guidance is in place.

6.4.2. Budget Managers are responsible for:

6.4.2.1. Ensuring that all purchase orders are raised using the Council's financial system, for all works, goods and services other than: a) purchases appropriately made through petty cash, procurement card or credit card; b) continuous charges for utilities supplies, or periodic payments such as rents or rates and treasury management payments; c) expenditure incurred on exceptions agreed with the Director of Finance.

6.4.2.2. Ensuring that no purchase orders are placed without the proper approvals and financial authorities set out in the Schedule of Financial Authority to Officers, Contract Standing Orders and issued procurement guidance.

6.4.2.3. Receipting all works, goods and services on the financial system.

6.4.2.4. Where still relevant, ensuring the proper completion and authorisation of payment certification vouchers, including confirming that the invoice has not previously been paid.

6.4.2.5. Ensuring that payments are made only where works, goods and services have been received to the correct price, quantity and quality standards.

6.4.2.6. Complying with the requirements of the Council's procurement guidance.

6.4.2.7. Ensuring that all procurement cards are appropriately controlled and that all expenses and other transactions are reviewed and authorised by the relevant line manager, are for proper business purposes, are supported by VAT receipts and are compliant with any other restrictions in force.

6.4.2.8. Complying with approval limits set out in the Schedule of Financial Authority to Officers and Contract standing Orders and any further limitations set out within the procurement guidance.

6.4.3. Other responsibilities:

6.4.3.1. Senior Management Team (SMT) Officers are empowered to expend from within their allocated service budget expenditure up to the amount set out in the Schedule of Financial Authority to Officers in any single case where the SMT Officer is of the view

that a finding of maladministration with injustice is likely to be found by the Local Government Ombudsman.

6.4.3.2. In circumstances where compensation above the amount set out in the Schedule of Financial Authority to Officers the authority of Cabinet is required.

6.5. Expenditure – Payroll

6.5.1. The Director of Finance is responsible for making emergency payments to staff in extremis and where practicable, such as in the case of payroll failure.

6.5.2. The Director of Finance is responsible for:

6.5.2.1. Operating sound arrangements for the payment of salaries and expenses to officers and members in accordance with the Members Allowances Scheme administered by Director of Governance and Licensing.

6.5.2.2. Providing a corporate payroll system for recording all payroll data and generating payments to employees and members, including payment of expenses.

6.5.2.3. The proper calculation of all pay and allowances, National Insurance and pension contributions, income tax and other deductions.

6.5.2.4. Completing all HMRC returns regarding PAYE and providing advice and guidance on employment related taxation.

6.5.2.5. Maintaining an accurate and up to date record of the Council's establishment.

6.5.3. Budget Managers are responsible for:

6.5.3.1. Controlling resources and containing staff numbers within approved establishment and budget levels.

6.5.3.2. Ensuring that all employee appointments, including temporary staff, are made in compliance with the Council's policies and procedures.

6.5.3.3. Ensuring that the Organisational Development Team are notified promptly of starters and leavers, and all information relating to employees' pay and expenses.

6.5.3.4. Ensuring that all payments made to employees are properly authorised in compliance with the requirements set out by Organisation Development policies and procedures.

6.5.3.5. Ensuring that all expenses claims (electronic or manual) are reviewed and authorised by the relevant line manager prior to payment.

6.5.3.6. Ensuring that all persons employed by the Council are paid through the Council's payroll, other than where the Head of Paid Service has agreed that the individual is bona fide self-employed or employed by a recognised agency.

6.6. Expenditure – Banking

6.6.1. The Director of Finance is responsible for:

6.6.1.1. Managing and operating all the Council's bank accounts and ensuring that all payment methods, whether physical (e.g. cheques) or electronic have the appropriate authorisations, approvals and signatures.

6.6.1.2. Ensuring that adequate controls are in place for the control of payment methods (including cheques) covering access, ordering, custody, preparation, signing and despatch as appropriate.

- 6.6.1.3. Ensuring regular reconciliations are carried out between all bank accounts and the financial records of the Council
- 6.6.1.4. Approving the operation of any local cash or bank imprest accounts.
- 6.6.2. Budget Managers are responsible for:
 - 6.6.2.1. Ensuring that no bank accounts are opened in the name of the Council other than with the express written authority of the Director of Finance.
 - 6.6.2.2. Reporting to the Director of Finance on the nature and state of any bank accounts for which they are responsible.
 - 6.6.2.3. The proper administration of any local cash or bank imprest accounts including record keeping, document retention, paying in income, reconciliation and control of cheques including ordering, custody, preparation, signing and despatch.

6.7. Treasury Management

- 6.7.1. The Director of Finance is responsible for:
 - 6.7.1.1. Preparing and presenting an annual Treasury Management Strategy to Cabinet prior to submission to the Council for approval.
 - 6.7.1.2. Implementing, reviewing and reporting on the progress and performance of the strategy and recommending any changes.
 - 6.7.1.3. Preparing and maintaining a Treasury Management Policy statement, stating the policies, objectives and approach to risk management of its treasury management activities.
 - 6.7.1.4. Preparing and maintaining suitable Treasury Management Practices (TMPs), setting out the manner in which the organisation will seek to achieve those policies and objectives and prescribing how it will manage and control those activities. The content of the policy statement and TMPs will follow the recommendations contained in the CIPFA Treasury Management in the Public Services Code of Practice (the Code), amended where necessary to reflect the particular circumstances of this organisation. Such amendments will not result in the organisation materially deviating from the Code's key principles.
 - 6.7.1.5. Ensuring that the organisation (i.e. Full Council) receives reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close, in the form prescribed in its TMPs.
 - 6.7.1.6. Effecting all investments and arranging borrowings within the limits imposed by the Council and reporting on the funding methods used.
 - 6.7.1.7. Approving the use of any finance leases.
 - 6.7.1.8. Ensuring that the use of any financial derivatives is intra vires and properly risk assessed and monitored.
 - 6.7.1.9. Ensuring compliance with all applicable laws, regulations and codes of practice relating to treasury management and capital finance.
 - 6.7.1.10. Ensuring that cash flow forecasting and monitoring systems are in place.
- 6.7.2. Budget Managers are responsible for:

- 6.7.2.1. Assisting cash flow through timely billing of income due, due consideration of contracts payment terms and minimising advance payments wherever possible.
- 6.7.2.2. Supporting cash flow forecasting and notifying the treasury team in advance of any high value receipts or payments that may impact on investments and borrowings.
- 6.7.2.3. Ensuring that no finance leases or borrowings are entered into without the approval of the Director of Finance.

6.7.3. Other responsibilities:

- 6.7.3.1. This organisation delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to Cabinet, and for the execution and administration of treasury management decisions to the Director of Finance, who will act in accordance with the organisation's policy statement and TMPs and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.

6.8. Taxation

6.8.1. The Director of Finance is responsible for:

- 6.8.1.1. Ensuring that transactions comply with relevant statutory requirements and authorities.
- 6.8.1.2. Completing a monthly return of VAT inputs and outputs to HMRC, ensuring prompt recovery of sums due, and reconciliation of tax records to the main accounting system.
- 6.8.1.3. Making monthly Construction Industry Scheme returns to HMRC.
- 6.8.1.4. Managing the Council's partial exemption position.
- 6.8.1.5. Preparing and submitting Voluntary Disclosure Notices to HMRC and recovery of any revenues due.
- 6.8.1.6. Providing advice and guidance on taxation issues.

6.8.2. Budget Managers are responsible for:

- 6.8.2.1. Ensuring that the correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HMRC regulations.
- 6.8.2.2. Seeking advice on the potential tax implication of any new initiatives for the delivery of Council activity and services.
- 6.8.2.3. Ensuring that the taxation implications of proposed land and building acquisitions and sales are properly identified and considered at the planning stage.
- 6.8.2.4. Where construction and maintenance works are undertaken, ensuring that the contractor fulfils the necessary construction industry scheme deduction requirements.

6.9. Asset Management

6.9.1. The Director of Finance is responsible for:

- 6.9.1.1. Ensuring that asset registers are maintained in the appropriate format for accounting purposes for all fixed assets valued in excess of the limit set out in the Schedule of Financial Authority to Officers and that valuations are made in accordance with the local authority accounting code of practice.

- 6.9.1.2. Ensuring that all asset acquisitions and disposals are properly recorded and comply with the disposal policy and investment strategy.
- 6.9.1.3. Prescribing the records to be maintained for any stocks and stores and for inventories of moveable assets.
- 6.9.1.4. Approving the write off of deficiencies in any stocks, stores and inventory items subject to the limits set out in the Schedule of Financial Authority to Officers.
- 6.9.2. The Assistant Director Place, Assets & Commercialisation is responsible for:
 - 6.9.2.1. Maintaining up to date records of all land and buildings, including values, for inclusion in the corporate fixed asset register in the format prescribed by the Director of Finance.
 - 6.9.2.2. Arranging for the regular valuation of assets for accounting purposes to meet the requirements specified by the Director of Finance.
 - 6.9.2.3. Establishing an asset management plan that details short, medium and long term use of assets, and monitoring and reporting on performance.
 - 6.9.2.4. Arranging the disposal of surplus assets in compliance with the disposal policy and subject to the necessary approvals.
 - 6.9.2.5. The acquisition of land and buildings on behalf of the Council in accordance with the asset management plan, Capital Programme and Medium Term Financial Plan and subject to the necessary approvals.
 - 6.9.2.6. Notifying the Director of Finance of acquisitions and disposals so that the accounting records can be updated.
- 6.9.3. The Director of Housing, Health and Environment is responsible for:
 - 6.9.3.1. Maintaining up to date records of all HRA land and buildings, including values, for inclusion in the corporate fixed asset register in the format prescribed by the Director of Finance.
 - 6.9.3.2. Arranging for the regular valuation of assets for accounting purposes to meet the requirements specified by the Director of Finance.
 - 6.9.3.3. Establishing an HRA asset management plan that details short, medium and long term use of assets, and monitoring and reporting on performance.
 - 6.9.3.4. Arranging the disposal of HRA surplus assets in compliance with the disposal policy and subject to the necessary approvals.
 - 6.9.3.5. The acquisition of HRA land and buildings on behalf of the Council in accordance with the HRA Business Plan, Housing Company Development Plan, Capital Programme and Medium Term Financial Plan and subject to the necessary approvals.
 - 6.9.3.6. Notifying the Director of Finance of HRA and Housing Company acquisitions and disposals so that the accounting records can be updated.
- 6.9.4. Budget Managers are responsible for:
 - 6.9.4.1. Providing the Assistant Director Place, Assets & Commercialisation and Director of Housing and Environment with all relevant information and documentation for the purposes of maintaining an up to date and complete fixed asset register.
 - 6.9.4.2. Maintaining local inventories of moveable assets as directed by the Director of Finance.
 - 6.9.4.3. Ensuring that any stocks and stores are properly recorded and that unnecessarily high levels do not accumulate.

- 6.9.4.4. Ensuring that any cash holdings are kept to a minimum, within insurance limits and held securely.
- 6.9.4.5. Ensuring the proper security and safe custody of assets and reporting any assets that are lost, stolen or destroyed to the insurance team, facilities management and the Director of Finance as appropriate.
- 6.9.4.6. Complying with guidance issued by the Director of Finance on disposal of assets.
- 6.9.4.7. Seeking approval to write off deficiencies in any stocks, stores, or inventory items, subject to the limits set out in the Schedule of Financial Authority to Officers.
- 6.9.4.8. Ensuring that assets are used only in the course of the Council's business unless specific permission has been given otherwise.

6.10. Insurance

- 6.10.1. The Director of Finance is responsible for:
 - 6.10.1.1. Determining the nature and level of insurance cover to be effected.
 - 6.10.1.2. Effecting insurance cover and processing and settlement of all claims.
- 6.10.2. Budget Managers are responsible for:
 - 6.10.2.1. All new risks, properties or vehicles for which insurance is required.
 - 6.10.2.2. Alterations affecting insurance arrangements.
 - 6.10.2.3. Any loss, damage or claim.
- 6.11. Recharges**
- 6.11.1. The Director of Finance is responsible for:
 - 6.11.1.1. Maintaining an appropriate system of internal recharges which ensures that the full cost of each service is identified.
 - 6.11.1.2. Processing all charges and recharges on a regular and timely basis.
 - 6.11.1.3. Advising on the operation of internal trading accounts.
- 6.11.2. Budget Managers are responsible for:
 - 6.11.2.1. Agreeing the basis of internal charges/recharges in advance of the financial year as part of the budget setting process.
 - 6.11.2.2. Maintaining appropriate systems to calculate recharges or justify their apportionment.
 - 6.11.2.3. Providing data to enable recharges to be processed on a regular and timely basis and responding in the event of any disputed charges.
 - 6.11.2.4. Complying with guidance issued by the Director of Finance in relation to the operation of trading accounts.

7. External arrangements

7.1. Principles

- 7.1.1. All partnerships and joint working arrangements with outside bodies must be properly evaluated for risk before they are entered into and be supported by clear governance, accounting and audit arrangements. Cabinet approval is required in order to set-up a new entity, such as a joint venture.

7.1.2. External funding can prove an important source of income but funding conditions must be carefully examined before any agreement is entered into to ensure they are compatible with the aims and objectives of Council.

7.1.3. Legislation enables the Council to trade and provide services to third parties. All such work must be intra vires and the respective risks and financial benefits associated with such work must be properly considered and a business case approved before any trading activities take place.

7.2. Partnerships and Joint Working

7.2.1. The Director of Finance is responsible for advising on the financing, accounting and control of partnership arrangements including:

7.2.1.1. Financial viability in current and future years.

7.2.1.2. Risk appraisal and risk management arrangements.

7.2.1.3. Resourcing and taxation.

7.2.1.4. Audit, security and control requirements.

7.2.2. Budget Managers are responsible for:

7.2.2.1. Ensuring that any arrangements do not impact adversely upon Council services, that risk assessments have been carried, and that appropriate approvals have been obtained before entering into any agreements.

7.2.2.2. Ensuring that agreements and arrangements are properly documented.

7.2.2.3. Ensuring the Partnership register is up to date with partnerships entered into.

7.2.2.4. Providing appropriate information to the Director of Finance to enable relevant entries to be made in the Council's accounts.

7.2.2.5. Ensuring that appropriate mechanisms are in place to monitor and report on performance.

7.3. External Funding

7.3.1. The Director of Finance is responsible for:

7.3.1.1. Ensuring that any match funding requirements are considered prior to entering into any agreement, that future revenue budgets reflect these requirements and that any longer term sustainability costs have been properly assessed.

7.3.1.2. Ensuring that all external funding is received and properly recorded in the Council's accounts and in the name of the Council.

7.3.1.3. Ensuring that all audit requirements are met.

7.3.2. Budget Managers are responsible for:

7.3.2.1. The sustainability of funding is assessed for risk, any agreements entered into are consistent with and support the Council's service priorities and necessary approvals have been obtained.

7.3.2.2. All claims for funds are made by the due date.

7.3.2.3. Work is progressed in accordance with the project plan and all expenditure is properly incurred and recorded.

7.3.2.4. Ensure Finance is notified of all External Funding arrangements.

8. Appendix 1 – Schedule of Financial Authority to Officers

- 8.1.** The Scheme of Delegated Authority to Officers sets out the powers and duties delegated to members of the Senior Management Team (SMT). SMT members may appoint appropriate “authorised officers” to act on their behalf.
- 8.2.** This Schedule sets out the approved financial limits within which SMT members and authorised officers, may conduct the Council’s business. Changes to the limits/values contained within this Schedule may only be made with the recommendation of the Director of Finance and approved by Council.
- 8.3.** For those items marked the relevant SMT member has discretion to appoint appropriate authorised officers to act on his/her behalf. In all cases the member remains accountable for the effective operation of the financial authorities and must:
- 8.3.1. Maintain a written record of authorised officers.
- 8.3.2. Ensure that an appropriate segregation of duties is in operation, e.g. between ordering and paying for goods, between claiming and approving expenses.
- 8.3.3. Ensure compliance with the financial limits in this Schedule and any additional financial restrictions and limitations imposed by Contract standing Orders and issued Procurement Guidance and HR policies.

REF	Description	Limit/Value	Approver
Virements			
	Individual Revenue & Capital Virements:		
	Re-allocation of approved budgets; system errors, technical corrections, coding changes within overall spending limits	Unlimited	Director of Finance
	Virement with budget and policy change	Up to £50k	SMT member with agreement of Director of Finance
		£50k to £100k	Relevant Portfolio Holder in consultation with Finance Portfolio Holder

REF	Description	Limit/Value	Approver
Income			
	Individual Sundry Debtor write offs	Up to £10k	SMT member or Assistant Director
		£10k to £50k	SMT member or Assistant Director with agreement of Director of Finance
		Over £50k	Director of Finance in consultation with Portfolio Holder Finance
	Individual Council Tax, NNDR, housing benefits overpayments and housing rent arrears write offs	Up to £10k (Service may have delegated authorities within these limits)	SMT member or Assistant Director
		10k to £50k	SMT member with agreement of Director of Finance
		Over £50k	Director of Finance in consultation with Portfolio Holder Finance
	Irrecoverable Debts – defined and evidenced of bankruptcy, liquidation, company insolvent, Court remittance, time bar etc.	Unlimited	SMT member or Assistant Director
	Fees and Charges – Existing Policy	Increase/Decrease	SMT member or Assistant Director in consultation with Director of Finance in relation to budget implications
	Fees and Charges – New Policy/New Charges	New Charge	Cabinet & Council
Expenditure			
	Where budget approval is in place	As defined by Contract Standing Orders	As defined by Contract Standing Orders
	Unforeseeable emergencies expenditure with no budget	As defined by Scheme of Officer Delegation in the Constitution	As defined by Scheme of Officer Delegation in the Constitution
Treasury Management			
	Expenditure relating to treasury management and investments	As defined in Treasury Management Strategy	As defined in Treasury Management Strategy

REF	Description	Limit/Value	Approver
Asset Management			
	Writing off deficiencies in stocks, stores and inventories	Up to £50K	SMT member or Assistant Director
		£10k to £50k	SMT member with agreement of Director of Finance
		Above £50k	Director of Finance in consultation with Portfolio Holder Finance
	Disposal of freehold and leasehold land and property. Purchase, surrender, renewal, variation and re-gearing of property leases	As defined by Scheme of Officer Delegation in the Constitution	As defined by Scheme of Officer Delegation in the Constitution
	Value for including items in fixed assets register	£20k and over	
Insurance			
	Agreeing settlement of insurance claims	Up to £30k	SMT member or Assistant Director
		Over £30k	SMT member or Assistant Director in consultation with Director of Finance or Director of Governance and Licensing

4.7 Contract standing orders

1. A brief guide to Contract Standing Orders

- 1.1. These Contract Standing Orders, or Rules, are intended to promote good procurement practice, public accountability, commercial enterprise and deter corruption. Following the Rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.
- 1.2. They are issued in accordance with section 135 of the 1972 Local Government Act; s123 of the Local Government Act 1972; the Public Procurement Regulations 2015 and in the case of commercial enterprise the Localism Act 2011.
- 1.3. Officers responsible for purchasing or disposal must comply with these procedures. These procedures lay down **minimum requirements** for the purchase and disposal of goods and services.
- 1.4. Officers must;
 - Follow these Rules whenever they purchase goods, services, or building works.
 - Take Legal, Financial and professional advice from the respective departments.
 - Declare any personal financial interest in a contract.
 - Be minded that Bribery has a very wide interpretation and is a criminal offence.
 - Conduct a Most Economic Advantageous Tender (“MEAT”) review and appraise the purchasing/disposal need in accordance with the legislative provisions and obtain Value for Money for the public finance.
 - Consider whether there is an existing corporate contract or framework agreement that would satisfy MEAT requirements which you can make use of, before undergoing a competitive process.
 - Identify a contract manager with responsibility for ensuring the contract delivers as intended.
 - Ensure there is authority to enter into a contract and ensure you complete a written contract or Council order before supply or works begin.
 - Keep records of dealings with suppliers.
 - Assess and monitor each contract after completion to understand how well it met the purchasing need and quality of delivery requirements, including Value for Money
- 1.5. Failure to comply with these Contract Standing Orders may lead to disciplinary action.
- 1.6. The Section 151 Officer may propose amendments from time to time to these Contract Standing Orders after consultation with Legal Services. Proposed amendments will then be submitted to the Audit and Governance Committee, with a recommendation from that Committee to Council for approval, if appropriate.

1.7. Contract Standing Orders should be read in full, however to aid quick reference key aspects have been drawn out by way of summary below.

1.8. **Summary of Requirements for the Competitive Process and Contract Completion**

Where the Total Value for a contract is within the values in the first column below, the competition and awarding requirements are then as specified. The Cabinet has the power to authorise exemptions from the requirement to seek quotations or invite tenders for specific projects where they are below Public Procurement Threshold. All ICT system developments and purchases of computer equipment or software must be approved and purchased through Strata Services Solutions Ltd.

Total Value (excluding VAT)	Competition Requirements (see Rule 4.1.1)	Short listing (see Rule 4.1.1)	Method of completion (see Rule 5.1.2)	Completion Authorised by (see Rule 5.1.2)
Up to £5,000	Quotation to be obtained in writing from a minimum of one supplier	Authorised Officer		Authorised Officer / Budget Manager
£5001 - £50,000	Quotations to be obtained in writing from a minimum of three suppliers 1 who have responded to a written tender specification by a defined deadline. Quotations to be formally evaluated. Electronic procurement portal to be used for all quotations above £10,000.	Authorised Officer and Budget Manager	Electronic order or by signature	Budget Manager
£50,001 - £100,000			Electronic order, by signature or under seal (as advised by Legal Services)	
£100,001 – Public Procurement Threshold	Formal tenders to be obtained from a minimum of four suppliers, ¹ who have responded to a written tender specification by a defined deadline. Tenders to be formally evaluated. Electronic procurement portal to be used for all tendering at this level	Budget Manager and Director / Assistant Director in consultation with Procurement Support	By signature or under seal (as advised by Legal Services)	Budget Manager (in consultation with Director / Assistant Director)
Above Public Procurement Threshold	The Public Procurement (EU) tender procedures to be used, electronic portal to be used for all Public Procurement (EU) tendering.	Budget Manager in consultation with Procurement Support and Legal Services	Legal Services to advise on form of contract and whether by signature or under seal	Director / Assistant Director

Total Value (excluding VAT)	Competition Requirements (see Rule 4.1.1)	Short listing (see Rule 4.1.1)	Method of completion (see Rule 5.1.2)	Completion Authorised by (see Rule 5.1.2)
Use of collaborative contracting arrangements ²	Purchases using such arrangements are deemed to comply with these Standing Orders ³	Budget Manager / Director / Assistant Director in consultation with Procurement Support and Legal Services	Legal Services to advise on form of contract and whether by signature or under seal	Director / Assistant Director

¹ Officers to use reasonable endeavours to ensure minimum responses achieved

² e.g. Crown Commercial Services, Devon and Cornwall Procurement Partnership

³ Officers must ensure any arrangements to be used for purchases above Public Procurement threshold, have been properly established and follow the Public Contract Regulations 2015.

2. Scope of Contract Standing Orders

2.1. Basic principles

2.1.1. All purchasing procedures must:

2.1.1.1. Look to find the Most Economic Advantageous Tender for public money spent in order to achieve Value for Money;

2.1.1.2. Be consistent with the highest standards of integrity of Members and Officers, having regard to the Council's Anti Fraud, Theft and Corruption Policy, the Anti Bribery Policy, and the Office of Fair Trading guidance on Anti-Competitive Behaviour;

2.1.1.3. Ensure Open, Transparent and Fair procedures are followed in allocating public contracts;

2.1.1.4. Comply with all legal and financial requirements;

2.1.1.5. Ensure that only commercial considerations influence any contracting decision in matters pursuant to the Localism Act 2011;

2.1.1.6. Support and comply with the Council's Plan, Priorities, and Policies.

2.2. Responsibilities

2.2.1. Officers

2.2.1.1. Officers responsible for purchasing or disposal must comply with these Contract Standing Orders, Financial Regulations, the Employee Code of Conduct and with all UK legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

2.2.1.2. Officers must:

- Have regard to the Council's purchasing and contract guidance – details held on the intranet (Procurement pages);
- Ensure that the appropriate approved budgetary provision is in place;
- Ensure appropriate authority is in place prior to purchase being completed;

- Check whether a suitable corporate contract exists before seeking to let another contract; where a suitable corporate contract exists, this must be used unless there is an auditable reason not to – discuss with Procurement Support if unclear;
- Keep the records required by Rule 3.3;
- Take all necessary procurement, legal, financial and other professional advice as appropriate.

