



Lewes District Council

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Constitution Working Party

Notes of a meeting of the **Constitution Working Party** held in the **Garden Room, Lewes House, 32 High Street, Lewes** on **Thursday, 25 October 2012** at 9.35am

Present:

Councillor I A Nicholson (Chair)

Councillors I Eiloart and J V Harris.

	Notes	Action
11	Notes The Notes of the meeting held on 23 August 2012 were approved as a correct record and signed by the Chair.	
12	Functions of Full Council The Working Party considered matters relating to the Responsibility for Executive Functions, Local Choice Functions and Council Functions, as set out in Part 3 on pages C1 to C23 of the Council's Constitution. Due to lack of time, it had not been possible for the Working Party to consider matters relating to the role of full Council, as set out in Article 4 on pages B4 to B7 of the Constitution. Therefore, such matter would, instead, be considered at its next meeting (see Minute 13 below). <u>Resolved:</u> 12.1 That the Corporate Head of Legal and Democratic Services be requested to: (a) Update the Council's Constitution to reflect the new	CHLDS (A Blanshard

responsibilities of the Cabinet Member's; and

- (b) When appropriate, circulate paper copies of all relevant updated pages to all Members of the Council, and appropriate Officers, for insertion in their Constitution files (*Note: This might result in a full revised version of the Constitution being circulated*).

It was further

Recommended:

- 12.2 That current pages C9 to C23 of the Constitution relating to Responsibility for Local Choice Functions be amended as set out in the appendix to these Notes (*Note: Amendments shown as tracked changes*);
- 12.3 That the Corporate Head of Legal and Democratic Services be requested to:
 - (a) Arrange for the on-line version of the Council's Constitution to be constructed in such a way so as to enable users of the Council's website to 'search' to determine which Cabinet Member is responsible for any particular Council function;
 - (b) Include reference to the appropriate Regulations as an appendix to the table set out in the section entitled "Responsibility for Council Functions" on current pages C12 to C16 inclusive of the Constitution;
 - (c) Arrange for the table on current pages C19 to C23 inclusive of the Constitution relating to Responsibility for Executive Functions, to provide cross-references to the Cabinet Members who are responsible therefore (*Note: The table might need to be re-worked as a consequence*);
 - (d) Include in her recently prepared document entitled "Leader and Cabinet Executive", as considered by the Working Party at its meeting held on 23 August 2012, the text of all appropriate paragraphs 4.1 to 4.16 inclusive, as set out on current pages C16 to C18 of the Constitution;
 - (e) Arrange for the "Note" at the bottom of current page C23 of the Constitution to be re-positioned within the section relating to the functions of Full Council;
 - (f) Ascertain whether or not it is appropriate to include, on current page C14 of the Constitution, a paragraph relating to Public Rights of Way (ie Is it a Council function or that of East Sussex County Council?);

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- (g) Amend, as necessary, the text set out on current pages C15 and C16 relating to the Audit and Standards Committee (*Note: In particular to reflect the Statutory functions of the Audit Committee*);
- (h) Arrange for the second bullet point in paragraph 4.1(a)(i) on current page B5 of the Constitution to be amended to read "Sustainable Community Strategy"; and
- (i) Amend paragraphs (c), (d) and (e) on current page U15 of the Constitution as necessary so as to reflect which committee (either the Appeals Committee or the Licensing Committee) is responsible for the functions detailed therein.

13 Future Work to be Undertaken by the Constitution Working Party

Resolved:

13.1 That:

- (a) The role of full Council, as set out in Article 4 on pages B4 to B7 of the Constitution; and
- (b) New local authority duties associated with The Localism Act 2011,

be included on the Agenda for the next meeting of the Constitution Working Party.

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Hayward)

14 Date and Time for the Next Meeting of the Constitution Working Party

Resolved:

- 14.1 That the Corporate Head of Legal and Democratic Services be requested to arrange the next meeting of the Working Party once she has had the opportunity to complete the work as set out in the above Recommendations.

