

PART 3

1 RESPONSIBILITY FOR FUNCTIONS

Introduction

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, specify which functions are:-

Council Functions

These cannot be the responsibility of the Leader and the Cabinet e.g. the Council's policy framework and budget, and such local choice functions as are allocated to full council.

Local Choice Functions

Those functions which the Council may delegate to the Leader and Cabinet or to the Council.

Executive Functions

All other functions save the above are executive functions. Decisions on these functions will be taken by the Leader unless they are delegated in accordance with this constitution or dealt with under joint arrangements.

Article 6 provides that the Leader may delegate responsibility for executive functions to the Cabinet, Committees, individual Cabinet members, a joint Committee with another local authority, executive of another local authority or officers.

THE LOCAL CHOICE FUNCTIONS

Local authorities are required to ensure that all 'local choice functions' are allocated so that it is clear whether:

- (a) they are the responsibility of the Council and/or its Committees, or
- (b) they are the responsibility of the Cabinet, or
- (c) they are, or are not, the responsibility of the Cabinet to a specified extent.

The table below sets out that these functions will be the responsibility of the bodies set out in column two. In turn the decision making body may delegate to the person or body specified in column three.

Function	Responsibility	Delegation of Function
1. Any function under a Local Act other than a function specified or referred to in Regulation 2 of Schedule 1 of SI 2000 No 2853 as amended.	Cabinet	Corporate Heads of Service within their areas of responsibility as defined within the Officer Scheme of Delegation
2. The determination of an appeal against any decision made by or on behalf of the authority.	Cabinet except a) Appeals and Disputes Committee (see page 38) b) Housing (Appeals) Committee (see page 38)	Unless there is a specific delegation to committee
3. Any function relating to contaminated land.	Cabinet	The Strategic Director (Services)
4. The discharge of any function relating to control of pollution or management of air quality.	Cabinet	The Strategic Director (Services)
5. The service of an abatement notice in respect of a statutory nuisance.	Cabinet	The Strategic Director (Services)

Responsibility for Functions

6.	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area	Cabinet	None
7.	The inspection of the authority's area to detect any statutory nuisance.	Cabinet	Corporate Head of Regulatory Services
8.	The investigation of any complaint as to the existence of a statutory nuisance.	Cabinet	Corporate Head of Regulatory Services
9.	The obtaining of information under Section 330 of the Town and Country Planning Act 1990 (i) as to interests in land	Cabinet or Planning Committee	Corporate Head of Regulatory and Corporate Head of Services
10.	The obtaining of particulars of persons interested in land under Section 16 of the Local Government Act (Miscellaneous Provisions) Act 1976	Cabinet or Planning Committee	All Strategic Directors
11.	The appointment of any individual: (a) to any office rather than an office in which he is employed by the Authority (b) to anybody other than the Authority or a Joint Committee of two or more authorities; or (c) to any Committee or Sub-Committee of such a body and the revocation of any such appointment	Cabinet	Chief Executive
12.	The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities	Cabinet	Chief Executive

SECTION 3 - THE REGULATORY COMMITTEES AND OTHER NON-EXECUTIVE DECISION MAKING COMMITTEES

3 (i) The Development Management Committee

Remit

All functions relating to Town and Country Planning and Development Management (excluding the preparation of plans and policies) as specified in Part A of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended by subsequent regulations) including:

- (a) planning applications
 - (b) enforcement action
 - (c) planning agreements
 - (d) lawful use or development
 - (e) advertisement control
 - (f) listed buildings
 - (g) conservation areas
 - (h) footpaths and highways
 - (i) minerals and waste disposal
 - (j) hazardous substances
 - (k) trees and hedgerows
- 1.2 The consideration and determination of matters arising from Part 8 of the Anti-Social Behaviour Act 2003 relating to complaints about high hedges.
- 1.3 Making recommendations to Council, implement and keep under review a Scheme of Delegation of Functions to Officers in respect of any of the functions delegated to the Committee.
- 1.4 The Committee's general remit does not extend to those parts of the district within the South Downs National Park and/or where delegation arrangements have been made with the National Park Authority.