2.2.1.3. When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) Regulations 2006 are considered and obtain advice from HR and Legal Services before proceeding with inviting tenders or quotations.

2.2.2. **Members**

2.2.2.1. Members considering purchasing or disposal must comply with these Contract Standing Orders, Financial Regulations, the Member Code of Conduct and with all legal binding requirements. Members must promote and maintain high standards of conduct as a representative of the local constituency.

2.2.2.2. Members must;

- pursue to the best of their ability the seven Nolan principles of; Selflessness, Integrity, Objectivity, Accountability, openness, honesty and leadership.
- Register their pecuniary interests and disclose the same when appropriate.
- disclose any personal interests when appropriate.
- act in accordance with the Members Code of Conduct.

2.2.2.3. If it comes to the knowledge of an elected Member or an employee of the authority that a contract in which he or she has a pecuniary interest (whether directly or indirectly) has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer.

2.3. **Exemptions from seeking quotations or tenders**

2.3.1. The Council and its Cabinet have the power to authorise exemptions from the requirement to seek quotations or invite tenders for specific projects if the Public Procurement Threshold has not been reached.

2.3.2. Where an exemption is necessary because of an unforeseeable emergency or appropriate business reasons (e.g. Life or Death, Increased Costs/Loss of Income, Limited Markets or Reputation) the procuring Officer, with the approval of their Assistant Director or Director, the S151 officer and the Director of Governance and Licensing, may jointly approve the exemption and record as such on the Contract Standing Orders Exemption Form. Where the Contract sum is £20,001 or above then the use of the exemption must be reported by the Officer, to the next meeting of the Cabinet for them to note their support for the action taken.

NOTE: If prior approval is being sought from Cabinet then a Contract Exemption Form is not required.

Terms are defined as:

Life or Death – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?

Increased Costs/Loss of Income – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?

Limited Markets – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses (or an approved list if it is recommended by Central Government which evidences that the market has been tested)?

Reputation – Would the Council be criticised for failing to act promptly or for acting in a certain way?

2.3.3. **No exemption can be used if the Public Procurement Threshold is exceeded.**

2.3.4. No exemption is necessary for any purchase below the Public Procurement Threshold where;

- a local authority purchasing consortium is used e.g. Devon Procurement Services or Eastern Shires Purchasing Organisation (ESPO), or
- any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Standing Orders of the leading organisation.

2.3.5. The Contract Standing Orders Exemption form is available on the Council's intranet. All exemptions, and the reasons for them, must be recorded. Exemptions shall be completed as above and a register maintained by S151 Officer.

2.4. **Relevant contracts**

2.4.1. These Contract Standing Orders apply to any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services (a 'Relevant Contract'). These include arrangements for:

- The supply or disposal of goods (see also Financial Regulations);
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to: the recruitment of staff; financial and consultancy services.

2.4.2. Relevant Contracts do not include:

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations and other legal duties shall apply); or
- Section 151 Officer dealing in the money market or obtaining finance for the Council.
- Urgent legal advice or support.

3. Requirements for all contracts

3.1. Steps prior to purchase

3.1.1. Prior to expenditure the Officer must confirm that there is an approved budget and authority for the purchase.

3.1.2. The Officer must appraise the purchase, or seek suitable advice in a manner commensurate with its complexity, value and associated risk profile, taking into account any purchasing guidance, by:

- Appraising the need for the expenditure and its priority.
- Defining the objectives of the purchase, and the required product specification.
- Assessing and documenting the risks associated with the purchase and how to manage them, including use of a procurement risk register for all contracts over £100,000.
- A business case must be prepared for all procurements with a potential value over the Public Procurement Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring.
- Consider (and where appropriate draft) the terms and conditions that are to apply to the proposed contract.
- For Service contracts above the Public Procurement Threshold, the Officer must consider the requirements of the Social Value Act 2012. Here, the Officer must consider:
 - a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - b) how, in conducting the process of procurement, the Officer may act with a view to securing that improvement. (www.legislation.gov.uk/ukpga/2012/3/enacted).

3.2. Advertising and framework agreements

3.2.1. Identifying and Assessing Potential Suppliers:

3.2.1.1. For all contracts above the Public Procurement Threshold, a Find a Tender Service advertisement must be published via the electronic procurement portal and the Public Procurement Procedure followed.

3.2.1.2. For contracts below the Public Procurement Threshold, Officers shall consider the most appropriate advertising strategy. Officers should consider whether proposed contracts might be of interest to potential suppliers located in other GPA member states, and take this into account in the advertising strategy for the contract. Examples of where advertisements for procurements may be placed include:

- The Council's e-tendering website: 'Supplying the South West Procurement Portal'
- Domestic websites, newspapers or journals
- Government Contracts Finder (automatically populated via the SW Procurement Portal for contracts above £100,000)
- Find a Tender Service

3.2.1.3. Officers are responsible for ensuring that all suppliers for a relevant contract are suitably assessed. The assessment process shall establish that the potential suppliers have the requisite:

- Technical ability to deliver the contract
- Capacity to deliver the contract
- Economic and financial standing
- And meet all relevant qualifying criteria

in order to fulfil the requirements of the authority.

3.2.1.4. It is acceptable to use purchasing consortiums / collaborative arrangements or a Framework Agreement in lieu of conducting an above the public procurement threshold exercise where the Authority has been named and the Public Contracts Regulations 2015 were followed in establishing the consortium or framework. Similarly such arrangements can be used in lieu of the requirements of these Rules for below public procurement threshold contracts provided competitive arrangements were used in establishing them. It is the Officers responsibility to check whether this requirement is satisfied.

3.2.2. **Approved Lists**

3.2.2.1. Approved Lists will not be maintained by EDDC due to the administration involved and the need to ensure that competition is maximised.

3.2.2.2. Suppliers interested in doing business with the Council must register online as a prospective EDDC supplier via the Supplying the South West Procurement Portal.

3.2.2.3. A register of pre-qualified contractors and consultants maintained by or on behalf of central government or other parties (e.g. Constructionline, Exor, Quidos, Achilles) will not normally be deemed to be an Approved List for the purpose of these Contract Standing Orders.

3.2.3. **Framework Agreements**

3.2.3.1. The duration of a Framework Agreement must not exceed four years, as per the Public Contracts Regulations 2015.

3.2.3.2. Contracts may be awarded under Framework Agreements by either:

(i) Applying the terms laid down in the Framework Agreement without reopening competition (where such terms are sufficiently precise to cover the particular call-off),
or:

(ii) where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition in accordance with the following procedure:

- Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders (via mini competition)
- Fixing a time limit of a sufficient period to enable Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject matter of the contract.
- Awarding each contract to the tenderer which has submitted the best Tender on the basis of the award criteria set out in the specifications of the underlying Framework Agreement.

3.3. Record keeping

3.3.1. Where the Total Value is less than £100,000 the following records must be kept:

- Invitations to quote and quotations received (where e-tendering is used, the Archive record of the e-tendering system will suffice).
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would not normally be produced.
- Any exemption obtained under Rule 2.3 and the reasons for it.
- If the lowest price is not accepted, the reasons why
- The contract documentation.

3.3.2. Where the Total Value exceeds £100,000 the following records must be kept:

- The method for obtaining bids (see Rule 4.1.1).
- Any exemption obtained under Rule 2.3 together with the reasons for it.
- The award criteria in descending order of importance.
- Tender documents sent to and received from suppliers.
- Pre-tender market research.
- Clarification and post-tender negotiation (to include minutes of meetings).
- Legal advice.
- Any Contracting Decision and the reasons for it.
- The contract documentation
- Post-contract evaluation and monitoring.
- Communications with suppliers and with the successful contractor throughout the period of the contract.
- Where relevant, all documentation relating to above public procurement threshold not covered above (e.g. the FTS notice)

3.3.3. Records must be kept for six years (12 years if completed under Seal) after the end of the contract. However, written documents which relate to unsuccessful suppliers may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

3.3.4. Legal Services must be provided with the original of all contracts completed by signature or under seal for secure storage if they do not already hold them.

4. Conducting purchase and disposal

4.1. Competition requirements for purchase, disposal, partnership arrangements

The Officer must calculate the Total Value (excluding VAT) for the period of the contract. This should include the total lifetime value where possible.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with Government. If in doubt, Officers must seek the advice of Procurement Support or Legal Services.

4.1.1. Requirements for the Competitive Process

4.1.1.1. Where the Total Value for a contract is within the values in the first column below, the competition requirements in the second column must be followed. Short listing shall be done as per the roles specified in the third column.

Total Value (excluding VAT)	Competition Requirements	Short listing
Up to £5,000	Quotation to be obtained in writing from a minimum of one supplier	Authorised Officer
£5,001 - £100,000	Quotations to be obtained in writing from a minimum of three suppliers ⁴ who have responded to a written tender specification by a defined deadline. Quotations to be formally evaluated. Electronic procurement portal to be used for all contracts above £10,000.	Authorised Officer and Budget Manager
£100,001 – Public Procurement Threshold	Formal tenders to be obtained from a minimum of four suppliers ⁴ , who have responded to a written tender specification by a defined deadline. Tenders to be formally evaluated. Electronic procurement portal to be used for all tendering at this level.	Budget Manager and Director / Assistant Director in consultation with Procurement Support
Above Public Procurement Threshold	Public Procurement (EU) Procedures to be used, electronic portal to be used for all tendering.	Director / Assistant Director in consultation with Procurement Support and Legal Services

Total Value (excluding VAT)	Competition Requirements	Short listing
Use of collaborative contracting arrangements See Rule 3.2.1.4	Purchases made via collaborative contracting arrangements (e.g. Crown Commercial Services, Devon and Cornwall Procurement Partnership) are deemed to comply with these Standing Orders. Officers must ensure any arrangements to be used for purchases above Public Procurement (EU) threshold, have been properly established. Procurement Support <i>should be consulted prior to commencing any procurement process using collaborative contracts</i> . The terms and conditions of contract applicable to any collaborative contract, including the requirement to undertake competition between providers, must be fully complied with.	Director / Assistant Director in consultation with Procurement Support and Legal Services

⁴ Officers to use reasonable endeavours to ensure minimum responses achieved

All ICT system developments and purchases of computer equipment or software must be approved and purchased through Strata Services Solutions Ltd for legislation pertinent to contracts see link to Public Contract Regulations 2015:

http://www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf

- 4.1.1.2. Where it can be demonstrated that there are insufficient suitably qualified suppliers to meet the competition requirement, all suitably qualified suppliers must be invited.
- 4.1.1.3. There must be no attempt to artificially disaggregate any contract requirement to avoid the EU requirements or these Contract Standing Orders. However within the procurement process, officers should consider assigning the component parts of a properly advertised contract into smaller Lots, to support accessibility for SME's.
- 4.1.1.4. Where an above Public Procurement Threshold procedure is required, the Officer shall also consult Procurement Support as appropriate, to agree the method of conducting the purchase.
- 4.1.2. **Assets for Disposal**
- 4.1.2.1. Assets for disposal must be sent to public auction except where better overall Value for Money (including staff administrative costs) is likely to be obtained by inviting quotations and tenders. (These may be invited by advertising on the Council's internet site). In the latter event, the method of disposal of surplus or obsolete stocks / stores or assets (other than land) must be formally agreed as required by Financial Regulations and the Scheme of Delegation.

4.1.3. Contracts to Provide Services to External Purchasers

4.1.3.1. Legal Services must be consulted where contracts to work for organisations other than the authority are contemplated.

4.1.4. Collaborative and Partnership Arrangements

4.1.4.1. Collaborative and partnership arrangements are subject to UK procurement legislation and must follow these Contract Standing Orders (although see Rule 3.2.1.4). If in doubt, officers must seek the advice of Legal Services and / or Procurement Support. However, arrangements to share staff with other public bodies may not require a formal procurement process and Legal Services should be consulted.

4.1.5. The Appointment of Consultants to Provide Services

- 4.1.5.1. The appointment of Consultants (such as architects, engineers, surveyors and other professionals) who are directly providing services to East Devon District Council as the client shall be selected and commissions awarded in accordance with the procedures detailed within these contract standing orders and as outlined at Rule 4.1.1.1 and 5.1.
- 4.1.5.2. The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment to be in a form agreed by Legal Services.
- 4.1.5.3. Records of Consultants appointments shall be maintained in accordance with Rule 3.3, and be readily accessible by Procurement and Audit.
- 4.1.5.4. Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policy for the duration of the respective agreement unless the Director of Finance is prepared to accept the uninsured risk as being “Low” but in any event indemnity must be held for the duration of the respective agreement and for a minimum term of 3 years thereafter where the Councils Legal Services team deem the risk to be “Medium” or higher.

4.2. Pre-tender market research and consultation

4.2.1. The Officer responsible for the purchase may, prior to the issue of the Invitation to Tender or Quote, consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential Supplier. The Officer must not seek or accept technical advice on the preparation of an Invitation to Tender or Quote from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Suppliers or distort competition. If in any doubt, the Officer should seek advice from Legal Services.

4.3. Standards and award criteria

4.3.1. The Officer must ascertain what are the relevant European, British or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary to properly describe the required quality, and invite open to equal or equivalents. This includes sustainability standards. Legal Services and Procurement Support must be consulted if it is proposed to use standards other than European standards.

4.3.2. The Officer must define and document award criteria that are appropriate for the purchase and relevant to the matter at hand. Award criteria should be designed to secure an outcome giving 'Value for Money' for the authority, before quotations and tenders are sought. The basic criteria shall be:

- 'Most economically advantageous', where considerations of overall value apply, or :
- 'Lowest price to specification' where payment is to be made by the authority when the award criteria is price alone and the specifications are clear, or:
- 'Highest price' if payment is to be received

If the first criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service quality, product quality, running costs, technical merit, delivery, cost effectiveness, relevant environmental considerations, implementation planning, decommissioning considerations, aesthetic and functional characteristics (including security and control features), safety (which is likely to be a pass / fail criteria), after-sales services, technical assistance and any other relevant project specific considerations.

4.3.3. Award criteria must not include:

- Non-commercial considerations
- Matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement

4.4. Invitations to Tender/quotations

4.4.1. All Invitations to Tender or Quote must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (Rule 5.1).

4.4.2. The Invitation to Tender or Quote must state;

4.4.2.1. that the Council is not bound to accept any Quotation or Tender, either as a whole or in part,

4.4.2.2. that Tenders / Quotes are submitted to the Council on the basis that they are compiled at the tenderer or quoter's expense.

4.4.2.3. that no Tender or Quote will be considered unless it is received by the date, time and manner stipulated in the Invitation to Tender or Quote. No Tender or Quote delivered in contravention of this clause shall be considered.

- 4.4.3. In addition all Invitations to Tender shall include the following:
- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive and comparable offers.
 - (b) A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - (c) A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and noncollusion.
 - (d) A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and ideally in descending order of importance.
 - (e) All contracts above £10,000 must be undertaken using the Council's e-tendering system. If by exception, hard copy Tenders are used, there must be notification that no Tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates.
 - (f) The method by which any arithmetical errors discovered in the submitted Tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

- 4.4.4. All Suppliers invited to Tender or Quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis, and any pre-tender questions and answers must be shared (anonymously) with all tenderers.

4.5. Shortlisting

- 4.5.1. Any Shortlisting must be in line with the financial and technical standards relevant to the contract and the shortlisting criteria. Special rules apply in respect of the above public procurement threshold procedure Legal / or Procurement Services should be consulted.
- 4.5.2. Evaluation criteria (which may include a scoring system for larger value or complex tenders) must be transparent and any sub-criteria specified. Shortlisting records must be kept and held for the period specified in the Council's Document Retention Policy.
- 4.5.3. The officers responsible for shortlisting are specified in Rule 4.1.1.1.

4.6. Submission, receipt and opening of tenders/quotations

- 4.6.1. Suppliers must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The Public Contracts Regulations lays down specific time periods, please consult Procurement Support.

- 4.6.2. All Tenders and Quotations above £10,000 must be submitted electronically, through the Council's approved and secure electronic tendering system, with controlled opening and independent registration. Staff will have the relevant training to use Procurement Portal.
- 4.6.3. Where Electronic Tenders are not used:
- 4.6.3.1. The Officer must not disclose the names of potential Suppliers to any staff involved in the receipt, custody or opening of Tenders. Democratic Services shall be responsible for the safekeeping custody of Quotations / Tenders until the appointed time of opening. Each Tender must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received
 - Adequately protected immediately on receipt to guard against amendment of its contents
 - Recorded immediately on opening the Tender Register.
- 4.6.3.2. The Democratic Services team must ensure that all Tenders are opened at the same time when the period for their submission has ended. An Officer representing the Director or Assistant Director in question must be present.
- 4.6.3.3. Upon opening, a summary of the main terms of each Tender (i.e. significant issues that are unique to each Tender submission and were not stated in the Invitation to Tender documents such as tender sum) must be recorded in the Tender Register. The summary must be signed by all present.

4.7. Clarification Procedures

- 4.7.1. Clarification of an Invitation to Quote / Tender with potential or actual Suppliers or seeking clarification of a Tender should be in writing, email or if using the Supplying the South West Procurement Portal via the question function. In doing so, Officers must be mindful to maintain equal treatment of all tenderers in the clarification process. Discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post Tender negotiations) is not permitted.

4.8. Evaluation, award of contract, and debriefing of suppliers

- 4.8.1. Subject to the disclosures required under law, and apart from the debriefing required or permitted by these Contract Standing Orders, the confidentiality of Quotations, Tenders and the identity of Suppliers must be preserved at all times and information about one Supplier's response must not be given to another Supplier. Formal debriefing must be provided to the extent required in law, particularly in relation to contracts above the relevant public procurement threshold. A standstill procedure must be observed prior to award of contract as stated in the Public Contracts Regulations 2015, and is discretionary for below public procurement threshold contracts.

- 4.8.2. Contracts must be evaluated and awarded in accordance with the published award criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and satisfactorily resolved.
- 4.8.3. The arithmetic in compliant Tenders must be checked. If arithmetical errors are found those may need to be clarified and advice should be sought from Procurement Support in respect of how this should be done.
- 4.8.4. Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Standing Orders. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to Cabinet subject to consultation with Director of Finance.
- 4.8.5. Where the Total Value is over £100,000, the Officer must notify all Suppliers simultaneously and as soon as possible of the intention to award the contract to the successful Supplier and include the reasons why for unsuccessful bidders. The Officer must provide unsuccessful Suppliers with a period of at least ten days in which to review / or challenge the decision if they wish to before the Officer awards the contract. If the decision is challenged by an unsuccessful Supplier then the Officer shall not award the contract without first seeking the advice of Legal Services. The Officer shall debrief in writing all those Suppliers which submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of Legal Services:
- How the award criteria were applied.
 - The prices or range of prices submitted, in either case not correlated to suppliers' names.
 - The name of the successful tenderer(s)
 - The scores of the successful tenderer(s), and the reasons for those scores.
 - The scores of the unsuccessful tenderer being debriefed, and the reasons for those scores
 - The relative advantages of the successful Tender, above the unsuccessful tenderer being debriefed
- The debriefing process should only be carried out in writing.

5. Contract and other formalities

5.1. Contract Documents

5.1.1. Relevant Contracts

5.1.1.1. The formal advice of Legal Services must be sought for all Relevant Contracts where any of the following apply:

- Appointment of Consultants (see Rule 4.1.5); or
- Where the total contract value exceeds £50,000; or
- Those involving leasing arrangements; or
- Where it is proposed to use a supplier's own terms; or
- Contracts to carry out work for other organisations; or
- Those that are complex, High Profile or High Risk in any other way.

5.1.1.2. The Council's order form or standard terms and conditions must be used wherever possible. Notwithstanding, all Relevant Contracts above £50,000 shall be in writing in a form approved by Legal Services. If any doubt exists, refer to the advice of Legal Services.

5.1.1.3. All Relevant Contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done).
- The provisions for payment (i.e. the price to be paid and when).
- The time, or times, within which the contract is to be performed.
- The provisions for the Council to terminate the contract.
- Anti bribery / corruption clauses
- Data protection requirements (where relevant)

5.1.1.4. In addition, every Relevant Contract above £50,000 should consider inclusion of the following (as advised by Legal Services):

- That the contractor may not assign or sub-contract without prior written consent.
- Any insurance requirements.
- Health and safety requirements.
- Ombudsman requirements.
- That charter standards are to be met if relevant.
- The Council's requirements concerning Equality, detailed in EDDC's Equality Policy
- Freedom of Information Act requirements.
- Where agents are used to let contracts, the agents must comply with the Council's Contract Standing Orders.
- A right of access to relevant documentation and records of the contractor.
- The use of penalty clauses for non or unacceptable performance e.g. quality issues, late delivery. This will be aided by the inclusion of Key Performance Indicators within

the contract.

5.1.2. **Contract Formalities**

5.1.2.1. Agreements shall be completed as follows:

Contract Value	Method of Completion	Completion by
Up to £5,000	Electronic order or by signature	Authorised Officer / Budget Manager
Between £5,001 to £50,000	Electronic order or by signature	Budget Manager
Between £50,001 to £100,000	Electronic order, by signature or under seal (as advised by Legal Services)	Budget Manager
Above £100,001 or if any of para 5.1.1.1 applies	By signature or under seal (as advised by Legal Services)	Director / Assistant Director if by signature and by Authorised Signatory if under seal

5.1.2.2. The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

5.1.3. **Sealing**

5.1.3.1. Where appropriate, contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by an Authorised Signatory – Legal Services can advise on this process.

5.1.3.2. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's Constitution.

5.1.3.3. A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

5.1.4. **Records**

5.1.4.1. All contracts that are completed by way of signature, irrespective of the contract sum, the Officer responsible for securing a signature must provide Legal Services with the original copy for secure storage. An electronic copy must be held on file.

5.1.4.2. All contracts completed under seal must be kept by Legal Services for secure storage. An electronic copy must be held on file.

5.2. Bonds and Parent Company Guarantees

- 5.2.1. The Officer must consult the Director of Finance about whether a Parent Company Guarantee is necessary when a supplier is a subsidiary of a parent company and:
- The total value exceeds £100,000, or
 - Award is based on evaluation of the parent company, if there is some concern about the stability of the supplier.
- 5.2.2. The Officer must consult the Director of Finance whether a Bond is needed
- Where the total value exceeds £1,000,000, or
 - Where a Parent Company Guarantee is not available if there is no parent company
 - Where it is proposed to make stage or other payments in advance of receiving the whole of the contract and there is concern about the stability of the Supplier i.e. following a formal risk assessment

5.3. Prevention of Corruption and Anti-Competitive Behaviour

- 5.3.1. **Prevention of corruption**
- 5.3.1.1. The Officer needs to be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the new corporate offence of failing to prevent bribery. Officers should also be aware of the Council's Anti-Fraud, Theft and Corruption Policy and the Anti Bribery Policy.
- 5.3.1.2. The Officer must comply with these above requirements and the Employee Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the Bribery Act 2010.
- 5.3.1.3. Anti-Bribery Clauses must be written into every written Council contract except where doing so would conflict with the contract rules associated with a national or local framework.
- 5.3.2. **Anti-Competitive Behaviour**
- 5.3.2.1. In its guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, which should be followed where practical:
- (a) Use non-collusion clauses, certificates of independent bids and requests;
 - (b) Ensure sufficient credible bidders;
 - (c) Look for suspicious bidding patterns;
 - (d) Keep comprehensive notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns.
- 5.3.2.2. If there is any doubt concerning anti-competitive behaviour during a procurement exercise, or for further guidance, the Officer should contact Procurement Support or Legal Services.

6. Contract management

6.1. Managing contracts

- 6.1.1. Directors or Assistant Directors are to name contract managers ('the Contract Manager') for all new contracts and all contracts must have a named Council Contract Manager for the entirety of the contract.
- 6.1.2. Contract Managers must follow the procedures set out in the Council's Contract Standing Orders.
- 6.1.3. All variations to contracts are to be in writing in the form of an appropriately authorised variation order.
- 6.1.4. Payments to contractors will only be made on certification by the designated contract manager or nominated alternative officer(s), or, where engaged by the Council, the appropriate Consultant.
- 6.1.5. Liquidated and ascertained damages may need to be deducted for periods of delay in line with the terms of the contract. Any instance, where in the opinion of the Officer/Contract Manager, this does not apply, must be fully justified and authorised by the Council's Monitoring Officer and the Section 151 Officer.
- 6.1.6. The Officer/Contract Manager will consult with the Council's Monitoring Officer and the Section 151 Officer promptly on becoming aware of any significant dispute, claim for additional payment in connection with a contract.

