SCRUTINY FOR POLICIES AND PLACE COMMITTEE
SUMMARY OF OUTCOMES

19 June 2019

Declarations of Interest - Agenda item 2	**Action**
Cllr Munt declared a personal interest in respect of agenda item 5, as her partner was a landowner and she played no part in the discussion.	
Minutes from the previous meeting held on 22 May 2019 - Agenda item 3	**Action**
The Committee agreed that the minutes of the last meeting were accurate and in the absence of the Chair of the Committee the Vice Chair signed them.	
Public Question Time - Agenda item 4	**Action**
The Vice Chair of the Committee invited those who had registered to address the meeting. Statements had been received from 5 members of the public, however only Mrs Roseff and Mrs Bucks were present and they both spoke in support of the submissions they had made in advance of the meeting. The Governance Manager noted that all of the statements received from members of the public had been circulated to the Committee and published on the Council's website. Mrs Joanna Roseff, of the Axbridge Bridleways Association spoke in support of the statement she had submitted below including training officers and members on the efficiency of processing DMMOs. Following the process review, several options were approved by the Regulation Committee on 9th May 2019, on which we have the following comments: IR4 WCA 1981 s 53, (c) refers to the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows— etc The important word is relevant: it does not say exhaustive. Available evidence can become irrelevant depending on what else is found. Published county maps should be looked at first because they show the antiquity of the route and the places that it connected; they should move from the secondary to the primary list. The investigating officer should have authority to mark against each item on the list whether or not they chose to investigate and if it was omitted, put a reason why. Recently at Wedmore, the Definitive Map showed a FP through a building; the Provisional Map exposed a drafting error, yet the officer flogged	

through every map on the list adding no value.

IR8 Shorten the investigation when sufficient evidence has been found, not just when it is 'conclusive'. The relevant test is 'reasonable allegation', less than 50%, or 'balance of probabilities', which is slightly more than 50%.

D2 The Regulation Committee are untrained and inexperienced. They should not over-rule an informed decision by the R-o-W Department, particularly if it was arrived at in consultation with the Legal Department – especially not on the basis of a site visit. On 9th May, they said the Investigation Reports are lengthy and hard to follow – so no site visits.

D3 For borderline decisions it is even more important that untrained Councillors should not interfere. The decision should be based on the facts and not on politics. If it is borderline, the decision should always favour the public.

On the subject of post determination Mrs Joanna Roseff, submitted that the OMA has an obligation to protect and assert the rights of the public, so if they have made an order in favour of the public, they should defend it. To do otherwise is not fair on applicants, particularly inexperienced ones.
User evidence and landowners in favour
These both have a shelf-life; users die or move away and landowners change; yet these claims are not listed on the Statement of Priorities as they should be.

Mrs Sarah Bucks, Chair of the South Somerset Bridleways spoke in support of the statement she had submitted below:

<u>Problems, from the perspective of a user group, with the DMMO application backlog</u>
Backlog, referrals, inefficiencies, policies, possible/partial solutions

- <u>Backlog,</u>

The authority has had a backlog for many years and never the resources to make an impression on it. DMMO applications should be determined within 12 months and Inspectors are now finding delays of 10 and more years unacceptable, particularly in view of the 2026 cut off date. When an application is referred for non-determination, PINS are now directing the authority to determine it within 6 or 12 months.
The rate of submitting DMMO applications is going to increase exponentially as 2026 approaches. Even at the optimistic rate of processing 10 applications per year, the authority's current system is not fit for purpose. Other surveying authorities are trialling solutions, and working with user groups to streamline and standardise the process.
The Somerset LAF has already been provided with information from Northumberland and Yorkshire. Cornwall only require a set number of documents (tithe and 1910 Finance Act records and OS maps) to record the application on the modifications register and they encourage a standardised approach from the user groups and work with them to source documents. SCC require all researched information to be submitted,

which may be over 20 documents, all of which will have to be assessed and a report written.
Many authorities are now employing more experienced staff, as they can see that the rate of applications is going to grow exponentially. They are also evolving standardised and systematic ways of working.

- Referrals

This Surveying Authority has been ignoring directions from the Secretary of State for years. Whilst it is true that there is no direct penalty for not complying with such directions, it is very poor practise. This list shows ones that we (South Somerset Bridleways Association) are aware of, there may be others.