- 1.5 Certain applications within the West of Waterlooville Major Development Area are normally dealt with by the Joint West of Waterlooville MDA Planning Committee, as detailed in Appendix 1 to Section 4 below. Accordingly, save where an application is referred back to the Development Management Committee in accordance with the Terms of Reference of the Joint West of Waterlooville MDA Planning Committee, such applications will usually be dealt with by the Joint Committee.

Membership and meeting arrangements

The Committee, consisting of nine Members (and up to three substitutes), will be appointed annually by the Council and will be politically balanced.

The Committee will meet in accordance with a schedule of ordinary meetings, although meetings may be cancelled due to lack of business, or additional meetings may be arranged as necessary, in consultation with the Chairman of the Committee.

Delegation of Function

The majority of the Committee's functions will be determined by officers, as set out in Part 3 of the Constitution. These delegations are subject to:

- (a) any such determination being consistent with the Development Plan, the National Planning Policy Framework and any other applicable Government Guidance; and
- (b) statutory and customary consultations being carried out.

Procedure at meetings

Procedure at meetings shall be in accordance with the Council Procedure Rules, except as below.

The Committee shall agree a scheme of public speaking arrangements.

The Committee shall have authority to depart from the arrangements above and determine specific arrangements for public speaking on certain applications, as it sees fit.

Joint West of Waterlooville Major Development Area (MDA) Planning Committee

The Joint Committee is established by Havant Borough Council and Winchester City Council, and is composed of Members from Winchester City Council and Havant Borough Council.

Responsibility for Functions

The area within which the Joint Committee is to exercise its authority is the West of Waterlooville Major Development Area.

The full constitution and terms of reference of the Joint Committee are set out in the Appendix 1 to Section 4.

3 (ii) Licensing and Regulation Committee

Terms of Reference

The Licensing and Regulation Committee (in this Section 3 referred to as “the Committee”) may undertake or sub-delegate the Council’s regulatory functions relating to licensing and registration including:

- (a) the Licensing Act 2003;
- (b) the Gambling Act 2005;
- (c) the Local Government (Miscellaneous Provisions) Act 1976 (as it relates to taxi licensing);
- (d) health and safety at work (for non-council officers);
- (e) food premises;
- (f) scrap metal;
- (g) Caravan Site Movable Dwelling and Camp Site Licensing
- (h) Licensing Performances of Hypnotism
- (i) Animal Welfare Licensing

The Committee will hear informal appeals against decisions to refuse applications, restrict licenses or impose conditions in excess of the standard licensing conditions.

- (j) Charities/Street Collection Permits/Street Trading Consents

The Committee will hear informal appeals against refusals of applications and revocation of consents relating to Street Trading Consents

- (k) Certificates of Registration of Acupuncture, Tattooing, Electrolysis and Cosmetic Piercing
- (l) All functions and powers relating to Smoke Free Legislation
- (m) Public Spaces Protection Orders

The Committee will determine all applications to designate an area under Section 59 Anti Social Behaviour, Crime and Policing Act 2014

- (n) Licences under Section 115(e) Highways Act 1980 (Tables and Chairs).

The Committee will hear informal appeals against refusal of applications

- (o) The Setting of Relevant Fees and Charges
- (p) Local Choice Functions (as specified in Part 3 of the Constitution) unless the authority to determine the matter has been delegated to another Committee or an individual officer
- (q) The Committee may authorise a prosecution for any offence within the scope of its delegation

Unless a matter is reserved for Committee or a Sub-Committee, under the paragraphs above, by law or by procedures in this Constitution, then the Strategic Director of Operations is delegated to exercise all the licensing functions above

Membership and meeting arrangements

The Committee shall consist of eleven Members (and up to two substitutes). It shall be appointed annually by the Council and shall be politically balanced.

Members appointed to the Committee will:

- (a) be able to provide a sufficient, competent pool capable of carrying out the Committee's programme of work and anticipated number of sub-committee hearings for the forthcoming year;
- (b) make themselves available to participate in the work of the Licensing Authority; and
- (c) be required to undertake mandatory training on the functions and responsibilities of the Committee and its sub-committees.