6.2. Contingency Planning

- 6.2.1. In entering into contract agreements or reviewing existing contracts, Officers must consider risk implications and ensure that the Council's Risk Register is updated with any identified risks and that mitigating controls are recorded appropriately and complete a contract risk register for all contracts with a value over £100,000.

6.3. Contract Monitoring, Evaluation and Review

- 6.3.1. All contracts which have a value higher than the public procurement threshold limits, or **which are High Risk**, are to be subject to formal review(s) by the Contract Manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the contract.
- 6.3.2. A contract review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.

- 6.3.3. During the life of the contract, the Contract Manager must monitor and take any necessary corrective action in respect of:
- Performance
 - Compliance with specification and contract
 - Cost
 - Any Value for Money requirements
 - User satisfaction and risk management
 - Key performance indicators included within the contract.
- 6.3.4 Further support and advice on Contract Management including online training available can be found on the procurement page on the Council's intranet.

6.4. Definitions Appendix

Term	Definition
Authorised Officer	An officer with authority and responsibility for dealing with contracts within the course of their employment.
Authorised Signatory	An officer authorised by Rule 22 of Part 4 of the Constitution to attest the use of the Council's seal
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Budget Manager	An officer in charge of or responsibility for overseeing the budget relating to the contract. Finance will allocate a budget manager to all budget areas and these are approved by the Director or Assistant Director.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work (including architects, engineers, surveyors, lawyers and other professionals).
Contracting Decision	Any of the following decisions: withdrawal of Invitation to Tender; whom to invite to submit a Quotation or Tender; short listing; award of contract; any decision to terminate a contract.
Contract Manager	An officer with the responsibility of overseeing and monitoring delivery of a contract who may also be an Authorised Officer
European Economic Area	The members of the European Union, and Norway, Iceland and Liechtenstein.
Financial Regulations	The Financial Regulations outlining Officer responsibilities contained in the Constitution

Term	Definition
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
High Profile	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the EU Threshold values.
Invitation to Tender (ITT)	Invitation to tender documents in the form required by these contract standing orders
Invitation to Quote	Invitation to quote in the form required by these contract standing orders.
Non-commercial Considerations	(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters'). (b) Whether the terms on which contractor's contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only. (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy. (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes'). (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors. (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees. (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support. (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply

Term	Definition
Officer	The officer designated by the Service Manager to deal with the contract in question.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
Procurement support	Refers to the Council's arrangements for specialist procurement assistance
Public Contracts Regulations 2015 Procedure	The procedure required by the UK law where the Total Value exceeds the Public Procurement Threshold.
Public Procurement Threshold	The contract value at which the Public Contract Regulations and procurement directives apply for Goods, Services and Works. Available at UK Procurement Legislation.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Relevant Contract	Contracts to which these contract standing orders apply (see Rule 2.4).
Section 151 Officer	The Director for Financial Services or such other officer as may be designated Section 151 Officer by the Council, including the appointed Deputy S.151 Officer.
Shortlisting	The process of selecting suppliers who are to be invited to quote or bid or to proceed to final evaluation.
Supplier	Any person who asks or is invited to submit a Quotation or Tender.
Tender	A supplier's proposal submitted in response to an Invitation to Tender.
Tender Register	The log kept by Democratic Services to record details of Tenders (see Rule 4.6.3).
Total Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows: (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48 (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result (e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.
Value for Money	'Value for money' does not necessarily mean the lowest possible price. It combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, at an appropriate price, from an effective supplier.

4.8 Officer Employment Procedure Rules

1. Recruitment and Employment

1.1. Declarations

- 1.1.1. The Council will draw up a statement requiring any candidate for appointment as an employee to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or employee of the Council; or of the partner of such persons.
- 1.1.2. No candidate so related to a councillor or an employee will be appointed without the authority of the relevant Chief Officer or an officer nominated by him/her.

1.2. Seeking support for appointment

- 1.2.1. Any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council will be disqualified. The content of this paragraph will be included in any recruitment information.
- 1.2.2. Subject to paragraph 1.2.3, no Councillor will seek support for any person for any appointment with the Council.
- 1.2.3. Nothing in paragraphs 1.2.1 and 1.2.2 above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

2. Recruitment of Head of Paid Service and Chief Officers

- 2.1. Where the Council proposes to appoint the Head of Paid Service or a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- 2.1.1. draw up a statement specifying:
- 2.1.2. the duties of the officer concerned; and
- 2.1.3. any qualifications or qualities to be sought in the person to be appointed;
- 2.1.4. make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- 2.1.5. make arrangements for a copy of the statement mentioned in paragraph 8.2.1.1 to be sent to any person on request.

3. Appointment of Head of Paid Service and Chief Officers

- 3.1. The full Council will approve the appointment of the Head of Paid Service, or a Chief Officer following the recommendation of such an appointment by a committee or sub-committee of the Council. That committee or sub-committee must include at least one Member of the Cabinet.
- 3.2. The full Council may only make or approve the appointment of the Head of Paid Service, or a Chief Officer where no well-founded objection has been made by any Member of the Cabinet. Council shall have the final decision on whether or not an objection is well

founded.

4. Other appointments

- 4.1. The appointment of officers below Chief Officer is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

5. Disciplinary action

- 5.1. Disciplinary action against Chief Officers will be in accordance with the Council's Disciplinary Procedure for Statutory and Chief Officers, which reflect the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives and Chief Officers..
- 5.2. Councillors will not be involved in the disciplinary action against any officer other than a Chief Officer.

6. Dismissal

- 6.1. Other than as specified in the Scheme of Delegations to officers Councillors will not be involved in the dismissal of any officer other than a Chief Officer.

7. Redundancy of Chief Officers

- 7.1. In the event that the situation arises where any of the Chief Officers are recommended to be made redundant then only Full Council may approve the redundancy.

Part 5 Codes and Protocols

5.1 Members' Code of Conduct

1 Purpose of the Code of Conduct

- 1.1 The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, Council officers and the reputation of local government.
- 1.2 It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The Local Government Association encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.
- 1.3 This Code of Conduct is based on the Model Code of Conduct produced by Local Government Association. The Local Government Association has also produced guidance on their Model Code of Conduct and regard should be had to that advice when considering the obligations and expectations of this Code. The guidance can be found [here](#), although it should be noted that the Model Code of Conduct has not been adopted in its entirety and there is some local variation.

2. Definitions

- 2.1 For the purposes of this Code of Conduct;
- 2.2 a "**councillor**" means a member or co-opted member of East Devon District Council.
- 2.3 "Member" includes a co-opted Member.
- 2.4 a "**co-opted member**" means a person who is not a member of East Devon District Council but who;
- a) sits on any committee or sub-committee of the Council, or;
 - b) represents the Council on, any joint committee or joint sub-committee of the Council;
- whether or not they are entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.
- 2.5 a "**meeting**" means any meeting of:
- the Council;
 - the Cabinet of the Council;
 - any of the Council's or the Cabinet's, Committees, Sub-Committees, joint Committees, or Joint Sub-committees;

- one or more councillors, formal or informal and with or without officers, relating to the discharge of the Council’s functions where a formal record is made by a Council officer.

2.6 a **"partner"** means a spouse or civil partner, or a person with whom you are living as if you are a married couple, or a person with whom you are living as if you are civil partners.

2.7 a **"sensitive interest"** is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation

3. General Principles of councillor conduct

3.1 Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the **Seven Principles of Public Life**, also known as the Nolan Principles (See Appendix A). Building on these principles, the following general principles have been developed specifically for the role of councillor.

3.2 In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

3.3 In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my Council’s requirements and in the public interest.

4. Application of the Code of Conduct

4.1 This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor or co-opted member.

4.2 This code of conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor, or
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.

- 4.3 The Code applies to all forms of communication and interaction, including:
- at face-to-face meetings
 - at online or telephone meetings
 - in written communication
 - in verbal communication
 - in non-verbal communication
 - in electronic and social media communication, posts, statements and comments.
- 4.4 You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.
- 4.5 Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct.

5. Standards of councillor conduct - specific obligations

5.1 Courtesy and Respect - as a councillor:

5.1.1 I treat other councillors and members of the public with courtesy and respect.

5.1.2 I treat Council employees, employees and representatives of partner organisations and those volunteering for the Council with courtesy and respect and respect for the role they play.

5.1.2.1 Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

5.1.2.2 In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the Council, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and Council employees, where concerns should be raised in line with the Council's Member / Officer Protocol.

5.2 Bullying, harassment and discrimination - as a councillor:

5.2.1 I do not bully any person.

5.2.2 I do not harass any person.

5.2.3 I promote equalities and do not discriminate unlawfully against any person.

5.2.4 I do not do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 33 of the Equality Act 2010).

- 5.2.4.1 The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.
- 5.2.4.2 The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.
- 5.2.4.3 Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 5.2.4.4 The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the Council's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

5.3 **Impartiality of officers of the Council – as a councillor:**

5.3.1 **I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the Council.**

- 5.3.1.1 Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

5.4 **Confidentiality and access to information – as a councillor:**

5.4.1 **I do not disclose information:**

(a) given to me in confidence by anyone

(b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless

i. I have received the consent of a person authorised to give it;

ii. I am required by law to do so;

iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or

iv. the disclosure is:

1. reasonable and in the public interest; and

2. made in good faith and in compliance with the reasonable requirements of the Council; and

3. I have consulted the Monitoring Officer prior to its release.

5.4.2 **I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

5.4.3 **I do not prevent anyone from getting information that they are entitled to by law.**

5.4.3.1 Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the Council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5.5 **Disrepute – as a councillor:**

5.5.1 **I do not bring my role or Council into disrepute.**

5.5.1.1 As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Council and may lower the public's confidence in your or your Council's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Council into disrepute.

5.5.1.2 You are able to hold the Council and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the Council whilst continuing to adhere to other aspects of this Code of Conduct.

5.6 **Use of position – as a councillor:**

5.6.1 **I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

5.6.2 **I will not act as agent for people pursuing planning matters within the Council's administrative area.**

5.6.2.1 Your position as a member of the Council provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

5.7 **Use of the Council's resources and facilities – as a councillor:**

5.7.1 **I do not misuse Council resources.**

5.7.2 **I will have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or any similar Communications Protocol or Code produced by the Council;**

5.7.3 **I will, when using the resources of the Council or authorising their use by others:**

5.7.4 **act in accordance with the Council's requirements; and**

5.7.5 ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which I have been elected or appointed.

5.7.5.1 You may be provided with resources and facilities by the Council to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of Council buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the Council's own policies regarding their use.

5.8 Complying with the Code of Conduct and the Council's codes and protocols – as a councillor:

5.8.1 I undertake the mandatory training identified as part of the adopted Member Development Plan provided by my Council.

5.8.2 I cooperate with any Code of Conduct investigation and/or decision.

5.8.3 I do not intimidate or attempt to intimidate any person who is likely to be a complainant, a witness or involved with the administration of any investigation or proceedings that any councillor has failed to comply with the Council's Code of Conduct.

5.8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

5.8.5 I will comply with the Codes and Protocols forming part of the Council's Constitution.

5.8.5.1 It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the Council or its governance. If you do not understand or are concerned about the Council's processes in handling a complaint you should raise this with your Monitoring Officer.

5.8.5.2 The Council resolved at its 20th October 2021 meeting that the Council should pay for training imposed by way of sanction in relation to district councillors.

6. Protecting your reputation and the reputation of the Council

6.1 Interests – as a councillor:

6.1.1 I register and disclose my interests in accordance with Appendix B.

- 6.1.1.1 Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the Council.
- 6.1.1.2 You need to register your interests so that the public, Council employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.
- 6.1.1.3 You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.
- 6.1.1.4 **Appendix B** sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.
- 6.1.1.5 The Council has agreed that a co-opted member who has no voting rights is not expected to complete a register of interest.
- 6.2 **Gifts and hospitality – as a councillor:**
- 6.2.1 **I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the Council or from persons who may apply to the Council for any permission, licence or other significant advantage.**
- 6.2.2 **I register with the Monitoring Officer any individual gift or hospitality with an estimated value of at least £50 or number of gifts or hospitality from the same donor which individually are below the estimated value threshold but which cumulative result in an estimated value of at least £50 in any calendar year within 28 days of its receipt.**
- 6.2.3 **I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**
- 6.2.4 **I disclose the existence of any gift or hospitality where I am present at a meeting where the gift or hospitality received is relevant to the matter of business being discussed irrespective of whether it has been entered into the register in accordance with paragraph 6.2.2 above.**
- 6.2.4.1 In order to protect your position and the reputation of the Council, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but

must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendix A - The Seven Principles of Public Life ('the Nolan Principles')

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B - Registering and disclosing interests

General

1. Within 28 days of becoming a councillor or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**. A co-opted member who has no voting rights is not expected to complete a register of interest.
2. When completing the register of interests, councillors shall provide sufficient information to properly describe the land **and** also provide HMLR title numbers or field numbers to enable land to be identified.
3. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
4. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees you can withhold the interest from the public register.

Non participation in case of Disclosable Pecuniary Interest

5. Where a matter arises at a meeting which **directly relates** to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. A dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests 'directly relating' to financial interest or well-being

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in **Table 1**) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests ‘affecting’ financial interests or well-being

8. Where a matter arises at a meeting which *affects* –
- a) your own financial interest or well-being;
 - b) a financial interest or well-being of a relative or close associate; or
 - c) a financial interest or wellbeing of a body included under Other Registerable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied.

9. Where a matter (referred to in paragraph 8 above) affects the financial interest or well-being:
- a) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest.

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

Cabinet members

10. Where you have a Disclosable Pecuniary Interest (paragraph 5), Other Registerable Interest (paragraph 6) or any Non-Registerable Interest (paragraphs 7 - 9) on a matter to be considered or which is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain by the councillor or his / her partner .
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his / her partner (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of#) and the Council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the Council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her partner (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the Council; and (b) the tenant is a body that the councillor or his/her partner is a partner of or a director* of or has a beneficial interest in the securities# of.
Securities	Any beneficial interest in securities# of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the Council; and (b) either— (i) the total nominal value of the securities# exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor or his/her partner have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

* 'director' includes a member of the committee of management of an industrial and provident society.

'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

<p>You must register as an Other Registerable Interest:</p> <p>a) any unpaid directorships.</p> <p>b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by the Council.</p> <p>c) any body</p> <ul style="list-style-type: none"> (i) exercising functions of a public nature, (ii) directed to charitable purposes, or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) <p>of which you are a member or in a position of general control or management.</p> <p>d) membership of any body which, in your view, might create a conflict in carrying out your duties as a councillor (such as membership of the Freemasons or any similar body).</p>

THIS SECTION DOES NOT FORM PART OF THE CODE OF CONDUCT AND IS FOR GUIDANCE ONLY

LGA guidance on the Model Code of Conduct in relation to interests states:

‘Directly relates to’ means it must be directly about the interest rather than simply affecting it – e.g. discussing an application about a property in which there is a financial interest as opposed to a neighbouring property where there is no financial interest or considering an application for funding from an organisation of which you are a member as opposed to discussing an annual report from the organisation where no decision is required.

‘Affects’ means it is not directly about the interest but nevertheless the matter has clear implications for the interest – e.g. discussing a neighbour’s planning application – and which can be positive (gain) or negative (loss) in impact.

‘Well-being’ can be described as a condition of contentedness and happiness and isn’t just about finances but can include anything that could affect quality of life either positively or negatively whether temporarily or on a permanent basis.

‘Relative or close associate’ is likely to be someone who the councillor is in regular or irregular contact over a period of time who is more than an acquaintance – it may be a friend, a colleague, a business associate, someone known through general social contacts or someone who the councillor is known to show animosity to - and who a reasonable member of the public might think the councillor would be prepared to favour or disadvantage when discussing a matter affecting them.

Guidance on Bias and Predetermination and predisposition

Councillors are permitted to have a pre-disposition towards a particular outcome. This means councillors can hold and express a view or inclination towards a future decision but requires a councillor to be open to having their views changed when it comes to the final decision.

Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you may participate in a decision on the issue in your political role as a member*. However, you must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When making a decision, consider the matter with an open mind and on the facts made available to the meeting at which the decision is to be taken. To take part in a discussion and decision on a matter with a closed mind (whether through bias or pre-determination) will put the Council at risk of a finding of maladministration and / or of legal proceedings. If a Councillor feels that they are biased or predetermined then this should be recorded in the minutes and then they should not be involved in the discussion and vote.

*It should be noted that there are more stringent rules on this in respect of planning decisions which are contained in the ‘Code of Good Practice for Councillors and Officers dealing with planning matters’.

Part 5 Codes and Protocols

5.2 Employees Code of Conduct

1 Standards

- 1.1 As a local government employee you are expected to give the highest possible standard of service to the public, and where it is part of your duties, to provide appropriate advice to Councillors and fellow employees with impartiality. You should have regard to the Principles of Public Life namely, Selflessness, Honesty/Integrity, Objectivity, Accountability, Openness, Personal judgment, Respect for others, Duty to uphold the law, Stewardship and Leadership.
- 1.2 You must report to the appropriate manager any wrong doing or legal, or ethical, breaches of procedure. Alternatively, you can use the procedure outlined in the Whistleblowing Policy.

2. Disclosure of information

- 2.1 You must get permission from your Director / Assistant Director before you:
- Give any information to the media
 - Take part in any broadcast (radio or TV/filmed)
 - Publish any article
 - Use any Council provided equipment for outside purposes
 - Using official experience/knowledge for outside purposes
- 2.2 You must not be influenced by improper motives (for example, secret profit or gain for yourself or anyone close to you).
- 2.3 You must get prior written permission of the Chief Executive or your Director or Assistant Director before you give any confidential information you have as a result of your official duties or position to anyone else.
- 2.4 You must not disclose any information regarding an officer's or Councillor's private affairs to anyone outside the Council, unless the person concerned has already given you their consent.
- 2.5 When requested, you must give the Director of Finance or his authorised representative, access to all records, documents and correspondence relating to any financial and other transactions of the Council.

3. Political neutrality

- 3.1 You must serve all Councillors equally regardless of their political beliefs.
- 3.2 If you are asked to advise one of the political groups, you must do so in an impartial way and only with the prior approval of the Chief Executive.
- 3.3 You must follow every Council Policy and not let your own personal or political opinions interfere with your work.

4. Relationships

- 4.1 **Councillors:** Mutual respect between employees and Councillors is essential to the Council. You must avoid having close personal friendships with individual Councillors. These can damage official relationships and prove embarrassing to other employees and Councillors.
- 4.2 **The local community and service users:** You should always remember your responsibilities to the local community and provide a polite, efficient and impartial service to everyone.
- 4.3 **Contractors:** You must tell your manager of any business or private relationships you have now, or have had, with any external contractor. Orders and contracts must be awarded on merit, by fair competition against other tenders. You must not grant any special favours to businesses run by, for example, friends, partners or relatives. You should not discriminate against anyone.
- 4.4 You must give your Director or Assistant Director notice in writing of any direct or indirect financial interest you have in a contract the Council has entered into, or is proposing to enter into. Your Director or Assistant Director will pass the information to the relevant line manager/and Monitoring Officer. An indirect interest is one where your spouse or partner with whom you live, or another immediate family member, stands to gain if they are awarded the contract.

5. Appointment and other employment matters

- 5.1 If you are involved in appointments you must ensure that these are made on the basis of merit. It is illegal for you to make an appointment which is based on anything other than the ability of the candidate to do the job. In order to avoid any possible accusation of bias, unless the employment is of a temporary or ad-hoc nature, you should not be involved in an appointment where you are related to an applicant, or have a close personal relationship outside work with him or her.

5.2 In principle, the Council will not allow individuals to be directly or indirectly in authority over a relative or someone with whom you have close personal ties, unless the employment is of a temporary or ad-hoc nature, nor will we allow employment of someone which may give rise to a conflict with someone already employed within the council due to them being a relative or because of close personal ties or they are related to a Member of the Council. A relative can include, for example, father or mother, husband or wife, son or daughter, brother or sister, or common-law partner. This factor may be taken into account in any recruitment and selection process. If this situation arises during employment, the individuals involved must report this to their Line Manager. The Council would work with the individuals to take action to resolve this situation. This may include redeployment or, in some cases, dismissal. Dismissal will only be considered once every other avenue has been exhausted.

6. Outside commitments

6.1 As an employee you should be clear about your contractual obligations and you should not take any outside employment, which conflicts with the Council's interests. You are advised to discuss the matter with your Manager if you have any doubts at all. You should not act as agent for people pursuing planning matters within the Council's area.

6.2 It is also a requirement that employees graded above (SCP 30) must speak to their Director if they wish to engage in any other business or to take up any other additional appointment. Directors have the right to consent to, or refuse, any such request.

7. Personal interests

7.1 You must declare in writing to your Director any financial or non-financial interests, including friendships with Council contractors, you or your family have which could conflict, in your Director's opinion, with those of the Council. If you, your family or personal friends have jobs, own a house or other property or have an interest in a business or community group who might benefit from Council activity, then you are expected to declare this for your own protection. There are forms for these declarations which are available from HR. A central register is maintained by Democratic Services.

7.2 You must also declare in writing to your Director, membership of any private organisation which does not have a formal membership but has a commitment of allegiance and secrecy about its rules, membership or conduct, including freemasonry. A form for this declaration is available from Democratic Services. Democratic Services also maintain the central register.

7.3 An annual reminder will be sent out to ensure that all declarations are regularly reviewed. Those on SCP31 or above must either confirm that there are no changes or provide an updated form.

8. Intellectual property

- 8.1 When you produce work as part of your job, the copyright of it or any invention will belong to the Council as your employer, unless you have a written agreement that says the opposite.
- 8.2 You must follow Council guidance to make sure that you do not break copyright regulations, as financial penalties could follow for the Council.

9. Equality issues

- 9.1 You must make sure that you abide by the Council's policies and the law on equality issues. You must treat everyone fairly and with equal respect.

10. Separation of roles during tendering

- 10.1 You must treat all customers, suppliers, other contractors and subcontractors, whether internal or external, fairly and impartially.
- 10.2 You must not disclose any confidential information on tenders or costs for either internal or external contractors to any unauthorised party or organisation.
- 10.3 If you are intending to carry out a management buy-out you must inform your manager and withdraw from the contract awarding process.
- 10.4 You must make sure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

11. Bribery and corruption

- 11.1 You must not do anything to benefit or show favouritism towards or against anyone. The Bribery Act 2010 makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. Individuals guilty of offences are liable to be punished by the court with heavy fines and/or imprisonment.
- 11.2 There is also a corporate offence under Section 7 of failure by a commercial organisation [this can include the Council] to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. The Council, if convicted under sections 1, 2 or 6 will also face the same level of fines and, if guilty of an offence under section 7, is liable to an unlimited fine.
- 11.3 11.3 It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure
- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this Code
- engage in activity in breach of this Code or Council policy.

11.4 Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

11.5 Bribery is a serious offence against the Council and employees will face disciplinary action if there is evidence that they have been involved in this activity, which could result in summary dismissal for gross misconduct. Disciplinary action will be taken in addition to, or instead of, criminal proceedings, depending on the circumstances of each individual case.

11.6 Any suspected fraud should be reported initially to your Director or Assistant Director. If this is not appropriate, for example, if they may be involved, then you should contact either the Section 151 Officer or Monitoring Officer instead.

11.7 **Whistleblowing:** The Council is aware of the difficulties and conflicts that may arise for staff who suspect a colleague of fraud, theft or corruption. It is nevertheless essential that all instances be reported without delay. Staff should report any suspicions related to the workplace. Our Whistleblowing Policy outlines the details and procedures for employees. Whistleblowing is protected by law provided it is in the public interest.

12. Use of financial resources

12.1 You must make sure that you use any public funds you are responsible for in a lawful and responsible manner. You must aim to get value for money and to avoid legal challenge against the Council.

12.2 You must only use Council facilities and resources in connection with Council work and not for personal use, unless you are allowed to do so in accordance with written guidance issued on behalf of the Council.