CHLDS (T
Hayward)

The meeting ended at 12.13pm

I A Nicholson
Chair

2 RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

Function	Decision making body	Delegation of functions
<p><i>Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended</i></p> <ul style="list-style-type: none"> Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 	<p>Council, and in the event that any such function is a licensing, consent, permission or registration function, in which case it shall be the responsibility of:</p> <ul style="list-style-type: none"> a) Planning Applications Committee, if it is a development control matter, and b) Licensing Committee in all other cases. 	<p>None</p>
<ul style="list-style-type: none"> The determination of an appeal against any decision made by or on behalf of the authority. 	<p>Licensing Committee</p>	<p>None</p>
<ul style="list-style-type: none"> 		

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Deleted: The conduct of best value reviews in accordance with the provisions of any order for the time being having effect under section 5 (best value reviews) of the Local Government Act 1999

Deleted: Scrutiny Committee

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Function	Decision making body	Delegation of powers
<ul style="list-style-type: none"> Any function relating to contaminated land 	<p>Council, unless it concerns:</p> <ul style="list-style-type: none"> the determination of an application for a licence, approval, consent, permission or registration; or the direct regulation of a person; or the enforcement of any such licence, approval, consent, permission or direct regulation in which case it shall be the responsibility of the Licensing Committee 	<p>Delegated to Director of Planning and Environmental Services.</p> <p>There is no limit on this delegation.</p>
<ul style="list-style-type: none"> The discharge of any function relating to the control of pollution or the management of air quality 	<p>Council, unless it concerns:</p> <ul style="list-style-type: none"> The determination of an application for a licence, approval, consent, permission or registration; or The direct regulation of a person; or The enforcement of any such licence, approval, consent, permission or direct regulation in which case it shall be the responsibility of the Licensing Committee 	<p>Delegated to Director of Planning and Environmental Services.</p> <p>There is no limit on this delegation.</p>
<ul style="list-style-type: none"> The service of an abatement notice in respect of a statutory nuisance 	<p>Licensing Committee</p>	<p>Delegated to Director of Planning and Environmental Services.</p> <p>There is no limit on this delegation.</p>

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Function	Decision making body	Delegation of function
<ul style="list-style-type: none"> The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area 	Council	None
<ul style="list-style-type: none"> The inspection of the authority's area to detect any statutory nuisance 	Licensing Committee	Delegated to Director of Planning and Environmental Services. There is no limit on this delegation.
<ul style="list-style-type: none"> The investigation of any complaint as to the existence of a statutory nuisance 	Licensing Committee	Delegated to Director of Planning and Environmental Services. There is no limit on this delegation.
<ul style="list-style-type: none"> The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land 	Planning Applications Committee Leader – but only insofar as is necessary as a preliminary to the exercise of compulsory purchase powers	Delegated to all of the following: <ul style="list-style-type: none"> Director of Planning and Environmental Services, Corporate Head - Legal and Democratic Services There is no limit on this delegation.
<ul style="list-style-type: none"> The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 	Planning Applications Committee Leader – but only insofar as is necessary as a preliminary to the exercise of compulsory purchase powers	Delegated to all of the following: <ul style="list-style-type: none"> Director of Planning and Environmental Services, Corporate Head - Legal and Democratic Services, Director of Finance. There is no limit on this delegation.

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Function	Decision making body	Delegation of functions
<ul style="list-style-type: none"> • The appointment of any individual – (a) to any other office other than an office in which he is employed by the authority and the revocation of any such appointment; (b) to any other body other than – <ul style="list-style-type: none"> (i) the authority (ii) a joint committee of two or more authorities and the revocation of any such appointment; or (c) to any committee or sub-committee of such a body, and the revocation of any such appointment 	<p>Leader, in relation to Cabinet appointments, Planning Applications Committee in relation to development control functions.</p> <p>Licensing Committee in relation to licensing/ health and safety functions.</p> <p>Full Council in relation to any other function.</p>	<p>Delegated to all of the following insofar as the appointment relates to the appointment of any officer:-</p> <ul style="list-style-type: none"> • Chief Executive • Director of Planning and Environmental Services, • Director of Finance, • Corporate Head - Legal and Democratic Services, • Corporate Head - Internal Services, • Corporate Head - Housing Services, • Corporate Head – Property, Regeneration and Enterprise, • Head of District Services. <p>There is no limit on this delegation.</p>

Deleted: functions which are the responsibility of the Leader.