Delegation of functions

The Committee's functions will be determined in line with Tables A, B, C and D of this part of the Constitution. The Committee or a sub-committee will consider:

- (a) matters which the Council's policies dictate the Committee's involvement
- (b) appeals being made against an officer's decision; and
- (c) matters when an officer to whom a decision has been delegated chooses to put the matter before the Committee.

A sub-committee will consist of any three Members drawn from the full membership of the Committee and appointed for each occasion when it is

Responsibility for Functions

needed. All Members of the Committee should be given equal opportunities to sit on sub-committees following successful completion of the relevant training.

Applications made in respect of the Licensing Act 2003 will be brought before the Committee or a sub-committee in accordance with any regulations published under the Act, the guidance issued under section 182 of the Act and summarised in Table A below.

Applications made in respect of the Gambling Act 2005 will be brought before the Committee or a sub-committee in accordance with the Scheme of Delegation summarised in Table B below.

Applications made in respect of sex establishments will be brought before the Committee or a sub-committee in accordance with the Schedule of Delegation summarised in Table C attached.

Taxi licensing-related matters reserved for the Licensing and Regulation Committee, or a sub-committee of that Committee, in the council's Licensing Points Record Scheme will be brought before the Committee or a sub-committee. All other taxi-licensing matters have been delegated to the Head of Environmental, Health and Housing, acting in consultation with the Chairman of the Licensing Committee (see Table D).

Procedure at meetings

Meetings of the Committee will be conducted in accordance with the Council Procedure Rules, except when the Committee sits as a hearing, in which case the Hearing Procedure Rules (see Appendix A) will apply.

Licensing Sub-Committee

To deal with applications under the Licensing Act 2003 allocated to the Licensing Sub-Committee in the following Tables A, B, C and D.

To deal with applications under the Gambling Act 2005 allocated to the Licensing Sub-Committee in the following Tables A, B, C and D.

TABLE A

Matter to be dealt with	Delegated to Licensing Sub Committee	Delegated to Officers
<ul style="list-style-type: none"> • Application for personal licence with unspent convictions • Application to review premises licence/club premises certificate • Decision to object when local authority is a consultee and not the lead authority • Determination of a Hampshire Constabulary representation to a temporary event notice 	<p>All cases</p>	
<ul style="list-style-type: none"> • Application for personal licence • Application for premises licence/club premises certificate • Application for provisional Statement • Application to vary premises licence/club premises certificate • Application to vary designated premises supervisor • Application for transfer of premises licence • Applications for Interim Authorities • Determination of application for licence, or variation of licence, in respect of community premises: supervision of alcohol sales 	<p>If a relevant representation made and not withdrawn</p>	<ul style="list-style-type: none"> • If no relevant representation made or • If representation made and withdrawn
<ul style="list-style-type: none"> • Request to be removed as designated premises supervisor • Decision on whether a complaint is irrelevant, frivolous or vexatious • Determinations of application for minor variation 		<p>All cases</p>

Responsibility for Functions

<ul style="list-style-type: none">• Determination of relevance of representation• Exercise of Responsible Authority Functions of applications and notices submitted to the licensing authority under the Licensing Act 2003 (as amended by the Police and Social Responsibility Act 2011) in accordance with the regulations• In cases where the Magistrates Court has determined the licence on appeal		
---	--	--

TABLE B - Gambling Act 2005: Delegation of Functions

GAMBLING ACT 2005 Summary of permitted licensing authority delegations			
Matter to be dealt with	Delegated to the Licensing Committee	Delegated to Sub Committee	Delegated to Officers
Approval to recommend to Council <ul style="list-style-type: none"> • the Standard of Licensing Policy (including substantive amendments) • policy not to permit casinos 	All cases		
<ul style="list-style-type: none"> • Cancellation of club gaming/club machine permits • Review of a premises licence • Decision to give a counter notice to a temporary use notice 		All cases	
<ul style="list-style-type: none"> • Application for premises licences • Application for a variation to a licence • Application for transfer of a licence • Application for a provisional statement • Application for club gaming/club machine permits 		If a relevant representation made and <i>not</i> withdrawn	<ul style="list-style-type: none"> • If no relevant representation made <i>or</i> • If representation made and withdrawn
<ul style="list-style-type: none"> • Fee Setting (when appropriate) • Applications for other permits • Cancellation of licensed premises gaming machine permits • Consideration of temporary use notice 			All cases