13. Acceptance of gifts and hospitality

- 13.1 Democratic Services keep a central register of all offers of gifts, hospitality or sponsorship accepted by employees and authorised by their line manager. Any gifts, hospitality or sponsorship which is accepted must be entered into the register by the employee. If you are ever faced with difficulty over whether or not to accept gifts and hospitality the guidelines 13.2 to 13.10 should help you make a decision.
- 13.2 The general approach of the Prime Minister's Committee on the Local Government Rules of Conduct to the problems of gifts and hospitality is expressed as: "Another particular source of conflict between the private and public interest is the offer of gifts, hospitality or other benefits in kind to councillors in connection with their official duties. A nice exercise of judgement may sometimes be necessary to decide how the public interest, and the authority's good name, may be best served. A reasonable amount of entertainment is a normal part of the courtesies of public life and extreme strictness can give unnecessary offence to people and organisations with whom the authority's relationships should be cordial. But an appearance of improper influence is easily created and with it encouragement of cynicism about the motives of those who serve in local government." In applying this judgement you are strongly advised to err on the side of caution and to consult with your manager if you are in any doubt.
- 13.3 You may run the risk of your actions being misinterpreted simply because you have a close working relationship with a donor. You must report to your manager any offer of any gifts or hospitality and write a letter of thanks to the donor. If possible you should try to pool (share out) any gifts which you accept, or donate them to the Chair's nominated charity.
- 13.4 **Gifts:** The acceptance of gifts is a dangerous practice and the general rule should be to refuse tactfully, all such offers from organisation or persons who do, or might, provide work, goods or services to the Council, or who need some decision from the Council (for example, a planning application).
- 13.5 Exceptions from the general rule would include modest gifts of no more than £10 in value, which may be of promotional character (for example, calendars, diaries, articles for office use, or a small gift during a courtesy visit to a firm). Such exceptions relate only to modest gifts, an expensive gift would raise questions, even if it would otherwise fall within the categories in section 13.6. It is impossible to be more precise in saying what are and are not acceptable gifts, this is down to your judgement and that of your Director.
- 13.6 **Hospitality:** When to accept hospitality is also a matter for your own judgement. You are not expected to refuse all invitations for social involvement with individuals or organisations which have, or want to have, business links with the Council. What is important is to avoid any situation if it could be suggested that the donor has gained

improper influence or that you are acting in a personal rather than professional capacity.

- 13.7 The extent of the hospitality will be a factor as to its acceptability. It may be more reasonable to join in hospitality offered to a group, than to accept something unique to yourself.
- 13.8 When deciding whether or not to accept hospitality you should think about what other people might think if you did accept. You should be particularly cautious if the donor is currently negotiating with the Council.
- 13.9 The following checklist of questions should help in deciding whether to accept a gift or an offer of hospitality or tactfully reject it:
- Is the donor, or event, significant in the community or District?
 - Are you expected to attend because of your position in the community?
 - Will the event be attended by others of a similar standing in the community or in other communities?
 - What is the motivation behind the invitation?
 - Would acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?
 - Could you justify the decision to the Council, press and public?
 - Is the extent of the hospitality or the nature of the gift reasonable and appropriate?
 - How will you respond to the hospitality?
 - Are you comfortable with the decision?
- 13.10 **Sponsorship – giving and receiving:** When an outside organisation wishes to sponsor, or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. You must take particular care when dealing with contractors or potential contractors.
- 13.11 If you, your partner, spouse or any relative would benefit from any proposed Council sponsored event or service, you must tell your Manager in full of your interest.
- 13.12 Similarly, where the Council, through sponsorship, grant aid, financial or other means, gives support in the community, you should ensure that impartial advice is given and that you have no conflict of interest.

Part 5 Codes and Protocols

5.3 Code of good practice for councillors and officers dealing with planning matters

1. General role and conduct of councillors and officers

- 1.1 **The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.
- 1.2 The Council first adopted a Local Code of Conduct with regard to Planning Matters on the 13 December 2000, and revised in 2002, 2006, 2011, 2013 and 2014. This Code of Good Practice continues the Council's commitment to the highest possible standards of behaviour in its operation of the planning system.
- 1.3 **The key purpose of Planning:** to control development in the public interest.
- 1.4 **Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 1.5 **When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings or when an application which would be required to be determined by the Planning Committee due to your interest is submitted). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.6 If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or his deputy, and preferably well before any meeting takes place.
- 1.7 Whilst this Code of Good Practice deals primarily with planning applications the principles it endorses apply with equal vigour to consideration of the Local Plan,

Development Briefs, enforcement cases and all other planning matters.

- 1.8 Officers involved in the processing and determination of planning matters must also act impartially and in accordance with the Council's Code of Conduct for Council Employees. In addition those that are members of the Royal Town Planning Institute are required to comply with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct.

2 Relationship to the Members' Code of Conduct

- 2.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on interests, Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

- 2.2 **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning management. If you do not abide by this Code of Good Practice, you may put:
- the Council at risk of proceedings on the legality or maladministration of the related decision; and;
 - yourself at risk of either being named in a report made to Council or, if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

3 Development Proposals and Personal Interests under the Members' Code

- 3.1 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

- 3.2 **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that "Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**".

It is therefore advisable that you:

- 3.3 **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same

opportunity to do so.

3.4 **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.

3.5 **Do not act as agent for people pursuing planning matters within the Council area, even if you are not involved in decision making on it.**

3.6 **Do** then act accordingly.

In addition, where you have a disclosable pecuniary interest [DPI]

3.7 **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

3.8 **Don't** try to represent Ward views, or comment on the planning proposal as Ward Member, but get another Ward Member to do so instead.

3.9 **Don't** get involved in the processing of the application.

3.10 **Don't** make written representations to members of the committee considering the application.

3.11 **Do** notify the Monitoring Officer and Assistant Director Planning Strategy and Development Management in writing of your own planning, listed building or conservation area consent application (and that of any close relative or friend of which you are aware) or of any such application affecting land you own and note that:

- notification to the Monitoring Officer and Assistant Director Planning Strategy and Development Management should be made no later than submission of the application;
- the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee;
- you should take no part in the application's consideration or processing;
- you do have a right to make written representations to officers about the proposal but may not address the planning meeting unless you have obtained a dispensation from the Monitoring Officer or Standards Committee.

3.12 **Officers' planning applications:** the same rules apply as for councillors except that you may address the Planning Committee. You should not act as agent for people pursuing

planning matters within the Council's area.

4 Fettering discretion in the planning process (Natural justice, predisposition and predetermination)

- 4.1 **Don't** fetter your discretion by approaching the decision with a closed mind.
- 4.2 **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- 4.3 **Do** keep at the front of your mind that, when you come to make the decision, you;
- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
 - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
 - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
 - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
 - are to come to a decision after giving what you feel is the right weight to those material considerations.
- 4.4 Having a closed mind and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 4.5 **Do** be aware that you can be biased where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 4.6 **Do** not use any political group meetings prior to the planning meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Planning Officer's report and

information and consideration at the planning meeting. The use of political whips to influence the outcome of a planning application is likely to be regarded as maladministration.

- 4.7 Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a Member of the Parish Council, for example, or both a district and county councillor), provided:
- the proposal does not affect the well being or financial standing of the body and is not the consultee's own planning application and
 - you make it clear to the body carrying out the consultation that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, Ward or Parish, as and when it comes before the Committee and you hear all of the relevant information; and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
 - you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- 4.8 Do explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 4.9 Do take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, provided you do not have a disclosable pecuniary or other personal conflict of interest. Where you do exercise these speaking rights:
- advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
 - remove yourself from the Member seating area for the duration of that item; and
 - ensure that your actions are recorded.
- 4.10 Do take advantage of the Council's Ward Member consultation processes. The local knowledge of councillors means they have an important contribution to make to the planning process. The scheme of delegations [elsewhere in the Constitution] sets out the processes for Ward Member involvement in the planning process.

5 Membership of Parish Councils and Outside Bodies

- 5.1 **Do** be aware that when deciding on a planning application at district council level, in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
 - (a) another local or public authority of which you are a member; or
 - (b) a body to which you have been appointed or nominated by the Council as its representative; or
 - (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council.
- you should always disclose a personal interest and may speak on the issue. You may also vote on the application provided you have not predetermined the application.

6 Contact with Applicants, Developers and Objectors

6.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.

6.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Development Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

6.3 **Do** otherwise:

6.4 follow the rules on lobbying;

- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Development Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
- ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.

In addition in respect of presentations by applicants/developers:

6.5 **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.

6.6 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.

6.7 **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate

Committee of the planning authority.

- 6.8 **Do** be aware that a presentation is a form of lobbying and whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other members would intend to vote at a committee.

7 **Lobbying of Councillors**

- 7.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may prejudice your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- 7.2 **Do** remember that your overriding duty is to the whole community not just to the people in your Ward and, taking account of the need to make decisions impartially, should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 7.3 **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 (in accordance with the authority's rules on gifts and hospitality).
- 7.4 **Do** copy or pass on any lobbying correspondence you receive to the Development Manager at the earliest opportunity.
- 7.5 **Do** promptly refer to the Development Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 7.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 7.7 **Do** note that, unless you have disclosable pecuniary interest or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
- listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers, making clear that you must keep an open mind when it comes to making the decision;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and

make it clear that, having expressed the opinion or Ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

- 7.8 **Do** note that a failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted Member has a disclosable pecuniary interest, are criminal offences

8 **Lobbying by Councillors**

- 8.1 **Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.**

- 8.2 Planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors

- 8.3 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, but you should normally seek to disclose that interest on the grounds of transparency where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.

- 8.4 **Do** register your membership of any lobby group. If you speak on behalf of a lobby group at a committee you should withdraw from the meeting once the public speaking on the item has been completed to avoid any suggestion of improper influence on the committee.

- 8.5 **Do** declare the existence and nature of your interest in any lobby group at planning meetings so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.

- 8.6 **Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors are:

- the nature of the matter to be discussed
- the nature of your involvement with the lobby group
- the publicly expressed views of the lobby group

- what you have said or done in relation to the particular issue

- 8.7 **Do** not become a member of an organisation whose primary purpose is to promote or oppose specific planning proposals or those within a limited geographical area, as you may be perceived as having fettered your discretion.
- 8.8 **Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.
- 8.9 **Do** not publicly support a particular outcome on a proposal within your Ward or actively campaign for it if you wish to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. You must not have a closed mind. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the application in accordance with the law.
- 8.10 **Don't** excessively lobby fellow councillors about your concerns or views and don't attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 8.11 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

9 Site Visits

- 9.1 **Do** try to attend site visits organised by the Council where possible.
- 9.2 **Do** explain to the Planning Committee why you are requesting a site visit. The reasons for a site visit will be recorded at Committee and a site visit should normally only take place where:
- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or

- where design considerations are of the highest importance particularly in relation to the surrounding locality.

- 9.3 **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.
- 9.4 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 9.5 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 9.6 **Don't** hear representations from any other party, with the exception of the Ward Member(s) or statutory consultees who must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 9.7 **Don't** express opinions or views to anyone.
- 9.8 **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
- 9.9 you feel it is essential for you to visit the site other than through attending the official site visit;
- 9.10 you have first spoken to the Development Manager about your intention to do so and why (which will be recorded on the file) and
- 9.11 you can ensure you will comply with these good practice rules on site visits.

10 Public speaking at meetings

- 10.1 **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 10.2 **Do** ensure that you comply with the Council's procedures in respect of public speaking.

11 Officers

- 11.1 Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to officers concerning individual planning decisions can only be given through a decision of the Council or the Planning Committee and not by individual Councillors acting outside those powers. There is also a scheme of officer delegations which includes planning decisions where

the matter is not referred to committee.

- 11.2 **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Manager, which may be incorporated into any committee report).
- 11.3 **Do not do anything which compromises, or is likely to compromise the officers' impartiality or professional integrity.**
- 11.4 **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Director Planning Strategy and Development Management or Development Manager or those officers who are authorised by them to deal with the proposal at a Member level.
- 11.5 **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.
- 11.6 Do be aware of the Protocol for Relationships between Members and officers.

12 Decision Making

- 12.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 12.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 12.3 **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 12.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 12.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter, and

attended any site visit.

- 12.6 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the **planning reasons** leading to this conclusion/ decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.
- 12.7 **Do** delegate to the Assistant Director Planning Strategy and Development Management the detailed drafting of specific conditions that the Planning meeting may wish to add or amend when considering an application, ensuring that an explanation of why the change or addition is required is given to the planning meeting.
- 12.8 **Do** have recorded the reasons for Committee's decision to defer any proposal.
- 12.9 **Do**, where necessary, consider the drafting of conditions for sensitive applications that the planning meeting wish to approve against Officer recommendation at the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further information.

13 Training

- 13.1 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 13.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the mandatory training which should help you in carrying out your role properly and effectively.
- 13.3 **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

13.4 Involvement in Section 106 Agreements

- 13.5 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by any benefits offered.
- 13.6 **Do** remember that requirements to be included within Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the Development Manager as soon as you become aware of them.

- 13.7 **Do** remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a development's impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.
- 13.8 **Do** include the potential content of Section 106 Agreements in the debate that takes place at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 13.9 **Don't** hold formal or informal meetings with Applicants, Developers and Objectors over the contents of potential Section 106 agreements. If you feel that a meeting would be useful to clarify the issues, you should ask the Assistant Director Planning Strategy and Development Management to arrange such a meeting. In this way the relevant Officers can be at the meeting, and those present can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 13.10 **Do** remember that it is imperative that a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that Section 106 Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors should contact Officers for any information on completed Section 106 Agreements.
- 13.11 Breaches of the planning protocol**
- 13.12 Maintaining high ethical standards enhances the general reputation of the Council, its Councillors and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Planning Protocol, along with the Members' Code of Conduct are intended to promote these standards.
- 13.13 **Do** be aware of your responsibilities under this Code and the Members Code of Conduct.
- 13.14 **Do** report any apparent breaches of either the Code of Conduct or the Planning Protocol to the Monitoring Officer. **Do** seek advice if you are in doubt.
- 13.15 Failure to comply with the Members Code of Conduct may lead to a complaint to the Monitoring Officer and its being referred to the Council's Standards Committee, which has the power to impose sanctions for breach. Failure to comply with this Planning Protocol may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.

13.16 Allegations on any breach of this Planning Protocol by Members may be referred to the Monitoring Officer, the relevant Leader and/or Chief Whip of the political group.

13.17 Member Advisory Panels

13.18 The Council operates a Members Advisory Panel (MAP) for major applications. The panel is convened as required and is an opportunity for developers to present proposals to Members at an early stage and gain initial feedback to gauge Members initial views on proposals to inform their development. A panel meeting is charged as 1 meeting under the relevant pre-application fee.

13.19 **Purpose:** To enable Members to input into emerging proposals at an early stage to inform the developers thinking and the development of their proposals without prejudicing the views that they may later choose to express in response to any future planning application for the development.

13.20 **Membership of the Panel:** A panel will be convened when a developer submits a proposal for pre-application discussion with officers on a major development and those discussions have progressed to a stage where the developer and officers agree that engaging Members in the discussion would help to progress the matter. Any meeting of the panel will be chaired by the Chair of Planning Committee and will also comprise of:

- Portfolio Holder Strategic Planning
- Portfolio Holder Coast, Country and Environment
- Portfolio Holder for Sustainable Homes and Communities
- Vice Chair Strategic Planning Committee
- Vice Chair Planning Committee
- Ward Members as appropriate to the site (inc. adjacent ward members as appropriate)
- Other relevant portfolio holders and assistant portfolio holders (as appropriate) as determined by the Chair of the Panel
- Relevant officers from key consultees such as Devon County Council etc.
- Relevant officers from other teams and services of EDDC.

13.21 **The Panel Meeting:** Prior to the meeting Members should acquaint themselves with the site and its surroundings. The panel, officers and developers to convene either in person at the Council's offices or virtually through zoom or similar as appropriate.

13.22 The meeting to then follow the format of:

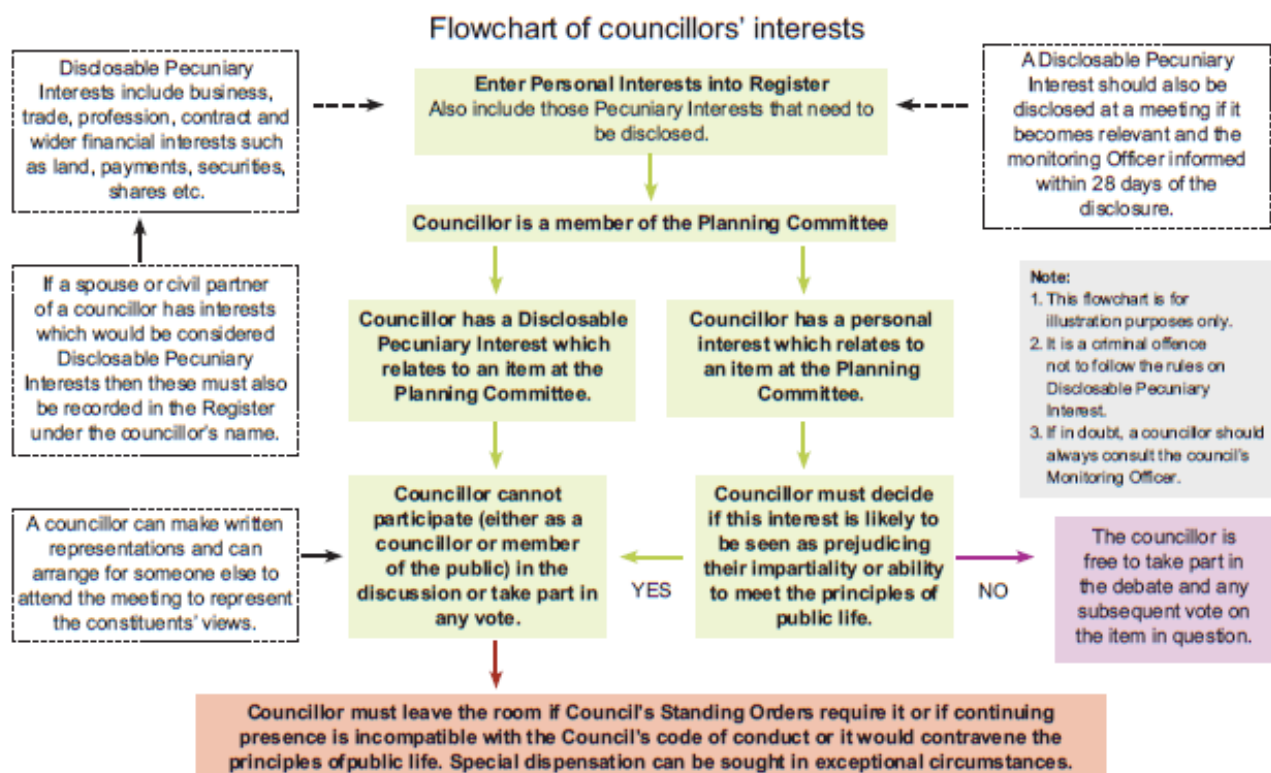
13.22.1 Meeting to open with introductions and Members to declare any interests.

13.22.2 Developer makes a presentation to the Member's Advisory Panel and Officers of no more than 30 minutes.

13.22.3 Members to ask questions of the Developers, seek clarification, test arguments but not to give any form of view in support or against the proposals.

- 13.22.4 Developers are asked to leave the meeting.
 - 13.22.5 Officers advise Members of the key issues and policy considerations as they see it.
 - 13.22.6 Members discuss the merits of the proposal.
 - 13.22.7 Members advise officers of the comments that they wish to feedback to the developer.
 - 13.22.8 Meeting is closed.
 - 13.22.9 Officers draft a response to be sent on behalf of the panel to the developer and circulate with the minutes for panel member's comment.
 - 13.22.10 Final minutes and letter is agreed by the Chair.
 - 13.22.11 Officers send panel response to the developer.
 - 13.22.12 In the event an application is made for the same or similar proposal on the site from the developer then all pre-application details including the panel minutes and letter are published.
- 13.23 **Administration** All meetings to be arranged and administered by the Planning Service. All meetings to be minuted in the same format as committee meetings. All virtual meetings to be recorded and saved.
- 14 **Further guidance on probity in planning and the Code of Conduct**
- 14.1 The Monitoring Officer and Deputy Monitoring Officer will be pleased to assist with councillors' individual queries on the application of the Code of Conduct or this Planning Code of Good Practice.

Probity in Planning, December 2019, issued by the Local Government Association and the Planning Advisory Service Openness and Transparency on Personal Interests: Guidance for Councillors, Department for Communities and Local Government, September 2013. [Note this is general guidance and does not reflect any additional requirements East Devon has chosen to include in its Member Code of Conduct].
<https://www.gov.uk/government/publications/openness-and-transparency-on-personalinterests-guidance-for-councillors>



Part 5 Codes and Protocols

5.4 Protocol for relationships between Members and Officers

"Every local authority should have its own written statement or protocol governing relations between Members and officers" (Third report of the Committee on Standards in Public Life – the Nolan Committee)

Preamble

1. Mutual trust and respect between Members and officers is at the heart of a council's good governance. They are essential if the partnership necessary for the effective running of a local authority is to succeed.
2. This may seem obvious. But what happens when relationships go awry? Where can Members and officers turn for guidance? What mechanisms exist for addressing concerns? How can matters be improved?
3. Such questions point to the need for a written guide to the basic elements of the relationship between Members and officers – a protocol:
 - to promote trust, openness, fairness and honesty by establishing some ground rules;
 - to define roles so as:
 - to clarify responsibilities (who does what),
 - to avoid conflict, and
 - to prevent duplication or omission;
 - to secure compliance with the law, codes of conduct and a council's own practices; and
 - to lay down procedures for dealing with concerns by Members or officers.
4. A protocol should be recognised both as a central element of a council's corporate governance, and as a commitment to upholding standards of conduct in public life. It's one way of demonstrating to the public at large that local government is serious about protecting and enhancing its integrity and reputation.

Definitions

5. Unless the context indicates otherwise, references to the term Council include the Cabinet, the Overview and Scrutiny Committees, and other committees and sub-committees.
6. For the purposes of this protocol, the term **Executive** refers to the Leader and Cabinet (and excludes Assistant Portfolio Holders).

7. Unless the context indicates otherwise, the terms **Member** and **Members** include non-elected (i.e. co-opted) members as well as elected councillors.
8. **Officers** and **staff** mean all persons employed by the Council.
9. **Senior Officer** means the Chief Executive and Directors and equivalents and includes the Monitoring Officer and Designated Finance Officer.
10. **Designated Finance Officer** means the officer exercising the duties prescribed by law for the financial administration of the Council.

Principles

11. Members and officers must at all times observe this protocol.
12. The protocol has been approved by the Council's Standards Committee who will monitor its operation.
13. The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.
14. Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
15. Whilst Members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to Members (individually and collectively) and to carry out the Council's work under the direction of the Council.
16. The Council has adopted codes of conduct for both Members and officers. Both represent best practice. The Members' code is based on the general principles governing Members' conduct enshrined in law:
 - Selflessness – serving only the public interest.
 - Honesty and integrity – not allowing these to be questioned; not behaving improperly.
 - Objectivity – taking decisions on merit.
 - Accountability – to the public; being open to scrutiny.
 - Openness – giving reasons for decisions.
 - Personal judgment – reaching one's own conclusions and acting accordingly.
 - Respect for others – promoting equality; avoiding discrimination; respecting others (Member/Member, as well as Member/officer).

- Duty to uphold the law – not acting unlawfully.
- Stewardship – ensuring the prudent use of a council’s resources
- Leadership – acting in a way which has public confidence.

17. These principles underpin this protocol.
18. Until such time as a new national code appears, officers are bound by the Council’s own code of conduct for staff and, in some cases, by the codes of their professional associations.
19. Breaches of this protocol by a Member may result in a complaint to the Monitoring Officer if it appears the Members’ code has also been breached. Breaches by an officer may lead to disciplinary action.

The role of Members

20. Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of senior colleagues, the relevant Senior Officer(s), and/or the Monitoring Officer.
21. Collectively, Members are the ultimate policy-makers determining the core values of the Council and approving the authority’s policy framework, strategic plans and budget.
22. Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
23. Every elected Member represents the interests of, and is an advocate for, his/her Ward and individual constituents. He/she represents the Council in the Ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.
24. Some Members have roles relating to their position as members of the Cabinet, Overview and Scrutiny Committees or other committees and sub-committees of the Council.
25. Members of the Cabinet can have individual delegated powers. They may determine matters within their portfolios but implementation of their decisions is the responsibility of officers.
26. Members serving on the Overview and Scrutiny Committees monitor the effectiveness of the Council’s policies and services, develop policy proposals (including those relating to the management of the Council’s housing stock) and examine community issues. They also monitor local health service provision and decisions taken by responsible

authorities in relation to crime and disorder.

27. Members who serve on other committees and sub-committees collectively have delegated responsibilities, for example deciding quasi-judicial and regulatory matters which by law are excluded from the remit of the Cabinet.
28. Some Members may be appointed to represent the Council on local, regional or national bodies.
29. As politicians, Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members they have a duty always to act in the public interest.
30. Members are not authorised to instruct officers other than:
 - through the formal decision-making process;
 - to request the provision of consumable resources provided by the Council for Members' use;
 - where staff have been specifically allocated to give support to a Member or group of Members; and
 - in the case of political assistants.
31. Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council except for the Leader or any Portfolio Holder where acting within a lawful delegated authority.
32. Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the designated Finance Officer.
33. Members must respect the impartiality of officers and do nothing to compromise it, for example, by insisting that an officer change his/her professional advice.
34. Members have a duty under their code of conduct:
 - not to do anything which may cause the Council to breach equality legislation and
 - to treat others with respect.
35. Under the code, a Member must not:
 - conduct him/herself in a manner which would reasonably be regarded as bringing their office or authority into disrepute, or
 - use, or attempt to use, his/her position as a Member improperly to confer or secure for him/herself or any other person an advantage or disadvantage.