<ul style="list-style-type: none"> • <u>The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities</u> 	<p><u>Council</u></p>	<p><u>Delegated to all of the following insofar as the appointment relates to the appointment of any officer:-</u></p> <ul style="list-style-type: none"> • <u>Chief Executive</u> • <u>Director of Planning and Environmental Services,</u> • <u>Director of Finance,</u> • <u>Corporate Head - Legal and Democratic Services,</u> • <u>Corporate Head - Internal Services,</u> • <u>Corporate Head - Housing Services,</u> • <u>Corporate Head – Property, Regeneration and Enterprise,</u> • <u>Head of District Services.</u> <p><u>There is no limit on this delegation.</u></p>
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3 RESPONSIBILITY FOR COUNCIL FUNCTIONS

Committee/ Council	Functions	Delegation of functions
<p>Planning Applications Committee</p>	<p><u>Planning and conservation</u> Functions relating to town and country planning, trees, hedgerows and development control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations) as amended</p>	<p>Certain functions are delegated to the Director of Planning and Environmental Services.</p> <p>These are detailed in the Scheme of Delegation to Officers set out at Part 9.</p>

Committee/ Council	Functions	Delegation of functions
Planning Applications Committee	<u>Highways, Use and Regulation</u> The exercise of powers relating to the regulation of the use of highways, footpaths, bridleways and public rights of way and means of access to land as set out in Schedule 1 to the Functions Regulations as amended insofar as they are powers exercisable by the District Council	Certain functions are delegated to the Director of Planning and Environmental Services. These are detailed in the Scheme of Delegation to Officers set out at Part 9
Licensing Committee	<u>Taxi, gaming, alcohol, entertainment, food and miscellaneous licensing</u> Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations as amended	Certain functions are delegated to the Director of Planning and Environmental Services. These are detailed in the Scheme of Delegation to Officers set out at Part 9
Licensing Committee	<u>Health and Safety</u> Functions relating to health and safety under any "relevant statutory provision" within the meaning of Part I of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the council's capacity as employer	Certain functions are delegated to the Director of Planning and Environmental Services. These are detailed in the Scheme of Delegation to Officers set out at Part 9

Committee/ Council	Functions	Delegation of functions
Council	<p><u>Electoral</u> Functions relating to the conduct of elections, electoral registration, boundary/electoral reviews and associated matters.</p> <p><u>Areas and Names</u> Functions relating to name and status of District/Towns/Parishes</p> <p><u>Functions relating to Community Governance and Reviews</u></p> <p><u>Byelaws</u> Power to make, amend, revoke or re-enact byelaws</p> <p><u>Local/Personal Bills</u> Power to promote or oppose local or personal bills</p> <p><u>Functions relating to local government pensions</u></p>	<p>Certain functions are delegated to the Chief Executive and/or Corporate Head - Legal and Democratic Services These are detailed in the Scheme of Delegation to Officers set out at Part 9.</p>
		<p><u>Standing Orders</u> – power to make standing orders as to council procedure, financial procedure and contract procedures</p>

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Committee/ Council	Functions	Delegation of functions
	<p><u>Staff</u></p> <p>Power to appoint "proper officers", Monitoring officer and Chief Financial officer. Duty to designate officer as the head of paid service</p>	
<p>Audit and Standards Committee</p>	<p><u>The provision and maintenance of high standards of conduct within the Council</u> To advise the council on the adoption or revision of its Code of Conduct.</p> <p>To monitor and advise the council about the operation of its Code of Conduct in the light of best practice, changes in the law, guidance from the Standards Board and recommendations of case tribunals under section 80 of the Local Government Act 2000</p> <p><u>Assistance to members and co-opted members of the authority</u> To ensure that all members of the Council have access to training in all aspects of the member Code of Conduct, that this training is actively promoted, and that members are aware of the standards expected from local councillors under the Code</p>	