TABLE C - Sex Establishments: Schedule of Delegated Authority

Matter to be dealt with	Delegated to
<p>Grant (First or New) of an application for any type of Sex Establishments Licence</p>	<p>The sub-committee*</p> <ul style="list-style-type: none"> • if a relevant objection received and not withdrawn and/or • if officers have concerns in respect of the application or characteristics of the locality <p>Officers in all other cases</p>
<p>Refusal of an application for the <i>grant, renewal or transfer</i> of any type of Sex Establishment Licence on the grounds that:</p> <ul style="list-style-type: none"> • the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason • if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, reviewed or transfer of such a licence if he made the application himself <p>Refusal of an Application for <i>the grant or renewal</i> of any type of Sex Establishment Licence on the grounds that:</p> <ul style="list-style-type: none"> • the number of sex establishments, or sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality • the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality; or to the use to which any premises in the vicinity are put; or to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made <p>Refusal of an Application for the <i>variation</i> of the terms, conditions or restrictions on/or subject to which the licence is held for any type of Sex Establishment Licence</p>	<p>The sub-committee* in all cases</p>
<ul style="list-style-type: none"> • <i>Matters ordinarily delegated to a sub-committee may be referred to the Licensing Committee at the discretion of the Head of Environmental</i> 	

<i>Health and Licensing after consultation with the Chairman and/or Vice-Chairman of the Licensing Committee</i>	
<p>Decision on whether an objection is frivolous or vexatious</p> <p>Decision on whether an objection is relevant</p> <p>Refusal of an Application for <i>the grant</i> of any type of Sex Establishment Licence on the grounds that the Applicant is:</p> <ul style="list-style-type: none"> • under the age of 18 • for the time being disqualified from holding a licence following revocation of such a licence • a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of 6 months immediately preceding the date when the application was made • a body corporate which is not incorporated in an EEA state • a person who had, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is a like application. 	<p>Officers in all cases</p>
<p><i>*Although matters will normally be referred to a sub-committee for determination, they may be referred to the full Committee at the discretion of the Head of Environmental Health and Licensing, after consultation with the Chairman and/or Vice-Chairman</i></p>	

TABLE D

TOWN POLICE CLAUSES ACT 1847 & LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 Summary of permitted licensing authority delegations		
Matter to be dealt with	Delegated to the Licensing Committee	Delegated to the Sub Committee
<ul style="list-style-type: none"> • Approve 'standard' conditions of licence Approval to recommend to Cabinet or Portfolio Holder: <ul style="list-style-type: none"> • Power to set hackney carriage fares • Power to create hackney carriage stands • Hackney Carriage and Private Hire Policy 	All cases	
<ul style="list-style-type: none"> • To consider appeals by applicants against a decision of the Head of Environmental Health & Licensing in respect of an application for such a licence 		All cases
<ul style="list-style-type: none"> • To consider cases involving the behaviour or suitability of the holder of, or applicant for, a licence • To suspend or revoke an existing licence, or refuse an application for such a licence • Decision on matter which may require the issue of penalty points 		Where referred by the Head of Environmental Health & Licensing

3 (iii) Housing (Appeals) Committee

To hear and determine the following matters where they do not fall, or are not decided, within the scheme of delegation to officers:

- (a) specific cases in respect of either public or private sector housing referred by the Corporate Head of Housing or where a specific request for consideration has been made by a Member of the Council;
- (b) where housing applicants wish to appeal against the decision to suspend their application for a period of one year;
- (c) to determine appeals in respect of discretionary housing payments;

(Note: A general protocol operates whereby the relevant Ward Member(s) will be invited to attend the Committee and have the right to address the meeting on particular cases).