The role of officers

36. Officers are responsible for giving advice to Members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
37. Under the direction and control of the Council (including, as appropriate, the Cabinet, committees and sub-committees), officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
38. Officers have a duty to implement decisions of the Council, the Cabinet, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
39. Officers have a contractual and legal duty to be impartial. They must not allow their professional judgment and advice to be influenced by their own personal views.
40. Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
41. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.
42. Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on officers' involvement in political activities.

The relationship between Members and officers: general

43. The conduct of Members and officers should be such as to instil mutual confidence and trust.
44. The key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
45. Informal and collaborative two-way contact between Members and officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection.
46. Members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.

47. It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
48. Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
49. Officers work to the instructions of their Senior Officers, not individual Members. It follows that, whilst such officers will always seek to assist a Member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, Members should normally direct their requests and concerns to a Senior Officer, at least in the first instance.
50. Officers will do their best to give timely responses to Members' enquiries. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Members should avoid disrupting officers' work by imposing their own priorities.
51. Members will endeavour to give timely responses to enquiries from officers.
52. An officer shall not discuss with a Member personal matters concerning him/herself or another individual employee. This does not prevent an officer raising on a personal basis, and in his/her own time, a matter with his/her Ward Member.
53. Members and officers should respect each other's free (i.e. non-Council) time.

The Council as employer

54. Officers are employed by the Council as a whole.
55. Members' roles are limited to:
- the appointment of specified senior posts,
 - determining human resources policies and conditions of employment,
 - the appointment of political assistants (although these do not currently exist at EDDC)
 - hearing and determining certain appeals.
56. Members shall not act outside these roles.
57. If participating in the appointment of officers, Members should:
- remember that the sole criterion is merit,

- never canvass support for a particular candidate,
- not take part where one of the candidates is a close friend or relative,
- not be influenced by personal preferences, and
- not favour a candidate by giving him/her information not available to the other candidates.

58. A Member should not sit on an appeal hearing if the appellant is a friend, a relative, or an officer with whom the Member has had a close working relationship.

Chair and Officers

59. Officers will respect the position of Chair and provide appropriate support.

Executive [Cabinet] Members and Officers

60. Executive Members will take decisions in accordance with the constitution and will not otherwise direct staff. Senior Officers will be responsible for instructing staff to implement the Executive's decisions.

61. In addition to individual members of the Executive, Senior Officers (including the Monitoring Officer and the Designated Finance Officer) have the right to submit papers to the Executive as a whole or to individual Executive Members for consideration.

62. Senior Officers and Executive Members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice including, without exception, the Director of Governance and Licensing and Designated Finance Officer, and will not direct officers in the framing of recommendations.

63. Before any formal decisions with a financial implication are taken by the Executive, the Designated Finance Officer and the Senior Officer(s) for the service(s) concerned must be consulted. This is to ensure that those officers who are budget holders:

- are aware of the proposed decision,
- have the opportunity to offer advice, and
- are subsequently able properly to authorise the financial transactions needed to implement decisions.

64. An individual Executive Member who is minded to write or commission a report or to make a decision about a matter within his/her portfolio must ensure that those other Members and officers who need to know of the matter are so informed. There is a particular requirement to involve other Executive Members on cross-cutting issues.

65. Executive Members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include

the reasons.

66. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Executive Member(s) of their intentions in advance when the matter to which the decisions relates is likely to be sensitive or contentious, or has wider policy implications.

Overview and Scrutiny Members and Officers

67. Chairs and other leading Overview and Scrutiny members shall maintain regular contact with the officer(s) providing the principal support to the overview and scrutiny function. In consultation with chairs, it shall be the responsibility of the latter to ensure that those who need to know of matters being considered or for possible future consideration are so informed.
68. Any Overview and Scrutiny Committee or its Chair acting on its behalf may require officers to attend any Overview and Scrutiny Committee meetings. Members should not normally expect junior officers to give evidence. All requests should be made to Senior Officers in the first instance.
69. When making requests for officer attendance, Overview and Scrutiny members shall have regard to the workload of officers.
70. It is recognised that officers required to appear before any of the Overview and Scrutiny committees may often be those who have advised the Executive or another part of the Council on the matter under investigation. In these circumstances, an officer may have a conflict of interest. Both Members and officers need to consider the severity of the conflict. If deemed appropriate, research and advice may be sought elsewhere – from Democratic Services or externally.
71. Subject to 70 above, officers should be prepared to justify advice given to the Council, the Executive, or other committees and sub-committees even when the advice was not accepted.
72. Officers must also be prepared to justify decisions they have taken under delegated powers.
73. In giving evidence, officers must not be asked to give political views.
74. Officers should respect Members in the way they respond to Members' questions.
75. Members should not question officers in a way which could be interpreted as harassment. Neither should they ask about matters of a disciplinary nature.

76. Overview and scrutiny proceedings must not be used to question the capability or competence of officers. Chairs and Members need to make a distinction between reviewing the policies and performance of the Council and its services, and appraising the personal performance of staff. The latter is not an overview and scrutiny function.
77. In exercising the right to call-in a decision of the Cabinet, Overview and Scrutiny members must seek officer advice if they consider the decision is contrary to the Council's approved plans, policies or frameworks, or is unlawful.

Members of other Committees or Sub-Committees and Officers.

78. The appropriate Senior Officers will offer to arrange regular informal meetings with chairs, vice-chairs, and spokesmen of committees and sub-committees.
79. Senior Officers (including the Monitoring Officer and the Designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
80. Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct officers to act.
81. At some committee or sub-committee meetings, a resolution may be passed which authorises a named officer to take action between meetings in consultation with the Chair. In these circumstances it is the officer, not the Chair, who takes the action and is responsible for it. A Chair has no legal power to take decisions on behalf of a committee or sub-committee; neither should he/she apply inappropriate pressure on the officer.

Local Members and Officers

82. To enable them to carry out their Ward role effectively, Members need to be fully informed about matters affecting their Ward. Senior Officers must ensure that all relevant staff are aware of the requirement to keep local Members informed, thus allowing Members to contribute to the decision-making process and develop their representative role.
83. This requirement is particularly important:
- during the formative stages of policy development, where practicable,
 - in relation to significant or sensitive operational matters,
 - whenever any form of public consultation exercise is undertaken, and
 - during an Overview and Scrutiny investigation.
84. Issues may affect a single Ward. Where they have a wider impact, a number of local members will need to be kept informed.

85. Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
86. If a local Member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant officer. Provided the meeting has not been arranged on a party political basis:
- an officer may attend but is not obliged to do so, and
 - the meeting may be held in Council-owned premises.
87. No such meetings should be arranged or held in the immediate run-up to Council elections.
88. Whilst support for Members' Ward work is legitimate, care should be taken if staff are asked to accompany Members to Ward surgeries. In such circumstances:
- the surgeries must be open to the general public, and
 - officers should not be requested to accompany Members to surgeries held in the offices or premises of political parties.
89. Officers must never be asked to attend Ward or constituency political party meetings.
90. It is acknowledged that some Council staff (for example, those providing dedicated support to Executive Members) may receive and handle messages for Members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.
91. In seeking to deal with constituents' queries or concerns, Members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by Members in the requested timescale, and may need to seek instructions from their managers.

Members' Access to Documents and Information

92. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution.
93. Members may request Senior Officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as Members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
- it is in the public domain, and

- it is not barred by the Data Protection Act from being given.

94. Every Member of the Cabinet, any Overview and Scrutiny Committee, and/or any other committee or sub-committee has a right to inspect documents about the business of that Overview and Scrutiny Committee, other committee or sub-committee or the Cabinet.
95. A Member who is not a Member of a specific Overview and Scrutiny Committee, other committee or sub-committee, or the Cabinet may have access to any document of that specific part of the Council provided:
- he/she can demonstrate a reasonable need to see the documents in order to carry out his/her roles as a Member (the “need to know” principle), and
 - the documents do not contain “confidential” or “exempt” information as defined by the law.
96. Disputes as to the validity of a Member’s request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a Member’s request.
97. A Member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:
- where to do so is likely to be in breach of the Data Protection Act, or
 - where the subject matter is one in which he/she has a personal interest as defined in the Members’ Code of Conduct.
- A Member should not use their position as Councillor to request documents where they have a Disclosable Pecuniary Interest in the matter.
98. Information given to a Member must only be used for the purpose for which it was requested and in connection with Council duties. As a Councillor you will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of exempted information and confidential information and you must always respect and comply with the requirement to keep information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise those rights where information is necessary for you to carry out your Council duties. Such information is, however, for your own use as a Councillor and must not be disclosed or in any way used for personal use or party political advantage or in such a way as to discredit the Council. This will also apply in cases where you hold the personal view that such information should be publicly available.
99. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.

100. Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
101. When requested to do so, officers will keep confidential from other Members advice requested by a Member.
102. Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

Media Relations

103. All formal relations with the media must be conducted in accordance with the Council's agreed procedures, its Social Media policy and the law on local authority publicity.
104. Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
105. Officers will keep relevant Members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
106. Before responding to enquiries from the media, officers shall ensure they are authorised to do so.
107. Likewise, officers will inform the Council's Communications Office of issues likely to be of media interest, since that unit is often the media's first point of contact.
108. If a Member is contacted by, or contacts, the media on an issue, he/she should:
- indicate in what capacity he/she is speaking (for example, as Ward Member, in a personal capacity, as an Executive [Cabinet] Member, on behalf of the Council, or on behalf of a party group);
 - be sure of what he/she wants to say or not to say;
 - if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's communications officer and/or relevant Senior Officer, except in relation to a statement which is party political in nature;
 - consider the likely consequences for the Council of his/her statement (for example, commitment to a particular course of action, image, allegations of jumping to conclusions);
 - keep the communications officer informed of any press statement or formal communications with the media;
 - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
 - consider whether to consult other relevant Members; and

- take particular care in what he/she says in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.

Correspondence

109. Correspondence between an individual Member and an officer should not be copied to another Member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies.
110. Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (for example, representations to a Government Minister) for letters to appear in the name of a Cabinet Member or the Chair of any Overview and Scrutiny Committee.
111. The Chair may initiate correspondence in his/her own name.
112. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member.
113. When writing in an individual capacity as a Ward Member, a Member must make clear that fact.

Access to Premises

114. Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.
115. Members have a right of access to Council land and premises to fulfil their duties. These rights may be withdrawn following a decision of the Standards Committee, and in limited other circumstances.
116. When making visits as individual Members, Members should:
- whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge;
 - comply with health and safety, security and other workplace rules;
 - not interfere with the services or activities being provided at the time of the visit;
 - if outside his/her own Ward, notify the Ward Member(s) beforehand; and
 - take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

Use of Council Resources

117. The Council provides all Members with services such as printing and photocopying, and goods such as computers to assist them in discharging their roles as Members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which the Member has been elected or appointed. Council resources must not be used under any circumstances for political campaigning activities or business use.
118. Reasonable personal use of computer hardware and software is allowed provided it does not conflict with this protocol, the conditions under which Council computers are supplied and maintained, and is not used in any way which could conflict with the interests of the Council.
119. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
- where facilities are provided in Members' homes at the Council's expense;
 - in relation to any locally-agreed arrangements, for example, payment for private photocopying; and
 - regarding ICT security.
120. Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:
- business which is solely to do with a political party;
 - work in connection with a Ward or constituency party political meeting;
 - electioneering;
 - work associated with an event attended by a Member in a capacity other than as a Member of the Council;
 - private personal correspondence;
 - work in connection with another body or organisation where a Member's involvement is other than as a Member of the Council; and
 - support to a Member in his/her capacity as a councillor of another local authority.

Interpretation, complaints and allegations of breaches

121. This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.
122. Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
123. A Member who is unhappy about the actions taken by, or conduct of, an officer should:

- avoid personal attacks on, or abuse of, the officer at all times,
- ensure that any criticism is well founded and constructive,
- never make a criticism in public, and
- take up the concern with the officer privately.

124. If direct discussion with the officer is inappropriate (for example, because of the seriousness of the concern) or fails to resolve the matter, the Member should raise the issue with the officer's manager or the relevant Senior Officer.
125. A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
126. An officer who believes a Member may have acted other than in accordance with this protocol should raise his/her concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. The Monitoring Officer may decide to discuss the complaint with both the Member and officer (and Senior Officer or equivalent as appropriate) and try to negotiate an informal resolution. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may involve alleged breaches of the Members' Code of Conduct.

Part 5 Codes and Protocols

5.5 Council's petition scheme

1 Introduction

1.1 This Council believes it acts in the best interests of the people who live in the area and is responsive to their concerns. However sometimes there are issues that you believe the Council should address and there are a number of ways by which you can be heard. You can raise matters at any of our meetings, you can contact your elected district councillor and ask that they raise a matter on your behalf or you can contact any relevant officer direct. You can also raise matters by way of a petition. This Council welcomes petitions as it recognises that they are another way in which people can let us know their concerns.

1.2 There are several types of petitions (see 3 below for a description of each type) depending on the number of signatures. This scheme sets out how the Council will respond to petitions.

2. What can petitions cover?

2.1 You can submit a petition on the following issues:

- Issues which relate to the Council and/or the services it provides to local people
- Matters which affect local people or local communities in East Devon more than the general public nationally

3. What are the different types of petitions?

3.1 **'Ordinary' petitions:** Petitions containing at least 25 signatures. The petition organiser can present their petition to a meeting of the Council (that is a meeting to which the Chair and all Councillors are invited) who will, without discussion, refer the petition to the relevant decision-maker (this could be an officer of the Council or one of the Council's committees) OR the petition organiser (with two other people who signed the petition) can meet with the relevant decision-maker direct to present their petition.

3.2 **Petitions for Council debate:** Petitions containing at least 1500 signatures will be debated (or discussed) at a subsequent meeting of the Council.

3.3 **Petitions calling for Council employees to give evidence at any meeting of the Overview and Scrutiny Committees:** Petitions containing at least 750 signatures can call for a Senior Officer to give evidence at a public meeting of any of the Overview and Scrutiny Committees.

4. Who can organise and sign a petition?

4.1 Anyone who lives, works or studies in East Devon, including under 18's, can sign or organise a petition.

5. What must a petition include?

- 5.1 Petitions **must** include all of the following:
 - 5.1.1 at least 25 signatories;
 - 5.1.2 a clear and concise statement covering the subject of the petition and which petition type it is (*cf* to section 3 above). It should state what action the petitioners wish the Council to take;
 - 5.1.3 where it is a physical petition the subject matter of the petition on each page;
 - 5.1.4 Sufficient information to be able identify that the organiser and / or any signatories live, work or study in East Devon;
 - 5.1.5 Physical or verified virtual signature of any person supporting the petition; and
 - 5.1.6 contact details, including a phone number and address, for the petition organiser – this will be the person who we will contact to explain how we will respond to the petition.
- 5.2 The Council will accept electronic petitions provided the above requirements are met.
- 5.3 The Council may also ask for such additional information as it may require in order to confirm that the petition complies with the requirements of this scheme.
- 5.4 The Council’s Monitoring Officer may decline to accept;
 - 5.4.1 any petition where in his opinion the petition does not satisfy any of the above,
 - 5.4.2 any signatory where insufficient information has been provided to demonstrate that the person lives, works or studies in East Devon. This process may determine that the petition is determined to be a different type of petition than the basis upon which it was submitted.
- 5.5 A template to help you organise a written petition is provided at the end of this document.

6. Are there petitions which the Council will not accept?

- 6.1 The vast majority of petitions will be accepted provided they meet with the requirements of 5.1 above. However, there are certain circumstances when petitions will not be accepted by the Council’s Monitoring Officer, including:
 - 6.1.1 Petitions considered to be vexatious, abusive or otherwise inappropriate (such as for political campaigning). We will explain the reasons in our acknowledgement of receipt of the petition.
 - 6.1.2 Petitions which are identical or very similar to a petition that has already been presented to the Council in the past 12 months.
 - 6.1.3 The period immediately before an election or referendum we may need to deal with the petition differently – if this is the case we will explain the reasons and give the petition organiser revised timescales which will apply.
 - 6.1.4 Petitions which relate to planning or licensing application, or is a statutory petition (such as requesting a referendum on whether the Council should continue to have an elected mayor), or is a matter where there is already an existing right of appeal such as

council tax banding and non-domestic rates. We will advise the petition organiser what will happen to petitions under this category.

- 6.1.5 Petitions which relate to a subject where consultation by the Council is currently being undertaken or is due to be undertaken in the next six months. We will ensure the petition is included as part of the consultation and contact the petition organiser to give them details of the consultation.
- 6.1.6 Where the identities of a sufficient number of the signatories to the petition cannot be verified.

7. How to submit a petition

- 7.1 Petitions can be sent or emailed to: Democratic Services Manager East Devon District Council Blackdown House Heathpark Industrial Estate Border Road Honiton Devon EX14 1EJ showl@eastdevon.gov.uk
- 7.2 Alternatively, you can give your petition to your local councillor who will deliver it on your behalf.
- 7.3 Alternatively a petition can be presented by you at a Council meeting. If you wish for your petition to be presented to a meeting of the Council you have the option of speaking at that meeting. You can speak in support of your petition for up to five minutes. To register to speak you must inform the Democratic Services Manager (by telephone 01395 517541 or e-mailing showl@eastdevon.gov.uk) by 4.00 p.m. the day before the Council meeting.
- 7.4 At the meeting the Chair will invite you to speak. When you make your speech you can only refer to matters relevant to the petition and must:
- (a) not use discriminatory or offensive language;
 - (b) not make any party political statements;
 - (c) not use personal abuse; and
 - (d) treat others with courtesy and with respect.
- If the Chair considers that you have broken any of these requirements, appropriate action may be taken, (including preventing you from speaking further).

8. What will the Council do when it receives my petition?

- 8.1 All petitions sent or presented to the Council will receive an acknowledgement within 10 working days of receipt. The acknowledgement will be sent to the petition organiser and will explain what we plan to do with the petition and when you can expect to hear from us again. Details of your petition will be provided to the Chair of the Council, the political party group leaders, the Monitoring Officer and the Chief Executive so they are informed of the details of the petition.
- 8.2 If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council meeting debate, or a Senior Officer giving

evidence, then the acknowledgement will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation, we will tell you the steps we plan to take.

- 8.3 If you submit an 'ordinary' petition (see 3.1 above) the Democratic Services Manager will contact the petition organiser and inform them which body/decision-maker will respond to the petition and invite them to choose whether they wish to make a presentation at a Council meeting or for the petition to be referred direct to the body/decision-maker concerned. However, if the subject of the petition is due to be considered by the decision-maker before the next meeting of the Council it will be referred to the decision-maker direct and you will not, therefore, have the opportunity to present your petition at a Council meeting. If you choose to submit your petition directly to the decision-maker you will be informed who makes the decision and who will be contacting you to make arrangements for you to meet with the decision-maker.

9. How will the Council respond to petitions?

- 9.1 Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- Taking the action requested in the petition.
- Considering the petition at a Council meeting (where the subject of the petition does not fall within the remit of an appropriate body or person).
- Holding an inquiry into the matter.
- Undertaking research into the matter.
- Holding a public meeting.
- Holding a consultation.
- Holding a meeting with the petitioners.
- Referring the petition for consideration by one of the Council's Overview and Scrutiny Committees*.
- Calling a referendum
- Writing to the petition organiser setting out our views about the request in the petition.

*The Overview and Scrutiny Committees are responsible for scrutinising the work of the Council – in other words, the Councillors on these Committees have the power to hold the Council's decision-makers to account.

- 9.2 In addition to these steps, the Council will consider all the specific actions it can potentially take on the issues highlighted in a petition. The following table gives some examples:

Petition subject	Appropriate steps
Alcohol related crime and disorder	If your petition is about crime or disorder linked to alcohol consumption, the Council will, among other measures, consider the case for placing restrictions on public drinking in the area by establishing a designated public place order or, as a last resort, imposing an alcohol disorder zone. When an alcohol disorder zone is established the licensed premises in the area where alcohol related trouble is being caused are required to contribute to the costs of the extra policing in that area. The Council's response to your petition will set out the steps we intend to take and the reasons for taking this approach.
Anti-social behaviour (ASB)	The Council plays a significant role in tackling anti-social behaviour (ASB) as the elected representatives of your local area as a social landlord and as licensing authority. When responding to petitions on ASB, we will consider, in consultation with our local partners, all the options available to us including the wide range of powers and mechanisms we have to intervene. For example, we will work with the neighbourhood policing team in the affected area to identify what action might be taken including what role CCTV might play, consider identifying a dedicated contact within the Council to liaise with the community and neighbourhood partners on issues of ASB in the area in question and, where appropriate, we will alert the crime and disorder reduction partnership and the relevant Overview and Scrutiny Committee to the issues highlighted in the petition.

- 9.3 If your petition is about something over which the Council has no direct control (for example the local railway or hospital) we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information on the services for which the Council is responsible at www.eastdevon.gov.uk .
- 9.4 If your petition is about something that a different council is responsible for we will give consideration to what the best method is for responding to it. This might consist of

simply forwarding the petition to the other council, but could involve other steps. In any event we will always notify you of the action we have taken.

10. Petitions for debate at a Council meeting

- 10.1 If a petition contains more than 1500 signatures it will be discussed by a meeting of the Council unless it is a petition asking for a senior Council employee to give evidence at a public meeting (see 11 below). The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be given five minutes to present the petition at the meeting (see 7 above) and the petition will then be discussed by the Chair and councillors for a maximum period of 15 minutes (unless the Council decides to extend this period at the meeting).
- 10.2 The Council will decide how to respond to the petition at this meeting, it may decide to:
- take the action the petition requests
 - not to take the action requested for reasons put forward in the debate
 - make recommendations to the Leader or Chief Executive if the issue is one for either of them to make the decision
 - commission further investigation into the matter, for example by a relevant committee.
- 10.3 The petition organiser will receive written confirmation of this decision and this will also be published on our website.

11. Petitions asking for officers to give evidence

- 11.1 If your petition contains more than 750 signatures your petition may ask for a Senior Officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. A list of the officers that can be called to give evidence is as follows:
- Chief Executive
Monitoring Officer
Section 151 Officer (Chief Finance Officer)
Directors
- 11.2 Your petition may ask the officer to explain progress on a particular issue or to explain the advice given to the Leader and/or councillors to enable them to make a particular decision. The petition must relate to the officer's job and cannot relate to their personal circumstances or character.
- 11.3 The evidence will be given at a public meeting of the Council's relevant Overview and Scrutiny Committee and not at a meeting of the Council. The officer giving evidence at the meeting may be accompanied by another officer, technical expert or a

representative from a partner agency. You will be given details of the meeting so that you can attend. The Committee meetings are normally held in public, but the Committee has the option to exclude the press and public from any part of the meeting that discusses confidential information. If the Committee does exclude the press and public you will also have to leave the meeting. If possible you will be given the opportunity to present your petition first. If it is likely that the press and public will be excluded from the whole or any part of the meeting you will be notified of this and given the reason(s) for this when we give you the details of the meeting. You should be aware that the relevant Overview and Scrutiny Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs. The Committee may also decide to call the Leader or relevant councillor to attend the meeting. Only the Committee will ask questions at this meeting, but you will be able to suggest questions you would like them to ask by contacting the Democratic Services Manager by 4.00 pm three working days before the meeting.

12. What can I do if I feel my petition has not been dealt with properly?

12.1 If you feel that we have not dealt with your petition properly, the petition organiser has the right to appeal and request the Council's relevant Overview and Scrutiny Committee to review the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve the prospects for a review if the petition organiser gives a short explanation of the reasons why they feel the Council's response is not considered to be adequate.

12.2 The Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These include:

- instigating an investigation
- making recommendations to the Leader
- arrange for your request to be considered by a meeting of the Council if it considers the Council has seriously neglected its responsibility to listen to local people

12.3 Once the appeal has been considered the petition organiser will be informed of the results within five working days. The results of the review will also be published on our website.

13. What else can I do to have my say?

13.1 There are a number of other ways you have your say and get involved in local decisions, including:

- Attending meetings
- Public question time

- Speaking on planning or licensing applications
- Overview and Scrutiny Committees
- Community partnerships
- Become a councillor
- Take part in consultations
- Writing to us about issues that are of concern to you

14. Special requirements and assistance

14.1 If you need any special help with accessing any Council buildings or if you have any special requirements or if you are unsure what to do or need help with the wording of your petition then please contact our Democratic Services Manager (either by telephone 01395 517541 or emailing showl@eastdevon.gov.uk as soon as possible.

