

Council – 28 September 2006

## **ADDITIONS / 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 additions and amendments to be made to the Constitution as outlined below.

## **RECOMMENDED**

**That the Council RESOLVES that:**

1. **the Scheme of Delegations be revised in accordance with recommendations listed at appendix A;**
2. **an addition be made to the Responsibility for Functions giving authority to the Executive to make Compulsory Purchase Orders;**
3. **Article 16 of the Constitution be revised to clarify and make more explicit the process under which the Full Council and Executive may suspend Procedure Rules relating to contracts and that the Monitoring Officer be authorised to perfect the textual amendment within the Constitution to give effect to the Resolution.**

### **Background**

2. Article 15 of the Constitution refers to the need to monitor and review the Constitution and recommend ways it can be amended in order to better achieve the purposes set out in Article 1. It is the role of full Council to alter the Constitution where necessary.

### **Scheme of Delegations**

3. Heads of Service have reviewed the current Scheme of Delegations and have made a number of recommendations for change. These are listed at appendix A.

### **Responsibility for Functions**

4. The Council adopted a Compulsory Purchase Policy on 30 June 2005 (E.18/05 refers). The power to make a Compulsory Purchase Order falls within the policy. As such the Executive is the relevant body to exercise this power. This is the general practice nationwide. As a matter of best practice

many councils have made this power an explicit function of the Executive in the Constitution. This is the purpose of recommendation 2 above. By adopting the recommendation it places the exercise of the power by the Executive beyond constitutional doubt. The changes will appear in Part 3 “Responsibility for Functions” with an addition to the “miscellaneous functions” as shown below:

Executive	Power to make a Compulsory Purchase Order	Town & Country Planning Act 1990. Planning & Compulsory Purchase Act 2005
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### Article 16 – Suspension, Interpretation and Publication of the Constitution

5. Since the adoption of the Constitution, Full Council and the Executive have exercised power to waive the requirement of standing orders in specific instances. For example, this has related in a few occasions to the waiving of a requirement for competitive tendering under financial regulations where there have been compelling reasons for such a step as an emergency etc.
6. The purpose of the amendment is to make this procedure explicit in the Constitution. It is not intended to alter in any way the grounds upon which the power may be recommended to members. Rather it is to clarify in plain English that this is a Full Council and Executive discretion. The textual amendments to Article 16 are shown at appendix B.

### Risk Assessment

Risk	Mitigation
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. These proposals are a result of this ongoing review process.

Richard McDermott  
Member Support Services Manager

Council  
 28 September 2006

Kevin Williams  
Monitoring Officer

### Background Papers:

South Hams District Council Constitution

Subject Matter	Action Delegated within Current Scheme	Recommended Change
<b>General Delegation to Officers:</b>		
	<p>During periods of absence of a Head of Service, an officer specifically nominated by that Head of Service can undertake all of the functions delegated to him/her in this scheme to the extent permitted by law.</p>	<p>Revised wording:</p> <p>“During periods of absence of a Head of Service or for other service needs, an officer specifically nominated by that Head of Service (from the tier of management immediately below Head of Service level) can undertake all of the functions delegated to the Head of Service in this scheme to the extent permitted by law, where consent has been received in writing from the relevant member of the Strategic Management Team and where both the Section 151 and Monitoring Officers have been informed.”</p>
<b>Chief Executive in conjunction with the Head of Financial Services:</b>		
<p>Use of Reserves:</p>	<p>To use the reserves set out below, and to approve sums between £20,000 and £30,000 on any one item:-</p> <ul style="list-style-type: none"> <li>(i) DLO/DSO Appropriation</li> <li>(ii) Economic Initiatives</li> <li>(iii) Elections</li> <li>(iv) Ferry Renewals</li> <li>(v) General, Land &amp; Development</li> </ul>	<p>Revised wording:</p> <p>“To use the revenue reserves of the Council and to approve sums of up to £30,000 on any one item.”</p> <p>Delete the list of named reserves.</p>