3 (iv) Winchester Town Forum

- (a) To act as a consultative and advisory body regarding issues affecting the five Winchester Town District Wards which, on occasions, may also include 'cross-boundary' matters involving adjoining areas (e.g. Badger Farm and Olivers Battery) and the Littleton Parish Ward area of the parish of Littleton and Harestock.
- (b) To forward any recommendations for action principally to Cabinet, but also to one of the regulatory Committees and/or Council when appropriate. However, no discussions shall take place about specific applications which fall within the remit of any of the Council's regulatory committees.
- (c) To promote community engagement within the Town Wards, by undertaking consultation exercises or encouraging the formation of community groups.
- (d) To consider the draft capital and revenue budget for the S35 Town Account each year and to make recommendations to Cabinet and Council.
- (e) Within the Council's policy framework and the framework of the S35 Town Account Revenue Budget:
 - (i) to incur expenditure;
 - (ii) to set fees and charges;

Responsibility for Functions

- (iii) to make decisions in connection with the operation or management of property or facilities;
- (iv) to make arrangements for special events;
- (v) to scrutinise budget and other performance monitoring reports;

- (vi) to authorise incurring expenditure up to a limit of £50,000 on Town Account capital schemes within the approved capital programme under Financial Procedure Rule 6.4.
- (vii) to authorise virement of a sum of £25,000 or less in total in any one year between budget heads subject to:
 - a) The virement being in respect of a budget within the S35 Town Account and that the base budget is not increased; and
 - b) Where in the opinion of the Section 151 Officer the provisions of the Council's Financial Procedure Rules (Rules 7.4 (b) to (d) and 7.5) on virement are met.
- (viii) To consider the programme of schemes within the Town Wards to be funded from the Open Spaces Fund each year, including any other funds specifically allocated to the programme of schemes within the Town Wards, particularly the Community Infrastructure Levy (CIL), and to make recommendations to Cabinet and the portfolio holder.

PROVIDED THAT these provisions shall not apply to that part of St Barnabas Ward that is within the Parish of Littleton and Harestock (Harestock Parish Ward).

3 (v) Joint West of Waterlooville Major Development Area (MDA) Planning Committee

1 Establishment of the Joint Committee

1.1 There shall be constituted under the provisions of Section 101(5) and Section 102 of the Local Government Act 1972 a Joint Committee to be known as the “West of Waterlooville Major Development Area Joint Planning Committee”.

1.2 The Joint Committee is established by Havant Borough Council and Winchester City Council.

1.3 The area within which the Joint Committee is to exercise its authority is the West of Waterlooville Major Development Area, as shown on the plan attached as Appendix A.

1.4 This Constitution sets out how the Joint Committee will operate and how decisions are made.

2 Functions Delegated to the Joint Committee

2.1 Subject to the remaining provisions of this Clause 2, the following functions shall be delegated to the Joint Committee insofar as they relate to matters within the West of Waterlooville Major Development Area:

Power to determine applications for planning permission (including applications for reserved matters).
Power to determine applications to develop land without compliance with conditions previously attached.
Power to grant planning permission for development already carried out.
Duties relating to the making of determinations of planning applications.
Power to determine applications for planning permission made by a local authority, alone or jointly with another person.
Power to enter into agreement regulating development or use of land.

The delegation includes all the powers necessary to facilitate, or otherwise incidental or conducive to, the discharge of the functions of the Joint Committee.