14.2 **To ask for a copy of this guide in another format or language, or for more information on petitions or Council meetings, please contact: Democratic Services on (01395) 517546**

Petition form

Subject of petition:

Action required:

Organiser or main contact for petition:

Address:

Telephone number:

Email:

Petition type (please tick relevant box)

Ordinary (contains 25 signatures or more)

Please indicate where you wish to submit your petition:

Council or **Direct to Decision Maker**

If you have chosen to submit your petition straight to Council, would you like to speak at the Council meeting? (Please tick below)

Yes; Name of speaker is:

No

Petition for Council debate (contains 1500 signatures or more)

Would you like to speak at the Council meeting? (Please tick below)

Yes; Name of speaker is:

No

Petition calling for an officer to give evidence (contains 750 signatures or more)

Would you like to speak at the committee meeting? (Please tick below)

Yes; Name of speaker is:

No

ORGANISERS SHOULD ENSURE THAT THE FOLLOWING INFORMATION IS REQUESTED OF SIGNATORIES;

- **Name**
- **Address including postcode (of where signatory lives, works or studies in East Devon)**
- **Signature**

Part 5 Codes and Protocols

5.6 Member Champion Protocol

1 Introduction

- 1.1 Member Champions exist to provide a voice for traditionally underrepresented groups, or issues which need to be kept at the forefront of council business although they may not be the responsibility of any individual or committee and / or which may cross a number of different areas.
- 1.2 Member Champions are elected councillors (but not a Cabinet Member / Assistant Portfolio Holder) who will seek to make sure that their area of interest is taken into account when Council policy is being developed and decisions taken.
- 1.3 Council, on the advice of Cabinet, will decide on what areas of interest to have Member Champions for and who the appointees shall be. Appointments will be made at Annual Council and while changes can be made each year the expectation is that appointees will be appointed for a minimum of 2 years to ensure continuity in the role.

2. Responsibilities

- 2.1 Within the context of the powers of the Council and having regard to the Council's overall corporate priorities, the Member Champion will:
 - 2.1.1 Make sure that their area of interest is taken into account when the Council is developing policy or making decisions and exert influence in that regard.
 - 2.1.2 Act as a catalyst for change and improvement including working with national and local initiatives relevant to their area.
 - 2.1.3 Ask questions about performance and resourcing for their area.
 - 2.1.4 Raise the profile of their area within, and outside, the Council.
 - 2.1.5 Promote good practice within the Council and make the authority aware of good practice from elsewhere.
 - 2.1.6 Engage with, and exert influence on, external partners and bodies who work in the area including sharing good practice where appropriate.
 - 2.1.7 Engage with other members, officers and community groups who have an interest / stake in the area.
 - 2.1.8 Keep up-to-date with all relevant matters connected with the area and pursue relevant personal development and training opportunities.

3. Mutual Expectations

- 3.1 The Council is empowering a Member Champion and therefore will put in place such arrangements as it considers appropriate to support the Member Champion – this includes access to information held by the Council relating to their area and access to a reasonable amount of Officer (provided work priority of Officers is not prejudiced).

3.2 The Council expects Member Champions to act reasonably when carrying out their role and recognise, and work effectively within, the political management and corporate working arrangements of the Council.

3.3 A Member Champion cannot take decisions that bind the Council or commit the Council in a way that is contrary to established policy or practice. Otherwise the Member Champion may take all reasonable actions judged by the Member as being necessary to perform their role including engaging with the media to confirm a Council position as stated in published policy or expressing a personal view in their capacity as the Member Champion.

4. Reporting

4.1 Member Champions shall provide a written report to Annual Council on work achieved during the year and identifying priorities for the future.

Part 5.7 Councillor DBS Checks and Safeguarding Protocol

Introduction

1. A Councillor's behaviour is covered by the Council's Code of Conduct (as required under the Localism Act 2011) which provides recourse to any member of the public wishing to make a complaint against a Councillors behaviour. That Code, however, does not make specific mention or reference to DBS checks and allegations about safeguarding.
2. The Code of Conduct, in the main, only applies to the conduct of a Councillor when acting or giving the impression that they are acting in their official capacity. It does not, therefore, always cover them in their 'private' life. Moreover, while the Council's Monitoring Officer has a duty to advise and consult an Independent Person appointed under s28(7) of the Localism Act 2011 on any action to be taken arising from a complaint regarding the conduct of members under the East Devon District Council Code of Conduct, it would be inappropriate to do so in any case where safeguarding issues had been raised without first referring to the Council's safeguarding procedures.
3. The Council has adopted a Safeguarding Policy which requires Councillors to undergo a basic DBS check. This Protocol therefore outlines the process for undertaking DBS checks and the risk assessment process that will be followed should the DBS check identify convictions.
4. This Protocol will form part of the Council's constitution. Failure to comply with it, will amount to a potential breach of the Code of Conduct pursuant to paragraph 5.8.5 of the Code of Conduct which states: *I will comply with the Codes and Protocols forming part of the Council's Constitution.*

DBS Checks and Risk Assessment

5. Following each District Council election the Council will, (or mid-term if a Councillor is elected mid-term) conduct a Basic DBS check for all Councillors which will be in place for a period of four years (a Council term), unless they notify the Council of a change, or the Council requires a new check following safeguarding concerns.
6. Councillor's will co-operate in providing all necessary information to enable the DBS check to be carried out. Once a Basic DBS check has been undertaken for that individual Councillor, a record of that will be retained on the Council's website.
7. Only where the DBS check identifies a criminal conviction will the Monitoring Officer be notified. In these circumstances, the following course of action must be undertaken in line with the approved Risk Assessment, attached at Appendix A. The Monitoring Officer will not

retain a copy of the DBS Certificate but will record the Certificate Number, date of Certificate, date of offence(s) disclosed, the type of offences and when they will be spent.

8. It is the responsibility of the Monitoring Officer to ensure all appropriate actions, guidance and notifications are taken in such cases.
9. The Monitoring Officer will first undertake an assessment of the risk to both vulnerable adults and/or children and/or the reputation of the Council, the risk of the Councillor (the subject Councillor) continuing to exercise any existing or proposed role - either on a conditional basis or with additional safeguards in place or whether it would be incompatible with the circumstances of the case for the subject Councillor to continue in a particular role at all.
10. The Monitoring Officer will also review the circumstances of the case with reference to the Code of Conduct to determine whether there are any political and/or standards issues involved and any potential case to answer.
11. Thereafter and following consultation with the Head of Paid Service and Corporate Safeguarding Lead (where appropriate) a discussion will be had with the Councillor in consultation with the relevant Group Leader.
12. Any such risk assessment must necessarily require an objective common-sense approach, having regard not only to the Council's responsibilities for safeguarding but the need for Councillors to maintain the highest standards of conduct in their professional lives and from a safeguarding perspective, their personal lives. Also important is the need for any person in public life and holding a position of special responsibility to be extra vigilant.
13. The Monitoring Officer can also consider the withdrawal of facilities/access and, exceptionally, any action required to ensure the continued protection of others as a result of the disclosure or of any action the Council may decide to take as a result of that risk assessment, including confidential notification to a third party to ensure that continued protection of others, consulting with the Chair of the Standards Committee as appropriate.
14. If a Basic check reveals that a Councillor has been sentenced to imprisonment for 3 months or more (including suspended sentences) during the last five years or has been convicted of a corrupt or illegal practice by an election court, then their seat will be lost.

Safeguarding

15. Councillors should operate within a safe working environment for children and adults at all times. If Councillors adhere to common sense principles of safe working this will not only benefit the work and reputation of the Council but help protect them (Councillors) as well.
16. Councillors should therefore ensure that they do not have or are not put in the position of having unsupervised contact with children and young people or vulnerable adults. Avoiding any such circumstances/unsupervised contact with vulnerable persons will help prevent the risk of any allegation of inappropriate behaviour being made.

17. Any safeguarding concerns as defined in the Safeguarding Policy should in the first instance be reported to the Corporate Safeguarding Lead, who, in liaison with the Monitoring Officer, shall take all necessary steps as indicated below including all appropriate notifications.
18. If the allegation is in relation to potential safeguarding concerns relating to the individual in their capacity, either as a councillor, or in any other working or volunteering role with children, the Council's Monitoring Officer will liaise directly with Council's Corporate Safeguarding Lead.
19. If the allegation relates to safeguarding concerns regarding the individual's behaviour with children in their personal life (e.g. as a parent or relative or friend), and the local authority is made aware of it, the Monitoring Officer will ensure a referral is made to the Devon Multi-Agency Safeguarding Hub (MASH). In these circumstances, Children's Services would undertake any assessment as appropriate and, if following this, concerns remain which could impact on the individual's role as a Councillor, also make a referral for LADO consideration.
20. It is recognised that not all Councillors will have direct contact with children and young people or vulnerable adults as part of their role, although some may.

Appendix A

PART A

DBS RISK AESSMENT CHECKLIST IN THE EVENT OF A POSITIVE DISCLOSURE	
Disclosure Certificate No:	
Date of Certificate:	
Full Name:	
Position check undertaken for:	
Councillor Level of Check	Basic/Standard/Enhanced
Convictions disclosed? If so, details	
Date(s) and place of conviction?	
RISK ASSESSMENT	
Questions to be considered by the Monitoring Officer as part of the Risk Assessment	
Question	Comments
Does the Councillor confirm that the information disclosed in the DBS Disclosure is accurate?	
What is the individual's attitude to the offence now?	
Will the Councillor be working unsupervised?	
Is the conviction now spent? Were/Are there any orders/requirements/conditions as a part of the conviction and are they relevant to rehabilitation or control of reoffending?	
Does the conviction disqualify the Councillor from being a councillor?	
Have circumstances changed since committing the offence(s)? What has the individual done to reduce the risk of re-offending i.e. rehabilitation, improved education, moved location, changed	

associates etc	
At the time of the offence were there any mitigating circumstances? (i.e. financial / domestic / alcohol / drugs	
Was this a 'one-off' offence? or repeat offending?	
What level of contact is there with children or vulnerable adults i.e. unsupervised.	
What level of personal contact is there with the public.	
Is there potential for reputational damage?	
Describe what preventative measure(s) could be put in place to reduce risk?	
Signature of Monitoring Officer and Date of Risk Assessment	

PART B – FURTHER ACTION REQUIRED

Please state any additional action required. Examples below.

Proposed action:

1.
2.
3.
4.
5.

Examples:

- Speak to Leader of the Council and / or Group Leader
- Consideration of Committee / Sub Committees / outside bodies appointments
- Exclude or restrict the Councillor's access to some or all District Council Premises or business;
- Any training required
- Withdraw facilities (e.g. computer access)
- Or other actions as defined in the Safeguarding Policy

Action Taken

6 Members Allowance Scheme

1. Introduction

2. The Local Authorities (Members' Allowances) (England) Regulations 2003 requires councils to establish and maintain an Independent Remuneration Panel which will broadly have the function of providing the authority with advice on its scheme of allowances and the amounts to be paid. Local authorities must have regard to this advice.

3. Basic Allowance

4. Every Member is paid a basic allowance, monthly in arrears. The basic allowance is £5,260 per annum, the Basic Allowance should increase each year on the 1st May in line with the average of the agreed National Joint Council Pay Award for staff. This index should be reviewed every 4 years.

5. Special Responsibility Allowances

6. Special Responsibility Allowances are paid effective 1st of June following the annual May meeting, Special Responsibility Allowance should increase each year on 1st June beginning in 2024 in line with the average of the agreed National Joint Council Pay Award for staff. This index should be reviewed every 4 years.

7. Where a member, with the agreement of the Leader of the Council, is acting in a capacity of a cabinet or portfolio holder for a significant period due to the incumbent being absent through sickness or extended leave of absence, that individual should, if not in receipt of a Special Responsibility Allowance, be paid the full agreed amount of the incumbent Special Responsibility Allowance. If they are already in receipt of a Special Responsibility Allowance and continue to receive it they should receive 50% of the Special Responsibility Allowance for that new post/responsibility.

8. Special Responsibility Allowances are as follows:

Role	Amount
Leader of Council	£14,477.00
Deputy Leader of Council	£4,021.00
Portfolio Holder Economy and Assets	£6,184.00
Portfolio Holder Sustainable Homes and Communities	£6,184.00
Portfolio Holder Tourism, Leisure, Sport and Culture	£6,184.00
Portfolio Holder Coast, Country and Environment	£6,184.00
Portfolio Holder Strategic Planning	£6,184.00
Portfolio Holder Council and Corporate Coordination	£6,184.00
Portfolio Holder Climate Action and Emergency Response	£6,184.00
Portfolio Holder Finance	£6,184.00

Chair of Council	£7,813.00
Vice Chair of Council	£2,988.00
Leader of the Opposition	£4,021.00
Deputy Leader of the Opposition	£1,549.00
Chair Audit and Governance Committee	£2,010.00
Chair Licensing and Enforcement Committee	£3,098.00
Vice Chair Licensing and Enforcement Committee	£836.00
Chair Planning Committee	£6,184.00
Vice Chair Planning Committee	£3,098.00
Chair Scrutiny Committee	£3,098.00
Chair Overview Committee	£2,010.00
Chair Housing Review Board	£3,098.00
Co-optees	
Housing Review Board	£550
Standards Committee	£400
Independent Remuneration Panel	£400

9. The Chair of the Strategic Planning Committee does not attract a special responsibility allowance because the position is undertaken by the Portfolio Holder for Strategic Planning, which already is in receipt of a special responsibility allowance.

10. Co-optees

11. Housing Review Board - Two independent representatives and five tenant representatives who are entitled to an allowance plus expenses.
12. Standards Committee - Four co-optees and two independent persons entitled to an allowance plus expenses.
13. Independent Remuneration Panel - Five co-optees entitled to an allowance plus expenses.
14. Arts and Culture Forum - Members of joint body are entitled to claim expenses only.

15. Travelling Allowances

16. Duties qualifying for the payment of travelling allowances for Members of the Council. The rules for Members claiming travelling expenses are summarised as being under three main headings. Below is a summary of the types of allowable claims under each heading:

Attending meetings which are called by the Council:

- 1.1.1.1 Attendance at Committees and Sub Committees – these are deemed to include Working Parties, Steering Groups, Consultative Committees, etc.
- 1.1.1.2 Meetings between Member(s) and Officers – formally arranged by the appropriate Director or Assistant Director.
- 1.1.1.3 In connection with the purpose or discharge of the Council functions.

Carrying out duties on behalf of the Council:

- a) Site visits and public meetings – attendance at site visits and formal meetings with the public or developers with other Members and Officers of the Council to which the Member has been invited by the appropriate Director or Assistant Director.
- b) Opening ceremonies, presentation of certificates, awards or other similar ceremonies for the purposes of carrying out the presentations etc, presentation of certificates and awards.
- c) Attendance at Planning or Other Local Inquiry – where a Member has been specifically requested in writing by the Chief Executive or other Chief Officer to give evidence (or prepare) on behalf of the Council.
- d) Official tours, civic days, etc. – attendance at official tours, civic or similar occasions subject to prior approval of appropriate Committee or appropriate Director or Assistant Director.
- e) Chairs and Vice Chairs – attendance by the Chairs or Vice Chairs of the Council (and the local Ward Member) at civic ceremonies or functions, etc.
- f) Opening of tenders – attendance at the opening of tenders when specifically requested to attend by the appropriate Member of the Senior Management Team.

Attending meetings of other bodies at which Members are representing the Council:

- a) Joint meetings between the Council, other local authorities and other bodies subject to such meetings being approved in advance by Committee or the appropriate Director or Assistant Director.
- b) Conferences, seminars, etc. – attendance at seminars, courses, “teach-ins”, or similar occasions subject to the approval of the appropriate Committee or appropriate Director or Assistant Director in consultation with the Chair of the Committee.
- c) Outside bodies – attendance at formal meetings of outside bodies as an elected representative of the Council, the subject of which has received Council Approval as being further to the interests on the functions of the Council or local government generally.
- d) Other – in those circumstances where a is satisfied that had time permitted the Council would have authorised the attendance of a Member at a meeting or a function, the purpose of which is related to a function or duty of the Council, provided such approval is given in advance of duty being undertaken.

17. For all other meetings and duties, for example, meetings with constituents, attending Parish Council meetings as elected Members of wards, no travelling expenses may be claimed.

18. Councillors **can** claim for attending Parish Council meetings in their Ward if they are not members of that Parish Council.

19. **Travelling Rates**

20. The rates of travel by a Member’s motor vehicle are based on the current HMRC approved mileage rates as agreed by Council on 6 December 2023:

- | | | |
|----|---------------------------------------|-------|
| a) | Mileage rate up to 10,000 miles | 0.45p |
| b) | Mileage rate over 10,000 miles | 0.25p |
| c) | Passenger rate per mile per passenger | |

	(maximum 4 passengers per journey)	0.05p
d)	Bicycle allowance per mile	0.20p

21. The rate of travel by taxi-cab shall not exceed:
- in cases of urgency or where no public transport is reasonably available, the amount of the actual fare and any reasonable gratuity paid; and
 - in any other case, the amount of the fare for travel by appropriate public transport.
22. The rate of travel by a hired motor vehicle other than a taxi-cab shall not exceed the rate which would have been applicable had the vehicle belonged to the Member, provided that the rate may be increased at the Director of Finance's discretion to an amount not exceeding the actual cost of hiring.
23. Where travel by air is the only effective means of travel or produces sufficient savings in time and/or other allowances, the rate shall not exceed the cheapest fare available.
24. **Subsistence Allowances and Rates**
25. Subsistence allowances may be claimed to meet the costs of meals, refreshments, accommodation etc., in connection with approved duties, and the rates shall not exceed:
- In the case of an absence, not involving an absence overnight, from the usual place of residence:
 - of more than 4 hours, £6.75 for breakfast (£8.29 in London)
 - of more than 4 hours, £9.43 for lunch (£15.36 in London)
 - of more than 4 hours, ending after 7pm, £11.56 for an evening meal (£15.36 in London); provided that, for meetings such as Council or Committee meetings, meals or refreshments may be provided by the Council, including on occasions where the absence from the residence may not exceed 4 hours.
 - Where such meals are provided or paid for separately by the Council, the appropriate subsistence allowance shall not be paid to a Member, unless the Member has unforeseen commitments that prohibit the taking of the meal.
 - In the case of an absence overnight from the usual place of residence, £95.00, or, for such an absence overnight in London or an annual conference of the Local Government Association or such other association of bodies as the Secretary of State may designate, £125.00. The cost for overnight accommodation above these limits will not be reimbursed but the Councillor is entitled to pay the difference.
 - The actual reasonable costs of meals taken on trains may be reimbursed.
 - All claims should be backed up with receipts.
26. **Child Care and Dependent Carer's Allowance**
27. A child care and dependant carer's allowance scheme was introduced on 1 April 2003. The child care and dependant carer's allowance is set at the National Living Wage, with a maximum amount of 5 hours able to be claimed in any one day. It may only be claimed in the circumstances set out in the Local Authorities (Members Allowances) (England) Regulations 2003 which is essentially when a carer for a dependant has been engaged to enable a

Member of the Council to carry out an approved duty. A carer will be any responsible person who does not normally live with the Member as part of that Member's family.

28. Payment of Allowances

29. Basic and Special Responsibility allowances will be paid monthly. Payment is made on the 25th of the month or the last working day prior to this date unless other arrangements have been notified.

30. Any Member not wishing to claim these allowances should inform Payroll Services, in writing.

31. Travelling and subsistence will be paid on receipt of duly completed claim forms with supporting receipts.

32. Statutory Sick Pay

33. Any Member who claims Members' allowances will be treated as employed by the Council for the sole purposes of this Act (but not otherwise) and can claim sick pay from the Council. There are several conditions that allow for the payment of statutory sick pay. You must have earnings that exceed the lower earnings limit and have been off sick for more than 4 continuous days on Council business.

34. To comply with this scheme, a Member must notify illness on the first day, but in any event not later than the fourth day and on the eighth day produce a Doctor's note. Sick payments will be made by the Council for a period of 28 weeks, thereafter by the Department of Work and Pensions.

35. Further advice concerning the payment of statutory sick pay is available from Payroll Services.

36. Maternity Pay and Leave

37. Members are entitled to be assessed for maternity pay entitlement if you are pregnant whilst holding office. Entitlement to Statutory Maternity Pay ("SMP") and leave will depend on your earnings level and Payroll Services will advise whether or not you are eligible on receipt of a copy of the relevant form (currently MATB1). If you are entitled to SMP, then this will be paid in the same way as your normal allowances on the basis set out below.

38. The Basic Allowance will be paid for the duration of the maternity leave irrespective of whether or not you are eligible for SMP.

39. If you are eligible for SMP then;

- a) If it is lower than the Basic Allowance then it will be paid as part of the Basic Allowance, or

- b) If it is higher than the Basic Allowance then the Basic Allowance will be increased to the SMP level.
- 40. It is the policy of this Council that any Special Responsibility Allowances will cease to be paid if you are unable to continue with those duties and they are transferred to another Councillor.
- 41. Payroll Services are responsible for administration of maternity pay and leave and you should contact them if you have any queries.

It should be noted it is a legal requirement that you do not go longer than 6 months without attending a meeting of the Council (or any of its committees or sub-committees) from the date of the last meeting you attended. If you are not going to be able to attend a meeting for over 6 months then you will need to obtain the approval of the Proper Officer prior to the 6 month period elapsing. A failure to do so will mean that you cease to be a Member of the Council.

Part 7 Management Structure

Simon Davey, Director of Finance and Interim Chief Executive

Libby Jarrett, Assistant Director - Revenues and Benefits

Tim Child, Assistant Director - Place, Assets and Commercialisation

Andrew Hopkins, Corporate Lead - Communications, Digital Services, Engagement and Strata Client Lead

John Symes, Finance Manager (Deputy S151 Officer)

Melanie Wellman, Director of Governance and Licensing and Interim Chief Executive

Ed Freeman, Assistant Director - Planning Strategy and Development Management

Jo Fellows, Corporate Lead - Human Resources and Payroll

Anita Williams, Legal Services Manager (Deputy Monitoring Officer)

Tracy Hendren, Director of Housing, Health and Environment and Interim Chief Executive

Emma Congerton, Assistant Director - Housing Strategy and Operations

Amy Gilbert-Jeans, Assistant Director - Housing Tenancy Services

Charlie Plowden - Assistant Director - Countryside and Leisure

Matthew Blythe, Assistant Director - Environmental Health

Andrew Wood, Assistant Director - Growth, Development and Prosperity

Andrew Hancock, Assistant Director - Streetscene

Part 8 STRATA Terms of Reference and Rules of Procedure

Terms of reference and rules of procedure for the Joint Executive Committee and Joint Scrutiny Committee

1 Introduction

1.1 The Delegation of Functions and Rules of Procedure set out in this document regulate the proceedings of the Joint Executive Committee (JEC) and Joint Scrutiny Committee (JSC), both of which were created by East Devon District Council, Exeter City Council and Teignbridge District Council to govern and scrutinise the operation and performance of Strata.

1.2 In this document the following words have the following meanings:

“Board” means the Strata board of directors;

“Chief Executive” means the Chief Executive of a Council and together the “Chief Executives”;

“Committee” means both the JEC and JSC (where the Rules differ between the two Committees, this will be explained);

“Council” means East Devon District Council, Exeter City Council or Teignbridge Council and together the “Councils”;

“Executive” means the Executive or Cabinet of the Councils;

“Leader” means a Leader of a Council and together the “Leaders”;

“Proper Officer” means Democratic Services Manager, Corporate Manager, Democratic and Civic Support

“Relevant Council” means the Council at which the next Committee meeting will be held;

“Solicitor” means the Solicitor to the Council, the Corporate Manager- Legal Head of Legal Services or for the Councils; and

“Strata” means Strata Service Solutions Ltd.

Section A – Delegation of Functions

1. Joint Executive Committee (JEC)

The Councils have appointed the JEC which will be responsible for the strategic governance of Strata. The JEC will make operational decisions for Strata in accordance with the business plan and service plans, which it will agree. The JEC will provide strategic direction to the Board and be accountable to the Councils as shareholders. The JEC’s responsibility for governance and performance includes budget monitoring, all of which will be supported by the JSC.

