

Council – 21 December 2006

## AMENDMENTS TO THE CONSTITUTION

### Report of the Head of Corporate Services

**Statutory Powers:-** Local Government Act 2000

**Financial Implications:-** None

#### Purpose of report

1. To seek Member approval for amendments to be made to the Constitution in light of the Council's entry into the Devon Building Control Partnership.

#### RECOMMENDED

**That the Council RESOLVES that:**

1. **the Scheme of Delegations, Responsibility for Functions and Rules of Procedure be revised in light of the Council's entry into the Devon Building Control Partnership; and**
2. **the Monitoring Officer be authorised to make the necessary textual amendments to the Constitution arising from 1 above.**

#### Background

2. At the meeting of the Executive on 8 December 2005, it was agreed that the Council would enter into the Devon Building Control Partnership from 1 April 2006 (E.94/05 refers). Entry into the partnership actually occurred on 1 September 2006. The effect of entering into the Partnership Agreement is to confer upon the Partnership the right to exercise the Council's statutory duties and powers to discharge its Building Control functions. Schedule 3 of the Agreement, shown at appendix A, lists the functions that the Council has delegated to the Partnership and the relevant enactments.

#### Scheme of Delegations

3. The Scheme of Delegations currently includes the following entry in respect of the authority delegated to the Head of Planning and Building Control:

Section 79 of the Building Act 1984	To serve Notices under this Section of the Act.  Authority also to be exercised by the Building Control Manager and all Building Surveyors
Building Control	Head of Planning and Building Control or Building Control Manager to take all necessary action to comply with and fulfil the Council's obligations emanating from the following legislation:- Building Regulations 1991 (as amended);

Building (Approved Inspector) Regulations 1985 (as amended);  
Building (Local Authority Charges) Regulations 1998;  
Building Act 1984 - Sections 8, 15, 16, 18, 21 to 30, 36, 47 to 54, 56, 77, 78, 81, 91, 95 and 96.

Authority also to be exercised by all Building Surveyors.

4. As a consequence of entering into the Agreement, these functions are now conferred upon the Partnership and should be removed from the Scheme of Delegations.

### **Responsibility for Functions**

5. The Responsibility for Functions section at Part 3 of the Constitution lists the responsibilities of the Council's decision making bodies. An additional entry is now required in respect of the functions of the Devon Building Control Partnership as listed in points (i) to (vi) of appendix A.

### **Rules of Procedure**

6. Part 4 of the Constitution includes the Rules of Procedure which govern the operation of the Council's various bodies. The Partnership Agreement includes at schedule 1 the Standing Orders by which the Partnership Board will operate. These are shown at appendix B and reference to this should be included within the Council's Rules of Procedure.

### **Risk Assessment**

<b>Risk</b>	<b>Mitigation</b>
The constitution is out of date, insufficiently explicit and open to challenge	Ongoing review of the provisions within the constitution ensures that it is fit for purpose and sufficiently robust if subject to challenge

### **Conclusion**

7. Officers review the Constitution on an ongoing basis to incorporate new responsibilities which have been placed on local authorities, to bring clarity to existing provisions and to improve administrative efficiency. The proposals relating to the Devon Building Control Partnership reflect this ongoing review process.

Richard McDermott  
Member Support Services Manager

Council  
21 December 2006

Kevin Williams  
Monitoring Officer

### **Background Papers:**

South Hams District Council Constitution

**SCHEDULE 3****Building Control Functions**

To exercise on behalf of the Councils such statutory duties or powers conferred on the Councils by the following enactments and any enactments amending or replacing them and also any regulations, orders, bylaws and other subsidiary legislation made under the following enactments.

For the avoidance of doubt the functions conferred by this scheme of delegation shall include:

- (i) Appointment and/or authorisation of officers to exercise statutory functions.
- (ii) Undertaking of inspections, investigations, interviews, service of notices, notifications, consultation responses, and legal proceedings under the legislation applicable thereto set out below, and to exercise all other relevant powers, including powers of entry provided under such legislation.
- (iii) Determination of applications, service of notice, exercise of powers in default and recovery of expenses.
- (iv) The institution of legal proceedings including the issuing of formal cautions
- (v) Exercise of powers of entry.
- (vi) The production and operation of a Scale of Building Regulation Charges that will comply with the Building (Local Authority Charges) Regulations 1998.

**List of Enactments**

1. The Building Act 1984 and regulations made there under, including the Building Regulations 1991 (as amended). The Building Regulations 2000 together with the Fire Precautions Act 1971.
2. Local Government (Miscellaneous Provisions) Act 1982.
3. Town Improvements Clauses Act 1847 and the Public Health Act 1925.
4. Town & Country Planning Act 1990.
5. The Fire Safety and Places of Sports Act 1987.
6. Licensing Act 1964.
7. Party Wall Etc Act 1996.
8. The Building (Local Authority Charges) Regulations 1998
9. The Building (Approved Inspectors etc.) Regulations 1985 & The Building (Approved Inspectors etc.) Regulations 2000

*Note* the above list of enactments is also to include any subsequent amendments to the acts listed that are introduced.

SCHEDULE 1

**Standing Orders for the Partnership**

Unless the Partnership otherwise agrees:

1. The Standing Orders of the Host Council shall apply to the meetings of the Partnership except as hereinafter provided.
2. The Annual Meeting of the Partnership shall be held in July every year and at such meeting the Partnership shall from among their members elect a Chairman and Vice-Chairman provided that if there by an equality of votes in the election of the Chairman it shall be decided by lot which of the members having an equal number of votes shall be appointed.
3. The Partnership shall meet annually and at such other times as the Partnership considers necessary.
4. The Councils may make substitutions in accordance with their own procedures where one of their members is unable to attend any meeting of the Partnership.
5. The Chairman or Vice-Chairman may call a meeting of the Partnership at any time and shall do so upon the written requisition of two members.
6. The Host Council shall send to every member at least seven days before a meeting of the Partnership a summons to attend the meeting specifying the business proposed to be transacted thereat.
7. Every matter arising at a meeting of the Partnership shall be decided by a majority of the votes of the members present and voting on the question and in the case of an equality of votes the Chairman of the meeting shall have a casting vote.
8. Any two voting members of the Partnership shall form a quorum provided that the said two members shall include one member appointed from each of the Councils.
9. Minutes of the proceedings of the Partnership shall be sent to all members of the Partnership and the Councils within 30 days of the meeting.
10. Senior Managers from the respective Councils will be able to attend board meetings in an advisory capacity.
11. The Partnership shall have the ability to invite representatives from the community it serves to become members of the Partnership board. The total number of these representatives shall not exceed one third of the total membership of the Partnership board.