	<ul style="list-style-type: none"> <li>(vi) HQ Buildings Maintenance</li> <li>(vii) IT Development</li> <li>(viii) Leisure Centres Plant and Equipment</li> <li>(ix) Development Plans</li> <li>(x) Pay &amp; Display Equipment</li> <li>(xi) Print Equipment</li> <li>(xii) Buildings Repairs &amp; Maintenance</li> <li>(xiii) Staff Development</li> <li>(xiv) Strategic Issues</li> <li>(xv) Sustainable Management</li> <li>(xvi) Vehicles &amp; Plant Renewals</li> </ul>	
<b>Head of Property Services:</b>		
Property Management::	<ul style="list-style-type: none"> <li>(i) To give consent to the assignment, sub-letting or surrender of existing leases.</li> <li>(ii) To authorise and take necessary legal proceedings towards the termination and renewal of leases, agreements and licences.</li> <li>(iii) To take legal and court action to enforce payment of rent and charges due.</li> <li>(iv) To approve the revision of rents and licence fees.</li> <li>(v) To approve amendments to the terms of an existing lease, agreement or licence.</li> <li>(vi) To grant or obtain easements and wayleaves.</li> </ul>	Authority in respect of (i) – (vi) also to be exercised by the Principal Valuer

	(vii) To grant licences, periodic tenancies and short-term leases (not exceeding 7 years) at a fee/rental not exceeding £50,000 per annum (authority also to be exercised by Principal Valuer).	<p>Revised wording:          “To grant licences, periodic tenancies and leases (not exceeding 15 years) at a fee / rental not exceeding £75,000 per annum (authority also to be exercised by the Principal Valuer)</p> <p>Additional delegation:          “Imposition or release of covenants in respect of land where the Council has an interest”.</p>
<b>Head of Service (Harbour Master):</b>		
Use of Reserves:	In consultation with the Chief Executive and Head of Financial Services, to use the harbour reserves and to approve sums of up to £10,000 on any one item.	<p>Revised wording:          “In consultation with the Strategic Director (Operations) and Head of Financial Services to use the harbour reserves and to approve sums of up to £10,000 on any one item.”</p>
<b>Electoral Registration Officer (Currently Chief Executive)</b>		
Elections and Electoral Registration:	As Electoral Registration Officer (and therefore (Acting) Returning Officer for Parliamentary and local Elections), to revise the fees connected with the administration of elections and the registration of electors, based upon the average percentage salary increase agreed by the National Joint Council, and to exercise all functions regarding the conduct of elections, including parish polls, the preparation of the register of electors, including the employment of temporary staff. The Electoral Administrator,	<p>Remove wording highlighted in bold and include additional sentence:          “The Electoral Administrator may from time to time be specifically delegated to carry out the functions of the Returning Officer.”</p>

	<p><b>Democratic Services Manager and Electoral Assistant</b> are also authorised to discharge all or any of the functions of the Electoral Registration Officer except those reserved to the Returning Officer.</p>	
<p><b>Head of Planning and Building Control</b></p>		
<p>Development Control:</p>	<p>(a) In consultation with the Chairman of the Committee; and</p> <p>(i) the appropriate Ward Member(s), or, in a single Member Ward, if that Member declares a prejudicial interest, the application will be determined by the Head of Service in consultation with the Chairman and Vice Chairman of the Committee, and the Ward Member will be informed for information only that the decision has been made under delegated authority. Or,</p> <p>(ii) in respect of applications in multi-Member Wards where one Member has declared a wide interest in planning matters, (a) councillor(s) representing such Wards other than a Member having these interests, where such Members agree that delegation should be exercised -</p> <p>To refuse applications for planning permission, listed building consent, conservation area consent and advertisement</p>	<p>Authority in respect of (a) – (i) also to be exercised by the Area Planning Officers</p>

consent, and to approve any applications where objections have been received and the notification period has elapsed, subject to there being a holding period of 48 hours from the initial contact with the Ward Member(s), to enable the Member(s) to consider whether the application should be dealt with under this scheme.

(N.B. Where an application would normally be delegated in accordance with the above and a Member has acted as agent for the application, then it shall be referred to the Development Control Committee for determination.)

- (b) To approve planning applications listed building consent, conservation area consent and advertisement consent, where no objections have been received and/or notification periods have elapsed.