The Councils have each delegated to the JEC all those powers necessary to enable the proper operation of Strata, with the exception of the following decisions which are

reserved to the Executive of each of the Councils acting as shareholders of Strata (except for decisions over a capital or revenue expenditure outside the approved budget and business plan which shall specifically be reserved for Full Council to decide):

- Permitting the registration of any additional shareholders into Strata;
- Passing any resolution for its winding up or presenting any petition for its administration;
- Changing the company's name;
- Issuing shares;
- Amalgamating or merging with any other company or business undertaking;
- Forming any subsidiary or acquiring shares in any other company or participating in any joint venture;
- Decisions to extend the scope and nature of services to be provided by Strata, for example to provide HR, Accountancy or Legal services;
- Decisions to provide ICT services (or any other services) commercially for external clients or decisions that have an impact on the ability to use the Teckal procurement exemption;
- Declaring or making dividends or distributions of budgetary savings or assets of any kind; and
- Ceasing involvement in Strata as a participating shareholder.

2. **The Joint Scrutiny Committee (JSC)**

The Councils have appointed the JSC to scrutinise the operation and performance of Strata and its governance arrangements. More specifically the JSC's role is to:

- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the JEC's functions;
- make reports and/or recommendations to the Full Council of each Council and/or the JEC in connection with the discharge of any functions;
- exercise the right to call-in, for reconsideration decisions made but not yet implemented by the JEC;
- consider the decisions of the JEC that have been called-in and make recommendations to the JEC;
- appoint sub-committees, working parties and review group for particular matters; and
- report annually to each Full Council on its workings and make recommendations for amended working methods if appropriate.

Section B – Rules of Procedure

1. General

- 1.1 These Rules of Procedure (Rules) have been written to provide one set of bespoke procedural rules to govern the meetings of the Joint Committees established to govern and scrutinise Strata. They are designed to augment the existing constitutions

of the Councils.

1.2 The Chair of the Committee's view on the interpretation of these Rules is binding at the particular Committee.

1.3 These Rules may be reviewed at any time and any amendments must be made unanimously by the Councils following their respective decision making processes.

2. Ordinary Meetings

2.1 Ordinary meetings of the Committees will:

- (i) elect a person to chair the meeting which shall be on a rotational basis between the Councils with Chair to be appointed for 12 months unless agreed otherwise by the Committees;
- (ii) deal with any business required by statute to be done before any other business;
- (iii) approve the minutes of the last meeting;
- (iv) deal with business expressly required by statute to be done;
- (v) receive any communications or announcements from the Chair or the Leaders;
- (vi) deal with any business from the last meeting;
- (vii) consider motions;
- (viii) consider any other business specified in the summons to the meeting;

In addition to (i) – (viii) above the JEC shall:

- (ix) receive reports from the Board;
- (x) consider referrals made to it by the JSC;
- (xi) receive questions on the operation of Strata from members of the Councils and members of the public and provide answers to those questions;

In addition to (i) – (viii) above the JSC shall:

- (xii) receive reports on performance from the JEC and auditors; and
- (xiii) report to each Full Council of the Councils annually on the performance of the JEC and Strata.

2.2 The Committees may vary the order of business so as to give precedence to any business. However such a variation shall not displace business falling under items (i) and (ii) in this rule.

3. Extraordinary meetings

3.1 Calling extraordinary meetings: Those listed below may request a meeting of the Committee in addition to ordinary meetings:

- Any of the Councils by resolution;
- the Chair of any of the Councils;
- the Monitoring Officer of any of the Councils having first notified the Chair of the Councils; and

- the Board;
- any five Members of any of the Councils if they have signed a requisition presented to the Chair of their respective Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

3.2 Business: At an extraordinary meeting of the Committees the business to be conducted shall be limited to a single item in the form of a motion full details of which shall be set out on the summons calling the meeting.

4. Frequency, time and place of meetings

4.1 In the first year of operation of Strata, there shall be at least six meetings of the Committees.

4.2 From the second year of operation of Strata, the JEC and JSC can determine the frequency of the meetings following consideration of the Committee's projected workload. Extraordinary meetings of the Committees can be called in accordance with Section 3.3 above.

4.3 Meetings shall take place at the offices of the Councils on a rotational basis; the first of each Committee shall meet at the offices of East Devon District Council. Thereafter, the locations shall be Exeter City Council and then Teignbridge District Council.

4.4 The time and place of meetings will be determined by the Chief Executive of the Relevant Council and notified in the summons.

5. Notice of and summons to meetings

5.1 The Chief Executive of the Relevant Council will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the Chief Executive will send a summons signed by him or her by post to every member of the Committee or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

6. Chairing of meetings

6.1 The Chair of the Committee will be rotated and selected from the members of the Committee. The Chair will be appointed for a maximum period of 12 months unless otherwise agreed by the Committee.

6.2 The Chair does not have a casting vote

7. Committee Composition

- 7.1 JEC: The JEC shall comprise of three members being the Leaders of the Councils, each with an equal vote together with the Chief Executives or their nominee as non-voting co-opted members.
JSC: The JSC shall comprise three members of each of the Councils, to be appointed by the group leaders of the Councils. Each member of the JSC shall have an equal vote.
- 7.2 The Leaders and Chief Executives (or their nominee) may nominate a substitute to attend a meeting of the JEC provided that at least 24 hours' notice is given to the Proper Officer. Nominees of the Leaders must be members of the Council's Executive.
- 7.3 The members of the JSC may also nominate a substitute to attend a meeting of the JSC provided that at least 24 hours' notice has been given to the Proper Officer.
- 8. Quorum**
- 8.1 For the JEC the quorum is the three Leaders or their nominees.
- 8.2 For the JSC the quorum is three with at least one member from each Council.
- 8.3 During any meeting, if the Chair declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.
- 9. Voting**
- 9.1 Voting will be taken by a show of hands.
- 9.2 Each member has an equal vote.
- 9.3 The Chair does not have a casting vote.
- 9.4 For a decision taken at the JEC, a decision must be unanimous. At the JSC, a decision may be made by the majority of members present.
- 9.5 There will be no opportunity for a ballot vote.
- 9.6 If the meeting so decides (prior to a vote being taken) the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.
- 9.7 Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting. (This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations)

10. Questions and statements by the public

10.1 For both the JEC and JSC, subject to Paragraph 10.2, there shall be a fifteen minute period at the commencement of Committee meetings for members of the public to ask questions. Each individual questioner exercising a right during the public question time to be restricted to speaking for a total of three minutes.

10.2 Where a question does not relate to an agenda item, and a response is required from a member or an officer, the question must be submitted in writing to the Proper Officer of the Relevant Council not less than two working days before the meeting to give time for a response to be prepared. Where such advance notice is given, the questioner may ask a supplementary question at the meeting, if it is relevant to the original question.

10.3 The Chair of any meeting has the right and discretion to control question time to avoid disruption, repetition and wasting of meeting time.

11. Questions by Members

11.1 A member of the Councils may ask the Leader or Chair any question without notice upon an item of the report to the Committees when that item is being received or under consideration.

11.2 A member of any of the Councils may ask a question on notice relating to any function of Strata not to be considered at the Committee meeting provided that they have given at least two working days' notice in writing of the question to the Proper Officer or, where the question relates to urgent matters, they have the consent of the Chair to whom the question is to be put and the content of the question is given to the proper Officer of their Council by 9.15am on the day of the meeting.

11.3 An answer may take the form of:
(a) a direct oral answer;
(b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
(c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

11.4 A member asking a question under Rule 3.11.2 may ask one supplementary question without notice of the member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

12. Motions on notice

12.1 Notice:

Except for motions which can be moved without notice under Rule 11, written notice of every motion, signed by at least five members of a Council, must be delivered to that Council's Proper Officer not later than ten working days before the date of the meeting. These will be entered in a book open to public inspection.

12.2 Motion set out in agenda:

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

12.3 Clarification of motion on notice:

Where a motion on notice has been submitted in accordance with this Rule, and prior to the despatch of the agenda, the Chief Executive of the relevant Council may seek to clarify the purpose and/or wording of such a motion (such action may include recommending its rewording) so as to ensure that any such motion, if approved, is compliant with the Committee's legal and administrative powers.

12.4 Referral of motion to relevant committee:

Where the wording of the motion is not immediately relevant to the business of the Committee, the presumption is that it will be referred to the relevant Committee in the first instance to enable research to be properly carried out into the issue to facilitate a relevant and informed debate.

12.5 Leader's response to motion:

The Chair, at his discretion, may invite the Leader or his nominee to respond to a motion or a question.

12.6 Scope:

Motions must be about matters for which the Committee has a responsibility.

13. Motions without notice

13.1 The following motions may be moved without notice:

- (a) to appoint a Chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a committee or member arising from an item on the summons for the meeting;
- (f) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (g) to withdraw a motion;
- (h) to amend a motion;
- (i) to proceed to the next business;

- (j) that the question be now put;
- (k) to adjourn a debate;
- (l) to adjourn a meeting;
- (m) to suspend a particular procedure Rule;
- (n) to exclude the public and press in accordance with the Access to Information Rules;
- (o) to not hear further a member named under Rule 18.3 or to exclude them from the meeting under Rule 18.4; and
- (p) to give the consent of the Council where its consent is required by these Rules.

14. Rules of debate

- 14.1 No speeches until motion seconded
No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.
- 14.2 Right to require motion in writing
Unless notice of the motion has already been given, the Chair may require it to be written down and handed to him/her before it is discussed.
- 14.3 Secunder's speech
When seconding a motion or amendment, a member may reserve their speech until later in the debate.
- 14.4 Content and length of speeches
Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed five minutes without the consent of the Chair.
- 14.5 When a Member may speak again
A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:
- (a) to speak once on an amendment moved by another Member;
 - (b) to move a further amendment if the motion has been amended since he/she last spoke;
 - (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
 - (d) in exercise of a right of reply;
 - (e) on a point of order; and
 - (f) by way of personal explanation.
- 14.6 Amendments to Motions
- (a) An amendment to a motion must be relevant to the motion and will either be:
 - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;

- (ii) to leave out words;
- (iii) to leave out words and insert or add others; or
- (iv) to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion.

(b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

(c) If an amendment is not carried, other amendments to the original motion may be moved.

(d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

(e) After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

14.7 Alteration of motion

(a) A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

(b) A member may alter a motion that he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

(c) Only alterations that could be made as an amendment may be made.

14.8 Withdrawal of motion

A member may withdraw a motion that he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

14.9 Right of reply

(a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

(b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it. The proposer of the amendment shall also be entitled to reply

(c) A member exercising a right of reply shall not introduce new matter.

14.10 Motions that may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) to exclude the public and press in accordance with the Access to Information Rules; and
- (h) to not hear further a member named under Rule 3.19.2 or to exclude them from the meeting under Rule 3.19.3.

14.11 Closure motions

(a) A member may move, without comment, the following motions at the end of a speech of another member:

- (i) to proceed to the next business;
- (ii) that the question be now put;
- (iii) to adjourn a debate; or
- (iv) to adjourn a meeting.

(b) If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

(c) If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

(d) If a motion to adjourn the debate or to adjourn the meeting is seconded, and the Chair thinks the item has not been sufficiently discussed or cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

14.12 Point of order

A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Rules of Procedure or the law. The member must indicate the rule or law and the way in which he/she considers it

has been broken. The ruling of the Chair on the matter will be final.

14.13 Personal explanation

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member that may appear to have been misunderstood in the present debate. The ruling of the Chair on the admissibility of a personal explanation will be final.

15. Previous decisions and motions

15.1 Motion to rescind a previous decision.

A motion or amendment to rescind a decision made at a Committee meeting within the past six months cannot be moved unless the notice of motion is signed by at least 15 members, from a Council or the Councils.

15.2 Motion similar to one previously rejected

A motion or amendment in similar terms to one that has been rejected at a Committee meeting in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 15 members from a Council or the Councils. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

16. Minutes

16.1 Signing the minutes

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

16.2 There is no requirement to sign minutes of previous meeting at an extraordinary meeting.

16.3 Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under Paragraph 3 of Schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of Paragraph 41(1) and (2) of Schedule 12 relating to signing of minutes. This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations.

17. Record of attendance

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

18. Exclusion of public

18.1 Members of the public and press may only be excluded either in accordance with Rule 3.28 (Access to Information Rules) or Rule 20 (Disturbance by Public).

19. Members' conduct

19.1 Chair standing

When the Chair stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

19.2 Member not to be heard further

If a member persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

19.3 Member to leave the meeting

If the member continues to behave improperly after such a motion is carried, the Chair may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

19.4 Disclosable Pecuniary Interest

Unless a dispensation has been granted, a member shall not participate in any discussion of, or vote on, any matter in which they have a Disclosable Pecuniary Interest and having first declared to the meeting the existence and nature of that interest shall withdraw from the room where the meeting is being held at the commencement of the consideration of that business, or (if later) the time at which the interest becomes apparent.

Where the Disclosable Pecuniary Interest is sensitive (as defined on the Member Code of Conduct of the respective Councils) the member need not disclose the nature of that interest but must still state there is a Disclosable Pecuniary Interest and otherwise follow the requirements of the previous paragraph.

19.5 General disturbance

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as he/she thinks necessary.

20. Disturbance by public

20.1 Removal of member of the public

If a member of the public interrupts proceedings or is found to be recording the proceedings of the meeting (by video or otherwise) in a manner that is disruptive to business, the Chair will warn the person concerned. If they continue to interrupt or record the meeting contrary to the Chair's instructions, the Chair will order their

removal from the meeting room and the forfeiture of the unauthorised recording.

20.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.

21. Suspension and amendment of the Rules

21.1 Suspension

All of these Rules except Rule 3.9.7 and 3.16.3 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Committee are present. Suspension can only be for the duration of the meeting.

21.2 Amendment

Any motion to add to, vary or revoke these Rules will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of each of the Councils.

22. Motions affecting Staff

22.1 If any question arises at a meeting of the Committee to which the Local Government Act 1972 applies by virtue of Section 100(A)(4) concerning the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by Strata or the Councils, such question shall not be the subject of discussion until the Committee has decided whether or not the power of exclusion of the public under Section 100(A)(4) of the Local Government Act 1972 shall be exercised.

23. Call-in

23.1 A decision is made by the JEC but the decision does not come into effect until a Call-in period has elapsed.

23.2 Within two working days of the decision being made, the Proper Officer (which in this context means the Proper Officer of the Council whose members have exercised the power of call-in) will notify all members of the Councils of the decision. The notice will include the date of the notification and the date the decision will come into effect if there is no Call-in. The “effective date” of the decision which will be 09.00 am on the day after the expiry of three clear working days from the notification to members (Saturdays, Sundays and Bank Holidays are excluded). For example, in respect of a decision made by the JEC on a Wednesday, notification will be given to all members by Friday of the same week and the effective date of the decision will be 09.00 am on the following Thursday.

23.3 A request for a call-in of the decision must be received by the Proper Officer between the date of notification to members and the effective date of the decision.

- 23.4 For the call-in to be valid, the request must satisfy all of the following provisions:
- (i) Be in writing (on paper or e-mail);
 - (ii) Specify the relevant decision that is to be the subject of the Call-in;
 - (iii) Be supported by at least five members;
 - (iv) Written confirmation that such members have each considered all of the following matters before requesting a call-in of the decision:
 - (a) whether the decision is likely to cause distress, harm or significant concern to a local community, or to prejudice individuals within it;
 - (b) whether the matter has been subject to consultation or debate with relevant interested parties;
 - (c) whether the delay in implementing the decision is likely to cause significant harm to the Councils or others;
 - (d) whether the decision is against an approved policy or budget provision of the Councils or Strata;
 - (e) whether the decision was made against the advice of professional staff; or
 - (f) whether the views of the members requesting the call-in were taken into account in arriving at the decision.
 - (v) Stating the reasons for the call-in of the decision.
- 23.5 Once the Proper Officer is satisfied that the request is a valid request, they shall arrange for the JSC to consider the call-in at the next scheduled meeting or if the Proper Officer and Chair of the JSC consider that the matter cannot wait until the next scheduled meeting, the Proper Officer shall convene a JSC as soon possible on a date which is acceptable to the Chair of the JSC.
- 23.6 If having considered the decision, the JSC is still concerned about it, the Committee may refer it back to the JEC for reconsideration, setting out in writing the nature of its concerns.
- 23.7 If referred to the JEC, the JEC shall consider the concerns, amending the decision or not, before adopting a final decision.
- 23.8 **Exceptions:** In order to ensure that call-in is not abused, nor causes unreasonable delay certain limitations are placed on its use. These are:
- (i) only decisions involving expenditure or reductions in service over a value of £10,000 may be called in;
 - (ii) If in the opinion of the Proper Officer the power of call-in is being abused with the apparent intention of unreasonably disrupting the JEC's decision making process they may refuse to accept any or all requests.
- 23.9 **Urgent decisions** shall be excluded from the call-in process. What constitutes an urgent decision will be agreed between the Chief Executives and the Leaders and the Chair of

the JSC. The reason why the decision was urgent shall be recorded.

Referral to Councils

23.10 When considered by the JSC, the matter may be referred back to the JEC for further consideration or in exceptional circumstances, i.e. a matter of significance for the Councils affecting the strategic direction of Strata, referred to the Councils for further consideration and referral back to the JEC. Whether the matter is considered exceptional will be agreed between the Chief Executives and the Leaders and the Chair of the JSC or if not fewer than three quarters of the JSC members consider the matter is exceptional. When considered by the Councils or the JSC, the matter will need to go back to the JEC in the form of a report with recommendations in the name of the JSC or the Chairs of the Councils.

23.11 A matter which has been the subject of a call-in may not be the subject of a second call-in unless requested by at least one third of the total membership of a Council. In those circumstances, the matter will be referred back to the Full Council of each of the Councils. It will be subject to decision by Full Council only if it is outside of the budget or policy framework for Strata. If it falls within the budget and policy framework it will be referred back to the JEC for a decision.

24. Inspection of documents

24.1 A member of the Council may for the purposes of his duty as a member but not otherwise inspect any document that contains material relating to any business to be transacted, or which has been considered, at a meeting of the Committee. If copies are available they shall be supplied on request.

24.2 A member shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which he is professionally interested; or has a Disclosable Pecuniary Interest within the meaning of the Code of Conduct for members.

24.3 This Rule shall not preclude a Chief Executive or Solicitor from declining to allow inspection of any document which is or in the event of legal proceedings would be protected by privilege arising from the relationship of solicitor and client or where it appears to the Chief Executive that a document discloses exempt information of a description set out in Section 100F(2) of the Local Government Act 1972.

24.4 All minutes of the Committees shall be open for the inspection of any member of the Councils during office hours.

25. Inspection of land, premises etc

A member of a Council unless authorised to do so by a Council or Committee, shall not have the right to inspect any lands or premises which the Councils have the right or

duty to inspect, or enter upon or issue any order respecting any works which are being carried out by or on behalf of the Councils.

26. Proceedings at meetings

26.1 No person shall disclose "confidential information" or "exempt information" in any circumstances. However this Rule shall not forbid disclosure of the resolution or any recommendation which has been made or other contents of the relevant minute.

26.2 In the event of any member disclosing such information, he/she shall be liable to investigation by their Council's Monitoring Officer and report to the Standards Committee.

27. Attendance when not a Committee Member

27.1 A member who has proposed a motion which has been referred to a Committee shall have notice of the meeting of the Committee at which it is proposed to consider the motion, and if he attends, shall have an opportunity of explaining it.

27.2 A member of the Council may attend all proceedings of the Committees.

27.3 A member who wishes to raise any matter appropriate to a Committee of which he is not a member, may do so by giving notice in writing to the Proper Officer of their Council at least two clear days before the next ordinary meeting of the appropriate Committee. The member may also attend a special meeting if the matter in which he is interested is to be discussed by that special meeting. Such notice shall contain particulars of the matter that they wish to raise. They shall then have the right to explain and discuss the matter.

27.4 Any member attending a Committee meeting of which he is not a member shall not be able to propose or second any motion nor to vote at that meeting. Except as otherwise provided in this Rule they shall not be entitled to speak at that meeting (except with the consent of the Chair).

28. Access to Information

28.1 Additional Rights to Information

These Rules do not affect any more specific rights to information afforded by law.

28.2 Rights to Attend Meetings

Members of the public may attend all public meetings subject only to the exceptions in these Rules.

28.3 Notices of Meeting

At least five clear days' notice will be given of any meeting by posting details of the meeting at the Councils' offices and placed on the Councils' websites.

28.4 Access to Agenda and Reports before the Meeting

The Council hosting the Committee meeting will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear working days before the meeting and on its website. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer for the Council shall make each such report available to the public as soon as the report is completed and sent to members) will be open to inspection for the time the item was added to the agenda.

28.5 Supply of Copies

The Council hosting the meeting will supply copies of:

- (i) any agenda and reports which are open to public inspection;
- (ii) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (iii) if the Chief Executive or Monitoring Officer of the Council hosting the Committee meeting think fit, copies of any other documents supplied to members in connection with an item to any person on payment of a charge for postage and any other costs.

28.6 Access to minutes etc after the meeting

The Council which hosted the Committee meeting will make available copies of the following for six years after a meeting:

- (i) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Committee, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (ii) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (iii) the agenda for the meeting; and
- (iv) reports relating to items when the meeting was open to the public.

28.7 Background Papers

List of background papers: The proper officer of the Council hosting the Committee meeting will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- disclose any facts or matters on which the report or an important part of the report is based; and
- which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information.

29. Key Decisions

- 29.1 A “Key Decision” means a decision of the JEC which is likely:
(a) to result in Strata or the Councils incurring expenditure which is, or the making of savings which are, significant having regard to Strata’s or the Councils’ budgets for the service or function to which the decision relates; or
(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Councils’ areas;
- 29.2 In accordance with Section 38 of the Local Government Act 2000, in determining the meaning of “significant” regard shall be had to any guidance for the time being issued by the Secretary of State.
- 29.3 A decision taker may only make a key decision in accordance with the requirements of these Rules.
- 29.4 Only the JEC may take Key Decisions.
- 29.5 The JEC shall publish a forward plan of anticipated Key Decisions.
- 29.6 Notice of Key Decision
Subject to the general exception and urgency provisions below, no Key Decision may be taken unless:
(i) a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;
(ii) at least 28 clear days have elapsed since the publication of the Notice of Key Decision; and
(iii) where the decision is to be taken at a meeting of the JEC notice of the meeting has been given in accordance with Rule 3.5 (notice of meetings).
- 29.7 Contents of Notice of Key Decision
The Notice of Key Decision will state that a key decision is to be taken by the JEC and it will describe the following particulars:
(i) the matter in respect of which the decision is to be made;
(ii) the date on which, or the period within which, the decision is to be made;
(iii) a list of the documents submitted to the decision maker for consideration in relation to the matter;
(iv) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
(v) that other documents relevant to those matters may be submitted to the decision maker; and
(vi) procedure for requesting details of those documents (if any) as they become available.
- 29.8 Publication of the Notice of Key Decision

The Notice of Key Decision must be made available for inspection by the public at the offices of the Relevant Council of the next JEC meeting at which the Key Decision is to be made.

- 29.9 Exempt information need not be included in a Forward Plan and confidential information cannot be included.
- 29.10 **The Forward Plan**
The Councils are not required by law to publish a forward plan. However, the Notice of Key Decision published by the relevant Council set out not just details of specific key decisions, but also details of key decisions over a four month period (including important decisions to be made by the JEC).
- 29.11 **General Exception**
If a Notice of Key Decision has not been published, then subject to Rule 29.13 (special urgency), the decision may still be taken if:
(i) the decision must be taken by such a date that it is impracticable to publish a Notice of Key Decision;
(ii) the Proper Officer of the relevant Council has informed the Chair of the next JSC Committee meeting the matter about which the decision is to be made;
(iii) the Proper Officer of the relevant Council has made copies of that notice available to the public at the offices of the relevant Council and on the Councils' websites; and
(iv) at least five clear days have elapsed since the Proper Officer complied with 29 (ii) and 29 (iii)
- 29.12 As soon as reasonably practicable after the Proper Officer of the relevant Council has complied with Rule 29.11, they must make available at the Councils' offices and publish on the Councils' websites the reasons why compliance with issuing a Notice of Key Decision was impractical.
- 29.13 **Special Urgency**
If by virtue of the date by which a Key Decision must be taken Rule 29.11 (general exception) cannot be followed, then the Key Decision can only be taken if the Chief Executive of the relevant Council obtains the agreement of the Chair of the next JSC Committee meeting.
- 29.14 As soon as reasonably practicable after the Chief Executive of the relevant Council has obtained agreement under Rule 3.29.13 they must make available at the Councils' offices and publish on the Councils' websites the reasons why the meeting is urgent and cannot reasonably be deferred.