Committee/ Council	Functions	Delegation of functions
	<p><u>Other functions</u></p> <p>Functions relating to standards of conduct of members under any relevant provision of, or regulations made under, the Local Government Act 2000 as delegated to the Standards Committee by the Council in accordance with section 54(3) of the Local Government Act 2000. Overview of the whistleblowing policy.</p> <p><u>Payments in Cases of Maladministration</u></p> <p>Power to make payment or provide other benefits in cases of maladministration in accordance with section 92 of the Local Government Act 2000</p>	
Employment Committee	<p><u>Functions relating to employment</u></p> <p>Functions relating to local government pensions and appeals against dismissal, grading and grievances by employees of the Council; power to appoint staff and to determine their terms and conditions of office.</p>	<p>Certain functions are delegated to the following: Chief Executive, Director of Planning and Environmental Services, Director of Finance, Corporate Head - Internal Services. These are detailed in the Scheme of Delegation to Officers set out at Part 9</p>

4 RESPONSIBILITY FOR EXECUTIVE FUNCTIONS

- 4.1 The Leader and/or Cabinet exercises those functions which are not the responsibility of (i) the Council; (ii) committees of the Council; and (iii) officers under powers delegated to them.

- 4.2 The allocation of functions to the Leader/Cabinet are set out in the table on page C10 below. The column headed "Onward Limits of Delegation" shows the limits placed upon sub-delegation.
- 4.3 Any person or persons to whom a matter has been allocated or delegated may decide to seek the authority of the Leader/Cabinet rather than to exercise delegated authority in any matter.
- 4.4 In the absence of any Lead Councillor, the Leader shall be entitled to act in his/her place.
- 4.5 All powers shall be exercised in accordance with the various Procedural Rules set out in Part 4 of the Constitution.
- 4.6 The person or persons exercising such power shall give effect to any resolution of the Council upon any matter of principle or policy in relation to the functions concerned.
- 4.7 The person or persons dealing with a matter shall arrange any appropriate consultation including that with the Leader, other members of the Cabinet, officers and others that shall be required.
- 4.8 The exercise of delegated authority shall be subject to there being appropriate and adequate budgetary provision.
- 4.9 The exercise of delegated authority shall be documented in the prescribed form and copies sent to all members of the Corporate Management Team.
- 4.10 All decisions shall be taken in consultation with the Corporate Head - Legal and Democratic Services or in his or her absence the Senior Lawyer.
- 4.11 All decisions shall be taken in consultation with the Director of Finance or in his or her absence the Head of Finance.
- 4.12 Any decision which has personnel or IT implications shall be taken in consultation with the Corporate Head - Internal Services.
- 4.13 All decisions shall be taken in consultation with the Monitoring Officer or in his or her absence the Deputy Monitoring Officer.
- 4.14 Each Lead Councillor shall in exercising his or her functions have regard to the Council's duty to secure continuous improvement in the delivery of its services and in particular to improve performance as measured by nationally and locally set performance indicators which affect the functions delegated to him or her.
- 4.15 The exercise of functions delegated under the Scheme of Delegation shall have regard to all relevant considerations and shall not take into account irrelevant matters. In particular Lead Councillors exercising delegated authority must take proper account of the Council's duties to

promote compliance with the Convention rights schedules in the Human Rights Act 1988, to reduce crime and disorder and to promote harmonious race relations.

- 4.16 A Lead councillor cannot exercise functions to (i) appoint staff or (ii) determine the terms and conditions on which staff hold office (including procedures for their dismissal).

Who is responsible	Functions	Onward limits on delegations
(A) Leader/Cabinet	<ol style="list-style-type: none"> <li data-bbox="519 524 827 734">1 All matters relating to the policy framework or budget which are to be referred to the Council with a recommendation. <li data-bbox="519 741 827 952">2 All preliminary discussions upon and decisions in respect of matters set out in the Forward Plan. <li data-bbox="519 958 827 1424">3 All key decisions within the terms of Regulation 8 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended from time to time including preliminary discussions on them. 	<p data-bbox="832 524 1161 734">Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.</p> <p data-bbox="832 741 1161 952">Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.</p> <p data-bbox="832 958 1161 1169">Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.</p>