(N.B. Where an application would normally be delegated in accordance with the above and a Member has acted as agent for the application, then it shall be determined in accordance with (a) above.)

- (c) To determine the following, subject to advising the Chairman of the Committee and the appropriate Ward Member(s) of action to be taken:-

Additional wording at the end of (ii):  
“except when waived by agreement with the Ward Member and Chairman”

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|  | <ul style="list-style-type: none"><li>(i) applications for the demolition of certain classes of building under Class A of Part 31 of Schedule 2 of the General Permitted Development Order;</li><li>(ii) notifications of certain telecommunications development under Class A of Part 24 of Schedule 2 of the General Permitted Development Order;</li><li>(iii) applications for agricultural and forestry buildings and operations under Class A of Part 6 of Schedule 2 and Class A of Part 7 of Schedule 2 of the General Permitted Development Order.</li></ul> <p>(d) (i) In consultation with the relevant local Member(s) (who shall be given 7 days to respond), to forward to the County Council a recommendation on each planning application upon which the Council is consulted by the County Council. (Where a local Member has an interest, the Chairman of the Committee shall instead be consulted).</p> <p>(ii) To make recommendations to a neighbouring local planning authority when consulted on a planning application, subject to the concurrence of the Member(s) of the neighbouring Ward within South Hams to the development or, in the absence of the Ward</p> |  |
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Member(s), the Chairman of the Committee.

- (e) Where the Committee approves conditionally an application which the Head of Planning & Building Control has recommended should be refused, if the appropriate conditions of approval are the normal or standard requirements, the Head of Planning & Building Control is authorised to issue the Approval Notice forthwith including on it the normal or standard conditions.
- (f) Where conditions other than the normal or standard ones are imposed by the Committee, the Head of Planning & Building Control and Chairman of the Committee shall agree them, but if agreement cannot be reached, the matter shall be referred back to the Committee.
- (g) Where the Development Control Committee refuses an application which the Head of Planning & Building Control recommended to be approved, the Head of Planning & Building Control shall agree the wording of the reasons for refusal with the Chairman of the Committee.
- (h) To agree in writing details submitted in response to a planning, listed building, advertisement, conservation area or works to a protected tree or hedgerow condition imposed on a consent.
- (i) In respect of the Council's own planning applications, such applications will be determined