Part 9 South East Devon Habitat Regulations Executive Committee

Terms of reference and rules of procedure

1 Introduction

- 1.1 The Delegation of Functions and Rules of Procedures set out in this document regulate the proceedings of the Habitat Regulations Executive Committee (HREC) which was created by East Devon District Council, Exeter City Council and Teignbridge District Council as the South East Devon Habitat Regulations Joint Committee to govern delivery of mitigation measures as set out in the South East Devon European Site Mitigation Strategy and the emerging Pebblebed Heaths Visitor Management Plan.
- 1.2 The South East Devon European Site Mitigation Strategy and the emerging Pebblebed Heaths Visitor Management Plan are required to ensure timely and effective mitigation arising from new development with the potential to impact three sites of European wildlife importance, namely the;
Exe Estuary Special Protection Area and Ramsar Site, Dawlish Warren Special Area of Conservation, and East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area
- 1.3 The Councils have delegated all the necessary decision making powers to enable the Habitat Regulations Executive Committee to operate so as to deliver the identified mitigation measures.
- 1.4 In carrying out its role the Habitat Regulations Executive Committee shall, where necessary, act as a competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010.
- 1.5 East Devon District Council will be responsible for holding and administering developer contributions and community infrastructure levy receipts and to provide advice and guidance on all financial matters. Legal advice and guidance will be agreed between the authorities.
- 1.6 In this document the following words have the following meanings:
 “Chief Executive” means the Chief Executive of a Council and together the “Chief Executives”;
 “Committee” means HREC;
 “Council” means East Devon District Council, Exeter City Council or Teignbridge Council and together the “Councils”;
 “Executive” means the Executive or Cabinet of the Councils;
 “Proper Officer” means Democratic Services Manager, Corporate Manager, Democratic and Civic Support

“Relevant Council” means the Council at which the next Committee meeting will be held.

Section A – Delegation of Functions

1. Habitat Regulations Executive Committee (HREC)

The Councils have appointed the HREC which will make the operational decisions on behalf of the Councils to implement and deliver measures to mitigate against the impact of development pressures. Those decisions will be taken in accordance with a 5 year Delivery Programme and the Business Plan, both of which the HREC shall agree at its first meeting. Thereafter the 5 year Delivery Programme shall be reviewed every 5 years and the Business Plan annually.

Other functions that are within the remit of the HREC include:

- Monitoring the implementation and effectiveness of the mitigation measures and agree changes where necessary.
- Ensure that there is a simple and transparent audit trail linking S106 and CIL financial allocations for European site mitigation, and the works and projects that deliver mitigation. Allocate budget accordingly, taking account of other arising mitigation opportunities.
- Secure the cooperation of all stakeholders.
- Monitor risks, progress and effectiveness of delivery.
- Identify, lobby for and secure complementary funds.
- Monitor and review the delivery of the South-East Devon European Site Mitigation Strategy (and when adopted the Pebblebed Heaths Visitor Management Plan) quarterly and publish a progress report annually.
- Formally advise on any emerging requirements for refreshing the evidence base used to determine the Strategy (and when adopted the Plan).
- To include reviews of developer contribution charges in line with inflation/index linking and funding mitigation expenditure in perpetuity.
- Establish and maintain a financial model that ensures delivery of mitigation in perpetuity.
- Liaise between partner organisations and share best practice.
- Ensuring that a record is kept of planning proposals which are agreed through the planning process to satisfy their own mitigation requirements (and as such do not form part of the mitigation Strategy).

Section B – Rules of Procedure

1. General

- 1.1 These Rules These Rules of Procedure (Rules) have been written to provide one set of bespoke procedural rules to govern the meetings of the Committee established to govern delivery of habitat mitigation as set out in the Introduction and Section A above.
- 1.2 The Chair of the Committee’s view on the interpretation of these Rules is binding at the particular Committee.
- 1.3 These Rules may be reviewed at any time and any amendments must be made in accordance with the delegated authorities given by the Councils.

2. Ordinary Meetings

- 2.1 Ordinary meetings of the Committees will:
- (i) deal with any business required by statute to be done before any other business;
 - (ii) approve the minutes of the last meeting;
 - (iii) deal with business expressly required by statute to be done;
 - (iv) receive any communications or announcements from the Chair or the Councils;
 - (v) deal with any business from the last meeting;
 - (vi) consider motions;
 - (vii) consider any other business specified in the summons to the meeting;

In addition to (i) – (vii) above the HREC shall:

- (viii) receive reports from the Delivery Officer and/or the Officer Working Group;
- (ix) consider referrals made to it by any of the Councils’ relevant scrutiny Committees;
- (x) receive questions on the operational matters of the HREC from members of the Councils and members of the public and provide answers to those questions;

In addition to (i) – (vii) above each authority’s relevant Scrutiny Committee shall:

- (xi) receive reports on performance from the HRED; and
- (xii) report to each Executive Committee of the Councils annually on the performance of the HREC.

- 2.2 The Committee may vary the order of business so as to give precedence to any business. However such a variation shall not displace business falling under items (i) in this rule.

3. Extraordinary meetings

- 3.1 Calling extraordinary meetings: Those listed below may request a meeting of the Committee in addition to ordinary meetings:
- Any of the Executives of the Councils by resolution;
 - the Chair of any of the Councils;

- the Monitoring Officer of any of the Councils having first notified the Chair of the Councils; and
- any five Members of any of the Councils if they have signed a requisition presented to the Chair of their respective Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition.

3.2 Business: At an extraordinary meeting of the HREC the business to be conducted shall be limited to a single item in the form of a motion full details of which shall be set out on the summons calling the meeting.

4. Frequency, time and place of meetings

4.1 In the first year of operation of the HREC, there shall be at least four meetings of the HREC.

From the second year, the HREC can determine the frequency of the meetings following consideration of the HREC's projected workload. Extraordinary meetings of the HREC can be called in accordance with Rule 3 above.

4.2 Meetings shall take place at the offices of the HREC's then Chair.

4.3 The time and place of meetings will be determined by the Chief Executive of the Relevant Council and notified in the summons.

5. Notice of and summons to meetings

5.1 The Chief Executive of the Relevant Council will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the Chief Executive will send a summons signed by him or her by post to every member of the Committee or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

6. Chairing of meetings

6.1 The Chair of the HREC will be appointed for a maximum period of 12 months rotating thereafter between the Councils. For the first year the Chair will be from East Devon District Council, and then Exeter City Council, and then Teignbridge District Council.

6.2 The Chair does not have a casting vote

7. Committee Composition

7.1 The HREC shall comprise;

- three members one from each of the Councils, each with an equal vote and shall where possible be the Portfolio Holder responsible for any of sustainable development, strategic planning, environment or similar function

- one person from each of the bodies listed below all of which shall be non-voting positions;
- Natural England
- Green Infrastructure Board.

8. Quorum

- 8.1 For the HREC the quorum is the three Council members or their nominees.
- 8.2 During any meeting, if the Chair declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair or when the meeting becomes quorate again. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

9. Voting

- 9.1 Voting will be taken by a show of hands.
- 9.2 Each member has an equal vote.
- 9.3 The Chair does not have a casting vote.
- 9.4 For a decision taken at the HRED, a decision must be unanimous.
- 9.5 There will be no opportunity for a ballot vote.
- 9.6 If the meeting so decides (prior to a vote being taken) the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.
- 9.7 Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting. (This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations)

10. Questions and statements by the public

- 10.1 For the HREC, subject to Paragraph 3.10.2, there shall be a fifteen minute period at the commencement of Committee meetings for members of the public to ask questions. Each individual questioner exercising a right during the public question time to be restricted to speaking for a total of three minutes.
- 10.2 Where a question does not relate to an agenda item, and a response is required from a member or an officer, the question must be submitted in writing to the Proper Officer of the Relevant Council not less than two working days before the meeting to give time for a response to be prepared. Where such advance notice is given, the questioner may

ask a supplementary question at the meeting, if it is relevant to the original question.

- 10.3 The Chair of any meeting has the right and discretion to control question time to avoid disruption, repetition and wasting of meeting time.

11. Questions by Members

- 11.1 A member of the Councils may ask the HREC any question without notice upon an item of the report to the HREC when that item is being received or under consideration.

- 11.2 A member of any of the Councils may ask a question on notice relating to any function of the HREC not to be considered at the Committee meeting provided that they have given at least two working days' notice in writing of the question to the Proper Officer or, where the question relates to urgent matters, they have the consent of the Chair to whom the question is to be put and the content of the question is given to the proper Officer of their Council by 9.15am on the day of the meeting.

- 11.3 An answer may take the form of:
 (a) a direct oral answer;
 (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
 (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

- 11.4 A member asking a question under Rule 11.2 may ask one supplementary question without notice of the member to whom the first question was asked. The supplemental question must arise directly out of the original question or the reply.

12. Motions on notice

- 12.1 Notice:
 Except for motions which can be moved without notice under Rule 11, written notice of every motion, signed by at least five members of a Council, must be delivered to that Council's Proper Officer not later than ten working days before the date of the meeting. These will be entered in a book open to public inspection.

- 12.2 Motion set out in agenda:
 Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

- 12.3 Clarification of motion on notice:
 Where a motion on notice has been submitted in accordance with this Rule, and prior to the despatch of the agenda, the Chief Executive of the relevant Council may seek to clarify the purpose and/or wording of such a motion (such action may include

recommending its rewording) so as to ensure that any such motion, if approved, is compliant with the Committee's legal and administrative powers.

12.4 Referral of motion to relevant committee:

Where the wording of the motion is not immediately relevant to the business of the Committee, the presumption is that it will be referred to the relevant Committee in the first instance to enable research to be properly carried out into the issue to facilitate a relevant and informed debate.

12.5 Committee's response to motion:

The Chair, at his/her discretion, may invite any member (or his/her nominee) or officer to respond to a motion or a question.

12.6 Scope:

Motions must be about matters for which the Committee has a responsibility.

13. Motions without notice:

13.1 The following motions may be moved without notice:

- (a) in relation to the accuracy of the minutes;
- (b) to change the order of business in the agenda;
- (c) to refer something to an appropriate body or individual;
- (d) to appoint a committee or member arising from an item on the summons for the meeting;
- (e) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business;
- (i) that the question be now put;
- (j) to adjourn a debate;
- (k) to adjourn a meeting;
- (l) to suspend a particular procedure Rule;
- (m) to exclude the public and press in accordance with the Access to Information Rules;
- (n) to not hear further a member named under Rule 3.18.3 or to exclude them from the meeting under Rule 3.18.4; and
- (o) to give the consent of the Council where its consent is required by these Rules.

14. Rules of debate

14.1 No speeches until motion seconded

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

14.2 Right to require motion in writing

Unless notice of the motion has already been given, the Chair may require it to be written down and handed to him/her before it is discussed.

14.3 Secunder's speech

When seconding a motion or amendment, a member may reserve their speech until later in the debate.

14.4 Content and length of speeches

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed five minutes without the consent of the Chair.

14.5 When a Member may speak again

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) to speak once on an amendment moved by another Member;
- (b) to move a further amendment if the motion has been amended since he/she last spoke;
- (c) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

14.6 Amendments to Motions

(a) An amendment to a motion must be relevant to the motion and will either be:

- (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
- (ii) to leave out words;
- (iii) to leave out words and insert or add others; or
- (iv) to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion.

(b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

(c) If an amendment is not carried, other amendments to the original motion may be moved.

(d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are

moved.

(e) After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

14.7 Alteration of motion

(a) A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

(b) A member may alter a motion that he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

(c) Only alterations that could be made as an amendment may be made.

14.8 Withdrawal of motion

A member may withdraw a motion that he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

14.9 Right of reply

(a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

(b) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it. The proposer of the amendment shall also be entitled to reply

(c) A member exercising a right of reply shall not introduce new matter.

14.10 Motions that may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

(a) to withdraw a motion;

(b) to amend a motion;

(c) to proceed to the next business;

(d) that the question be now put;

(e) to adjourn a debate;

(f) to adjourn a meeting;

(g) to exclude the public and press in accordance with the Access to Information Rules; and

(h) to not hear further a member named under Rule 3.19.2 or to exclude them from the meeting under Rule 3.19.3.

14.11 Closure motions

(a) A member may move, without comment, the following motions at the end of a speech of another member:

- (i) to proceed to the next business;
- (ii) that the question be now put;
- (iii) to adjourn a debate; or
- (iv) to adjourn a meeting.

(b) If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

(c) If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

(d) If a motion to adjourn the debate or to adjourn the meeting is seconded, and the Chair thinks the item has not been sufficiently discussed or cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

14.12 Point of order

A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Rules of Procedure or the law. The member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final.

14.13 Personal explanation

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member that may appear to have been misunderstood in the present debate. The ruling of the Chair on the admissibility of a personal explanation will be final.

15. Previous decisions and motions

15.1 Motion to rescind a previous decision.

A motion or amendment to rescind a decision made at a Committee meeting within the past six months cannot be moved unless the notice of motion is signed by at least 15 members, from a Council or the Councils.

- 15.2 Motion similar to one previously rejected
A motion or amendment in similar terms to one that has been rejected at a Committee meeting in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 15 members from a Council or the Councils. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

16. Minutes

- 16.1 Signing the minutes
The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.
- 16.2 There is no requirement to sign minutes of previous meeting at an extraordinary meeting.
- 16.3 Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under Paragraph 3 of Schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of Paragraph 41(1) and (2) of Schedule 12 relating to signing of minutes. This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations.

17. Record of attendance

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

18. Exclusion of public

Members of the public and press may only be excluded either in accordance with Rule 3.28 (Access to Information Rules) or Rule 3.20 (Disturbance by Public).

19. Members' conduct

- 19.1 Chair standing
When the Chair stands during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.
- 19.2 Member not to be heard further
If a member persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the member be

not heard further. If seconded, the motion will be voted on without discussion.

19.3 Member to leave the meeting

If the member continues to behave improperly after such a motion is carried, the Chair may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

19.4 Disclosable Pecuniary Interest

Unless a dispensation has been granted, a member shall not participate in any discussion of, or vote on, any matter in which they have a Disclosable Pecuniary Interest and having first declared to the meeting the existence and nature of that interest shall withdraw from the room where the meeting is being held at the commencement of the consideration of that business, or (if later) the time at which the interest becomes apparent.

Where the Disclosable Pecuniary Interest is sensitive (as defined on the Member Code of Conduct of the respective Councils) the member need not disclose the nature of that interest but must still state there is a Disclosable Pecuniary Interest and otherwise follow the requirements of the previous paragraph.

19.5 General disturbance

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as he/she thinks necessary.

19.6 Code of Conduct

Appointment members to the Committee remain subject to the adopted Code of Conduct of their respective Councils.

20. Disturbance by public

20.1 Removal of member of the public

If a member of the public interrupts proceedings or is found to be recording the proceedings of the meeting (by video or otherwise) in a manner that is disruptive to business, the Chair will warn the person concerned. If they continue to interrupt or record the meeting contrary to the Chair's instructions, the Chair will order their removal from the meeting room and the forfeiture of the unauthorised recording.

20.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.

21. Suspension and amendment of the Rules

21.1 Suspension

All of these Rules except Rule 9.7 and 16.3 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Committee are present. Suspension can only be for the duration of the meeting.

21.2 Amendment

Any motion to add to, vary or revoke these Rules will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of each of the Councils, or until each Council has approved the amendment in accordance with the relevant delegated authority given by that Council.

22. Motions affecting Staff

If any question arises at a meeting of the Committee to which the Local Government Act 1972 applies by virtue of Section 100(A)(4) concerning the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by Strata or the Councils, such question shall not be the subject of discussion until the Committee has decided whether or not the power of exclusion of the public under Section 100(A)(4) of the Local Government Act 1972 shall be exercised.

23. Call-in

- 23.1 A decision is made by the HREC but the decision does not come into effect until a Call-in period has elapsed.
- 23.2 Within two working days of the decision being made, the Proper Officer (which in this context means the Proper Officer of the Council where the last meeting was held) will notify all members of the Councils of the decision. The notice will include the date of the notification and the date the decision will come into effect if there is no Call-in. The “effective date” of the decision which will be 10.00 am on the day after the expiry of five clear working days from the notification to members (Saturdays, Sundays and Bank Holidays are excluded). For example, in respect of a decision made by the HREC on a Wednesday, notification will be given to all members by Friday of the same week and the effective date of the decision will be 10.00 am on the following Monday.
- 23.3 A request for a call-in of the decision must be received by the Proper Officer (which in this context means the Proper Officer of Council whose members have exercised the power of call-in) between the date of notification to members and the effective date of the decision.
- 23.4 For the call-in to be valid, the request must comply with the respective authorities call-in procedures.
- 23.5 If the matter is referred back to the HREC after consideration by an authorities relevant Scrutiny Committee, the HREC shall consider the concerns, amending the decision or not, before adopting a final decisions.

- 23.6 **Urgent decisions** shall be excluded from the call-in process. What constitutes an urgent decision will be agreed between the Chief Executives and the voting members of the HREC and the Chair of each authority's relevant Scrutiny Committee. The reason why the decision was urgent shall be recorded.

Referral to Councils

- 23.7 When considered by each authority's relevant Scrutiny Committee, the matter may be referred back to the HREC for further consideration or in exceptional circumstances, i.e. a matter of significance for the Councils affecting the strategic importance of habitat mitigation, referred to the Councils for further consideration and then referral back to the HREC. Whether the matter is considered exceptional will be agreed between the Chief Executives and the voting members of the HREC and the Chair of each authority's relevant Scrutiny Committee. When considered by the Councils, the matter will need to go back to the HREC in the form of a report with recommendations from the Chairs of each of the Council's relevant Scrutiny Committee.

Limit on number of call-ins

- 23.8 A matter which has been the subject of a call-in by one Council may not be the subject of a second call-in by the same Council.
- 23.9 Each of the Councils may call in a decision of the HREC.

24. Inspection of documents

- 24.1 A member of the Council may for the purposes of his duty as a member but not otherwise inspect any document that contains material relating to any business to be transacted, or which has been considered, at a meeting of the Committee. If copies are available they shall be supplied on request.
- 24.2 A member shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which he is professionally interested; or has a Disclosable Pecuniary Interest within the meaning of the Code of Conduct for members.
- 24.3 This Rule shall not preclude a Chief Executive or Solicitor from declining to allow inspection of any document which is or in the event of legal proceedings would be protected by privilege arising from the relationship of solicitor and client or where it appears to the Chief Executive that a document discloses exempt information of a description set out in Section 100F(2) of the Local Government Act 1972.
- 24.4 All minutes of the Committees shall be open for the inspection of any member of the Councils during office hours.

25. Inspection of land, premises etc

A member of a Council unless authorised to do so by a Council or Committee, shall not have the right to inspect any lands or premises which the Councils have the right or duty to inspect, or enter upon or issue any order respecting any works which are being carried out by or on behalf of the Councils.

26. Proceedings at meetings

26.1 No person shall disclose "confidential information" or "exempt information" in any circumstances. However this Rule shall not forbid disclosure of the resolution or any recommendation which has been made or other contents of the relevant minute.

26.2 In the event of any member disclosing such information, he/she shall be liable to investigation by their Council's Monitoring Officer and report to the Standards Committee.

27. Attendance when not a Committee Member

27.1 A member who has proposed a motion which has been referred to a Committee shall have notice of the meeting of the Committee at which it is proposed to consider the motion, and if he attends, shall have an opportunity of explaining it.

27.2 A member of the Council may attend all proceedings of the Committees.

27.3 A member who wishes to raise any matter appropriate to a Committee of which he is not a member, may do so by giving notice in writing to the Proper Officer of their Council at least two clear days before the next ordinary meeting of the appropriate Committee. The member may also attend a special meeting if the matter in which he is interested is to be discussed by that special meeting. Such notice shall contain particulars of the matter that they wish to raise. They shall then have the right to explain and discuss the matter.

27.4 Any member attending a Committee meeting of which he is not a member shall not be able to propose or second any motion nor to vote at that meeting. Except as otherwise provided in this Rule they shall not be entitled to speak at that meeting (except with the consent of the Chair).

28. Access to Information

28.1 Additional Rights to Information

These Rules do not affect any more specific rights to information afforded by law.

28.2 Rights to Attend Meetings

Members of the public may attend all public meetings subject only to the exceptions in these Rules.

28.3 Notices of Meeting

At least five clear days' notice will be given of any meeting by posting details of the meeting at the Councils' offices and placed on the Councils' websites.

28.4 Access to Agenda and Reports before the Meeting

The Council hosting the Committee meeting will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear working days before the meeting and on its website. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer for the Council shall make each such report available to the public as soon as the report is completed and sent to members) will be open to inspection for the time the item was added to the agenda.

28.5 Supply of Copies

The Council hosting the meeting will supply copies of:

- (i) any agenda and reports which are open to public inspection;
- (ii) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (iii) if the Chief Executive or Monitoring Officer of the Council hosting the Committee meeting think fit, copies of any other documents supplied to members in connection with an item to any person on payment of a charge for postage and any other costs.

28.6 Access to minutes etc after the meeting

The Council which hosted the Committee meeting will make available copies of the following for six years after a meeting:

- (i) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Committee, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (ii) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (iii) the agenda for the meeting; and
- (iv) reports relating to items when the meeting was open to the public.

28.7 Background Papers

List of background papers: The proper officer of the Council hosting the Committee meeting will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- disclose any facts or matters on which the report or an important part of the report is based; and
- which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information.

29. Key Decisions

- 29.1 A “Key Decision” means a decision of the HREC which is likely:
- (a) to result in the Committee or any of the Councils incurring expenditure which is, or the making of savings which are, significant having regard to the Committee’s or the Councils’ budgets for the service or function to which the decision relates; or
 - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in any of the Councils’ areas;
- 29.2 In accordance with Section 38 of the Local Government Act 2000, in determining the meaning of “significant” regard shall be had to any guidance for the time being issued by the Secretary of State.
- 29.3 A decision taker may only make a key decision in accordance with the requirements of these Rules.
- 29.4 The HREC shall publish a forward plan of anticipated Key Decisions.
- 29.5 **Notice of Key Decision**
Subject to the general exception and urgency provisions below, no Key Decision may be taken unless:
- (i) a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;
 - (ii) at least 28 clear days have elapsed since the publication of the Notice of Key Decision; and
 - (iii) where the decision is to be taken at a meeting of the HREC notice of the meeting has been given in accordance with Rule 3.5 (notice of meetings).
- 29.6 **Contents of Notice of Key Decision**
The Notice of Key Decision will state that a key decision is to be taken by the HREC and it will describe the following particulars:
- (i) the matter in respect of which the decision is to be made;
 - (ii) the date on which, or the period within which, the decision is to be made;
 - (iii) a list of the documents submitted to the decision maker for consideration in relation to the matter;
 - (iv) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
 - (v) that other documents relevant to those matters may be submitted to the decision maker; and
 - (vi) procedure for requesting details of those documents (if any) as they become available.
- 29.7 **Publication of the Notice of Key Decision**

The Notice of Key Decision must be made available for inspection by the public at the offices of the Relevant Council of the next HREC meeting at which the Key Decision is to be made.

- 29.8 Exempt information need not be included in a Forward Plan and confidential information cannot be included.
- 29.9 **The Forward Plan**
The Councils are not required by law to publish a forward plan. However, the Notice of Key Decision published by the relevant Council set out not just details of specific key decisions, but also details of key decisions over a four month period (including important decisions to be made by the HREC).
- 29.10 **General Exception**
If a Notice of Key Decision has not been published, then subject to Rule 29.13 (special urgency), the decision may still be taken if:
(i) the decision must be taken by such a date that it is impracticable to publish a Notice of Key Decision;
(ii) the Proper Officer of the relevant Council has informed the Chair of the relevant Scrutiny Committee meeting the matter about which the decision is to be made;
(iii) the Proper Officer of the relevant Council has made copies of that notice available to the public at the offices of the relevant Council and on the Councils' websites; and
(iv) at least five clear days have elapsed since the Proper Officer complied with 29 (ii) and 29 (iii)
- 29.11 As soon as reasonably practicable after the Proper Officer of the relevant Council has complied with Rule 29.11, they must make available at the Councils' offices and publish on the Councils' websites the reasons why compliance with issuing a Notice of Key Decision was impractical.
- 29.12 **Special Urgency**
If by virtue of the date by which a Key Decision must be taken Rule 29.11 (general exception) cannot be followed, then the Key Decision can only be taken if the Chief Executive of the relevant Council obtains the agreement of the Chair of the next Scrutiny Committee meeting of the relevant Council.
- 29.13 As soon as reasonably practicable after the Chief Executive of the relevant Council has obtained agreement under Rule 29.13 they must make available at the Councils' offices and publish on the Councils' websites the reasons why the meeting is urgent and cannot reasonably be deferred.