Who is responsible	Functions	Onward limits on delegations
	<p>4 All matters which are to be referred to Council with a recommendation.</p> <p>5 All matters referred to the Cabinet by the Scrutiny Committee or Panels.</p> <p>6 All matters required by the Financial or Contract Procedure Rules to be considered by Cabinet.</p> <p>7 Local Choice functions on pages C1 to C4 of the Constitution.</p> <p>8 All matters which fall within the areas of responsibility of two or more Lead Councillors.</p>	<p>No delegation.</p> <p>No delegation.</p> <p>No delegation.</p> <p>No delegation.</p> <p>No delegation.</p>
Leader and Individual Lead Councillors	All matters relating to Policy and Financial Strategy including the Annual Performance Plan/Council Plan, performance management (including data quality), asset management and capital strategy.	Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.

Who is responsible	Functions	Onward limits on delegations
	<p>All matters relating to the employment of staff and the Council's administrative buildings, depots and stores and the following services; benefits, capital accounting/treasury management, communications/consultation, concessionary travel, Council Tax, and NNDR, councillor allowances and civic expenses, corporate administration, electoral matters, Equalities, IT and e-government, land charges, procurement, risk management and Standards issues.</p> <p>Power to grant discretionary rate relief, within guidelines approved by Cabinet, shall be limited to £5,000 per person/body.</p>	
	<p>All matters relating to the promotion of business, employment and tourism including the following services: car parking, cultural services and arts programme, economic development, industrial estates, miscellaneous properties, Newhaven Enterprise Centre, Newhaven Fort and Newhaven Town Centre.</p>	<p>Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.</p>

Who is responsible	Functions	Onward limits on delegations
	All matters relating to the Council's responsibilities for housing including homelessness, the Council housing stock, the Housing Revenue Account, Lifeline services, renovation grants administration, rent allowances, rent rebates, strategic housing services and working with housing associations.	Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.
	All matters relating to the Council's responsibilities as a Local Planning Authority including building control, car parking, flood and coast defence design and conservation, development control, planning policy, street naming, street numbering and transport.	Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.
	All matters relating to the Council's responsibilities for the development of a Community Strategy and the following services; abandoned vehicles, allotments, arts, cemeteries,	Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.

Deleted: (including power to approve draft Local Development Framework documentation for the purpose of public consultation)

Who is responsible	Functions	Onward limits on delegations
	<p>community safety, community sports and development, community wardens, dog and litter bins, emergency planning, leisure facilities, amenity services, parks and open spaces, public conveniences, Southerham Travellers' site and Southover Grange public hall. Also children's matters arising under the Children Act 2004</p> <p>Power to approve applications for grants from local organisations and town and parish councils, within guidelines approved by Cabinet, shall be limited to £5000 per application.</p>	
	<p>All matters relating to the Environment including the Council's responsibilities for contaminated land, EMAS, Local Agenda 21, licensing, other health services, port health, public health, recycling, refuse collection and street cleansing, rodent and pest control, sustainability and waste strategy and management.</p>	<p>Certain functions are delegated to officers in accordance with the scheme of delegation to officers set out in Part 9.</p>

Who is responsible	Functions	Onward limits on delegations
	Responsibility also for overall consideration of the Council's policies insofar as they affect sustainability.	
All Lead Councillors	A Lead Councillor may authorise payment of a sum up to £500 to compensate any person who suffers inconvenience as a result of a failure of a service standard by a department of the Council (provided that a summary of circumstances in which the payment is made is subsequently reported to the Cabinet).	

Note: The Local Authorities (Functions and Responsibilities) Regulations 2000 state that certain listed functions are not to be the responsibility of an authority's executive. These listed functions include the following:

- 1 Duty to appoint an electoral registration officer
- 2 Functions in relation to towns and parishes as contained in Part II of the Local Government and Rating Act 1997 (ie functions relating to review of town and parishes, establishment of new towns and/or parishes, electoral arrangements in connection with such reviews)
- 3 Powers to dissolve small parish councils
- 4 Duty to appoint returning officer for local government elections
- 5 Duty to provide assistance at European Parliamentary elections