<p>Hazardous Substances:</p> <p>Housing for Local Needs and Access Housing:</p> <p>Rights of Entry Under Sections 196A &amp; B, 214 B and D and 324 of the Town and Country Planning Act 1990; Section 88 and 88A of the</p>	<p>by the Development Control Committee, unless the local Member(s) have requested the matter to be determined by the full Council.</p> <p>To consider applications for deemed consent under the Planning (Hazardous Substances) Act 1990.</p> <p>To determine to which planning applications the policy approved in the agreed local plan/local development framework should apply and, in consultation with the Chairman of the Development Control Committee, to agree the actual features to be sought in negotiations with developers to provide an element of access housing and/or affordable housing in new schemes, if this is practicable.</p> <p>To enter land and issue authorisations in writing to other persons to enter land under the legislation referred to.</p>	<p>Authority also to be exercised by the Area Planning Officers</p> <p>Authority also to be exercised by the Area Planning Officers</p> <p>Revised wording:</p> <p>Subject Matter: Affordable Housing for Local Needs and Access Housing</p> <p>Delegation: To determine to which planning applications the policy approved in the agreed local plan/local development framework should apply and, in consultation with the Chairman of the Development Control Committee, to agree the proportion of affordable housing and/or actual features to provide an element of access housing to be sought in negotiations with developers in new schemes.</p> <p>Authority also to be exercised by all Planning Officers</p>
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<p>Planning (Listed Buildings and Conservation Areas) Act 1990, Regulations 12 and 13 of the Hedgerow Regulations 1997 and any Statutory Amendment or Replacement Thereof</p> <p>Section 106 Agreements</p>	<p>(a) To authorise the execution of a section 106 agreement, where required in advance of the grant of planning permission under delegated powers.</p> <p>(b) If the decision of the Development Control Committee to grant consent subject to prior completion of a Section 106 Agreement proves to be inappropriate, to vary the agreement or take such action as is necessary to secure the objectives of the Committee in consultation with the Chairman of the Committee.</p> <p>(c) To authorise the execution of a section 106 agreement where an application is subject to an appeal, to take effect in the event that the appeal is allowed:-</p> <p>(i) Where the agreement relates to drainage matters and/or an education infrastructure contribution; or</p> <p>(ii) where the appeal is against refusal or non-</p>	<p>Authority also to be exercised by the Area Planning Officers</p>
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<p>Enforcement Action</p>	<p>determination following an officer recommendation that permission be granted, where the agreement is substantially in the form set out in the recommendation, subject to any instruction to the contrary by the Committee; or</p> <p>(iii) in consultation with the Chairman of the Committee and the appropriate Ward Member(s), in all other cases.</p> <p>(a) To take action against breaches of the controls applying to development, conservation areas, listed buildings, advertisements, trees, hedgerows and untidy sites (including in any of these cases breaches of condition);</p> <p>(b) To serve and issue formal notices (including but not limited to enforcement and stop notices), and the authorisation of prosecution or injunction proceedings;</p> <p>and references to informal action or no action shall be construed in the same way:-</p> <p>(i) To take informal action by way of undertaking investigations and negotiations.</p> <p>(ii) In consultation with the Chairman of the Development Control Committee, (or in his absence, the Vice-Chairman), and the Ward Member(s) to agree to take no action with or</p>	<p>Authority also to be exercised by the Area Planning Officers</p>
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	<p>without amelioration or remedial measures where development had taken place for which a planning application should have been submitted.</p> <p>(iii) In consultation with the Chairman of the Development Control Committee, (or in his absence, the Vice-Chairman), the Ward Member(s) and the Head of Corporate Services (or an officer authorised by him) to take enforcement action.</p> <p>(iv) In conjunction with the Head of Corporate Services, to withdraw, vary or substitute any notice or proceedings.</p> <p>(v) To respond on behalf of the Council to consultations by the Dartmoor National Park Authority in connection with enforcement action or prosecution proceedings.</p>	
Prosecutions	In consultation with the Head of Corporate Services, to authorise prosecutions in respect of the failure to comply with enforcement notices on listed buildings, tree preservation, and advertisements.	Authority also to be exercised by the Area Planning Officers
Historic Buildings and Conservation	To serve Building Preservation Notices in accordance with Section 3(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to notify Ward Members of the serving of Notice.	Authority also to be exercised by the Area Planning Officers
Appeals	To recommend to the Planning Inspectorate whether	Authority also to be exercised by the Area Planning

<p>Caravan Sites and Control of Development Act 1960 - Exempted Organisations</p> <p>Applications to work on trees and hedgerows covered by a planning condition</p> <p>Planning Applications Within Dartmoor National Park</p> <p>Fly-posting - Local Government (Miscellaneous Provisions) Act 1982 (Section 37), Town and Country Planning Act 1990 (Section 225) and Anti Social Behaviour Act</p>	<p>planning appeals should be dealt with by written representations, Informal Hearings or Public Inquiry, subject to consultation with the Chairman of the Development Control Committee and Ward Member(s) if it appears to the Head of Development Services that there are implications which require such consultation.</p> <p>To determine applications for issue of certificates, in consultation with appropriate officers and Ward Member(s).</p> <p>To determine all applications</p> <p>To make recommendations to the Dartmoor National Park Committee, subject to the concurrence of the Ward Member(s), or in the absence of the Ward Member(s), the Chairman of the Development Control Committee</p> <p>To issue Notices and arrange for the removal or obliteration of illegal placards or posters. Planning staff are designated "authorised officers" for the purposes of Section 324 of the 1990 Act (Rights of Entry).</p>	<p>Officers</p> <p>Authority also to be exercised by the Area Planning Officers</p> <p>Authority also to be exercised by the Landscape and Recreation Manager</p> <p>Authority also to be exercised by the Area Planning Officers</p> <p>Authority also to be exercised by the Area Planning Officers</p>
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Repeat Applications	In conjunction with the Head of Corporate Services to decline, pursuant to Section 70A of the Town and Country Planning Act 1990, to determine applications.	Authority also to be exercised by the Area Planning Officers
Lawful Development Certificates	To determine applications, in conjunction with the Head of Corporate Services, subject to the subsequent notification to Members of the decisions taken.	Authority also to be exercised by the Area Planning Officers
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 & 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
Environmental Impact Assessment Regulations 1999	To exercise the powers and duties of the Council.	Authority also to be exercised by the Area Planning Officers
Anti Social Behaviour Act 2003	(or the Head of Landscape and Leisure)  To issue decisions against high hedge complaints	Authority also to be exercised by the Area Planning Officers