2.2 The following functions shall be reserved to the appointing Authorities and shall not be within the powers of the Joint Committee:-

Power to decline to determine application for planning permission.
Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.
Power to issue a certificate of existing or proposed lawful use or development.
Power to serve a completion notice.
Power to grant consent for the display of advertisements.
Power to authorise entry onto land.
Power to require the discontinuance of a use of land.
Power to serve a planning contravention notice, breach of condition notice or stop notice.
Power to issue a temporary stop notice
Power to issue an enforcement notice.
Power to apply for an injunction restraining a breach of planning control.
Power to determine applications for hazardous substances consent, and related powers.
Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.
Power to require proper maintenance of land.
Power to determine application for listed building consent, and related powers.
Duties relating to applications for listed building.
Power to serve a building preservation notice, and related powers.
Power to issue listed building enforcement notices.
Powers to acquire a listed building in need of repair and to serve a repairs notice.
Power to apply for an injunction in relation to a listed building.
Power to execute urgent works.
Power to determine applications to fell or carry out works to trees that are the subject of a Tree Preservation Order

2.3 The Joint Committee shall not have authority to take any decision which is contrary to or not wholly in accordance with the budget approved by Havant Borough Council or Winchester City Council for the Joint Committee or is contrary to an approved policy or strategy of either of the authorities.

2.4 Save as expressly provided, the functions delegated to the Joint Committee shall not affect the schemes of delegations for officers for determining planning applications adopted by Winchester City Council and Havant Borough Council.

3 Membership and Appointment of the Joint Committee

3.1 The Joint Committee shall comprise nine Members, being five Members from Winchester City Council and four from Havant Borough Council. Each appointing Authority shall, unless there are overriding reasons to the contrary, appoint to the Joint Committee the Chairman of their committee responsible for planning matters.

3.2 Each Authority may appoint deputies to act for the appointed Members of the Joint Committee. Where the appointed Member is unable to attend a meeting of the Joint Committee, their Deputy may attend and carry out their responsibilities, including voting in their absence.

4 Quorum

4.1 The quorum for a meeting of the Joint Committee shall be four Members, with at least one Member from each Authority.

5 Chairman and Vice-Chairman of the Joint Committee

5.1 The Chairman of the Joint Committee shall be the Chairman of the Planning Development Control Committee of Winchester City Council.

5.2 The Vice-Chairman of the Joint Committee shall be the Chairman of the Development Management Control Committee of Havant Borough Council.

6 Secretary to the Joint Committee

6.1 The Joint Committee shall be supported by the Secretary to the Joint Committee.

6.2 The Secretary of the Joint Committee shall be an officer of one of the appointing Authorities, appointed by the Joint Committee for this purpose.

- 6.3 The functions of the Secretary of the Joint Committee shall be:
- a) To maintain a record of membership of the Joint Committee;
 - b) To summon meetings of the Joint Committee;
 - c) To prepare and send out the agenda for meetings of the Joint Committee in consultation with the Chairman and the Vice Chairman of the Joint Committee;
 - d) To keep a record of the proceedings of the Joint Committee;
 - e) To take such administrative action as may be necessary to give effect to decisions of the Joint Committee;

7 Convening of Meetings of the Joint Committee

- 7.1 Meetings of the Joint Committee shall be held at such times, dates and places as may be notified to the members of the Joint Committee by the Secretary to the Joint Committee.