	and to authorise any other action under Part 8 of the Act.	
<b>Head of Community Regeneration</b>		
Local Agenda 21 and Global Action	Day to day activities and, in conjunction with the Head of Financial Services, expenditure within available budgets.	Delete – this is no longer a distinct area of activity and is incorporated into the Council’s commitment to sustainability.
Market Towns Initiative	Approval for funding for projects under the market towns initiative, in consultation with Ward Members within available budgets	Revised wording: Replace “Market Towns “ with “Community”
Development Plans		Additional delegations:  (a) In consultation with the Leader of the Council, the Deputy Leader and a nominated Member of the Minority Group, to make necessary final changes to the content of local development documents and supplementary planning documents following their approval by Council and to publish supporting sustainability appraisals in order to secure fitness for purpose prior to publication.  (b) In consultation with the Leader of the Council, the Deputy Leader and a nominated Member of the Minority Group, to make necessary final changes to the content of the local development scheme following approval by Executive in order to secure

<p>Development Plans - Surveys</p>	<p>To enter land and issue authorisations in writing to other persons to enter land under Section 324(1)(a) of the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.</p> <p><b>That, the Chief Executive and Head of Community Regeneration in consultation with the Leader of the Council, the appropriate Executive member and a representative of the minority groups, be given delegated authority to make minor amendments to the text of the Local Development Framework.</b></p>	<p>fitness for purpose prior to publication.</p> <p>New Subject Matter: Development Plans of other agencies or authorities</p> <p>Delegation: In consultation with the Leader of the Council, the Deputy Leader and a nominated Member of the Minority Group, and consulting Ward Member(s) where appropriate, to respond to the development plans of other authorities.</p> <p>Delete second paragraph (shown in bold)</p>
<p>Transportation Matters</p>	<p>To respond to consultations under the Transport Acts concerning transportation matters, consulting Ward Member(s) where appropriate.</p>	<p>Revised Wording: Subject Matter: Strategic Transport:</p>

<p>Loans to social, cultural and sporting organisations</p> <p>Community Involvement</p>	<p>To make advances up to a total of £20,000 in any one year with individual advances being between £500 and £2,000.</p>	<p>Delegation: To respond to consultations under the Transport Acts concerning local transport plans and other strategic transport matters, consulting Ward Member(s) where appropriate.</p> <p>Revised wording: Subject Matter: Community Loans: Delegation: To make advances up to a total of £20,000 in any one year to support community projects, with individual advances being between £500 and £5,000</p> <p>Additional delegation: Detailed arrangements to implement the Council's policy on community involvement.</p>
<p><b>Head of Customer Services</b></p>		
<p>Car Park Fines</p>		<p>New Delegation: To determine all appeals made against the issue of a standard charge for failure to comply with car parking rules</p>

# Article 16 – Suspension, Interpretation and Publication of the Constitution

## 16.1 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council **and the Executive** to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of councillors **of the Council or Executive** are 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.
- (c) **Rules capable of suspension.** The Rules capable of suspension are:
  - Council Procedure Rules **defined by Rule 22**
  - Contracts Procedure Rules **defined by Rule 2.3**

## 16.2 Interpretation

The ruling of the Chairman of the Council **and / or the Executive** as to the construction or application of this Constitution or as to any proceedings of the Council / **Executive** shall not be challenged at any meeting of the Council / **Executive**. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

## 16.3 Publication

- (a) The Monitoring Officer will ensure that a printed copy of this Constitution is given to each councillor of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the councillor first being elected to the Council.
- (b) The Monitoring Officer will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.