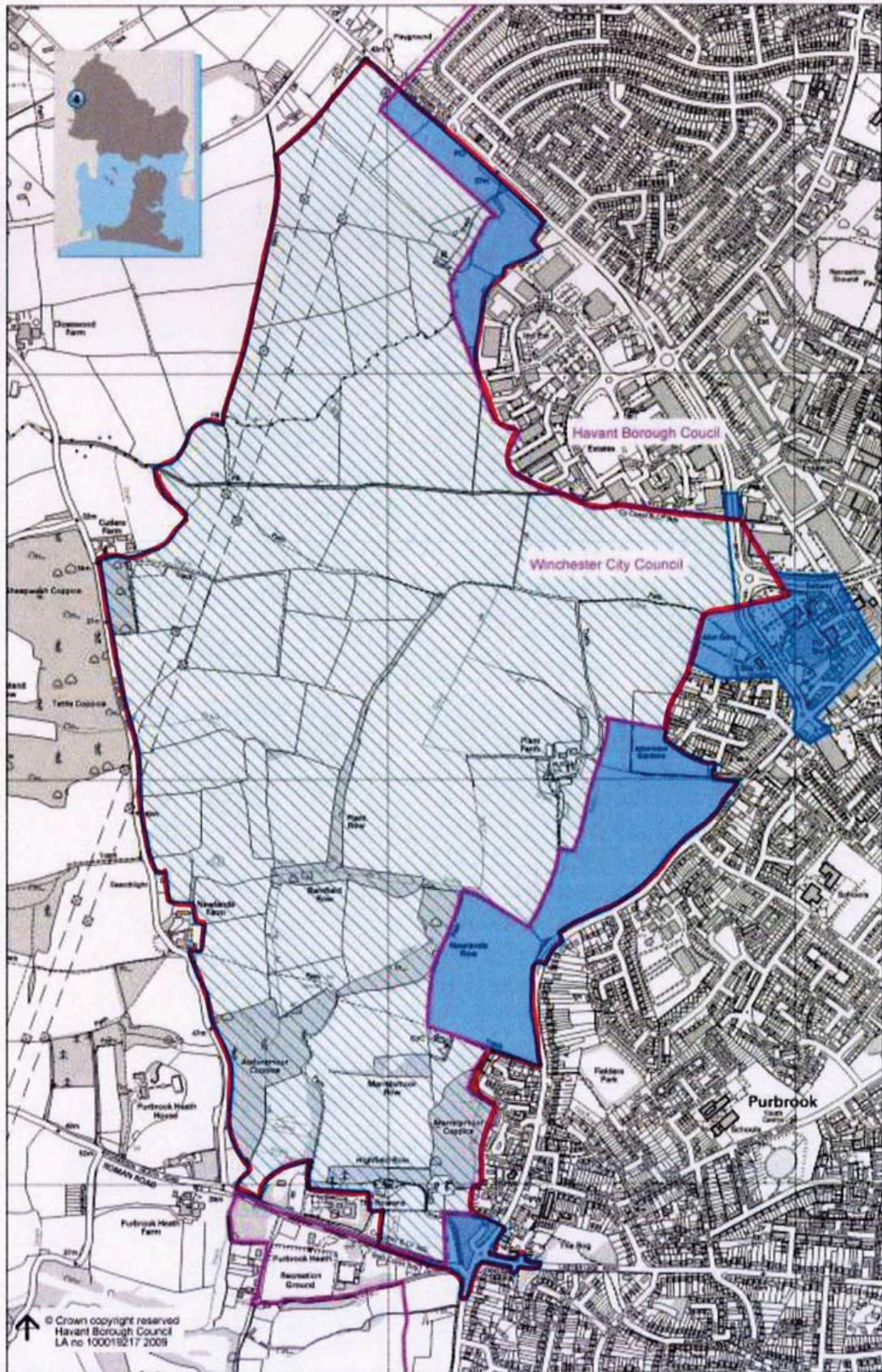
8 Procedure at Meetings of the Joint Committee

- 8.1 The Joint Committee shall, unless the member of the Joint Committee presiding at a meeting or the Joint Committee determines otherwise, conduct its business in accordance with the Constitution of Winchester City Council, except in so far as may be specified to the contrary in this Constitution.
- 8.2 The Chairman of the Joint Committee, or in his/her absence the Vice Chairman of the Joint Committee, or in his/her absence the member of the Joint Committee elected for this purpose, shall preside at any meeting of the Joint Committee.
- 8.3 Subject to Clause 8.4, decisions shall be decided by a majority of the votes of the members present and voting.
- 8.4 The chairman shall have a second or casting vote.
- 8.5 Where, immediately following the taking of a decision, at least two members of the Joint Committee indicate that the decision should be referred back and made by the relevant local planning authority(ies) for the application, the matter shall stand referred to the appropriate local planning authorities for determination.


9 Amendment of this Constitution


- 9.1 This constitution can only be amended by resolution of all appointing Authorities.

Appendix A
Waterlooville MDA



Site 4 in Havant Borough Core Strategy

 MDA Boundary

 Land in Havant Borough

Version 11/02/2019