Parish	Route	Date of application	Instructed to determine the case by:
Abbas and Templecombe	Lily Lane	August 2008	December 2018
Broadway	Long Drove	September 2008	May 2018
Broadway	Long Drove to Hare Farm	September 2008	May 2018
Broadway	Long Drove to Hare Lane	September 2008	May 2018
Broadway	New House Farm to Hare Lane	September 2008	May 2018
Charlton Musgrove	east from Balls Farm	September 2009	May 2018
Combe St Nicholas	Hamway Lane	January 2009	May 2018
Combe St Nicholas	Charmoor Drove	January 2009	May 2018
Combe St Nicholas	Charmoor Lane	January 2009	May 2018
Puckington	Gummers Lane	June 2008	May 2018
Shepton Beauchamp	Fouts Lane	September 2008	May 2018
South Petherton	Frogmary Lane	September 2008	May 2018
Combe St Nicholas	Sixteen Acre Lane	January 2009	June 2019 (20th.)

Plus there are another dozen that SCC have been directed by PINS to determine in the next couple of years, and of the many applications submitted by the South Somerset Bridleways Association, another 130 are paragraph 2 compliant and so could be referred for non-determination at any time.

- Inefficiencies:
    - ROW staff looking for too much evidence rather finding ‘reasonable allegation’ or ‘balance of probability’ and making an order. If an order is made, then it can be objected to or

confirmed, and many would go through without objection.
    - Reports too long and confusing, not balanced or adding positive evidence together, but dismissing any evidence which does not offer 'proof'. No summary sheet.
    - Researching and producing irrelevant or excessive information – e.g. comparisons with other routes in other parishes.
    - Lack of continuity - cases are not followed through to conclusion, but 'parked' for many years and often more than once.

- Not processing adjacent or connecting routes at the same time.
    - For example in South Chard there is a network of connecting routes for which applications were submitted in March 2009 and which rely on many of the same documents. In the queue, laboriously compiled by SCC, the applications for Factory Lane to Green End Lane are 19, Chilson Common to Hoskins Lane 96, and Dyke Hill to Chard Junction 148 respectively. **If** SCC achieve a rate of processing applications at 10 / year, these 3 applications will be processed in approximately 20, 70 and 150 years' time respectively – making dead end routes for many decades. Why not process them at the same time as they rely on the same evidence? Obviously all current users will be dead so there is little enthusiasm to collect user evidence.

    - Sixteen Acre Lane in Combe St Nicholas was submitted at the same time as three others in Combe St Nicholas, and has also been referred for non-determination, yet it has not been processed with the other three, and we don't think any work has been done on this application – another direction to determine date missed.

- Holding back cases which should be sent to PINS. We believe that the following applications have had orders made, objections received, and are waiting to be sent back to PINS. There may be other such cases.

Chaffcombe	Whitemoor Hill	order made in December 2015
Pitney	Underhill Lane	Secretary of State overturned SCC's decision to refuse to make orders on the evidence provided for these three applications, and directed SCC to make orders for RBs. Orders made in
Pitney	Dyer's Piece Lane	
Pitney	Northern end of Westerngate Lane	

		January 2016
Crewkerne	Butts Quarry Lane	Secretary of State overturned SCC's decision and directed SCC to make orders for RBs orders made in July 2016
Crewkerne	Higher Easthams Lane	
Pilton	Westholme Lane	order made in February 2018

- Orders about to be made: (what is the delay?)

Kingsbury Episcopi route from Rusty Axe to Pulpits Way
Secretary of State directed SCC to make order for RB in June 2019
Puckington Gummers Lane (objection period has passed some time ago, what is the delay now?)

- <u>SCC ignoring own policies:</u>
  1. County farm land at Dowlish Wake was sold without a 100 yard section of connecting bridleway being dedicated. This goes against both the ROWIP and the policy to dedicate public rights of way before selling county land, especially where the land concerned had a DMMO application (submitted 2009) was bought to the council's attention. End result will be an expensive Public Inquiry when the application is eventually processed, and in the meantime riders are on the roads.
  2. Taking applications out of turn where a planning application is made. The current application for another anaerobic digester and service roads in South Petherton crosses the land of Frogmary Lane and potentially Fouts Lane. Applications for these routes were submitted in 2008, SSBA referred the applications to the Secretary of State for non-determination in August 2017 about the time the planning applications were submitted. The Secretary of State directed the council to determine the applications by May 2018. To date the authority still hasn't determined the applications.

- <u>Possible Solutions:</u>
  - Process applications which are backed by a legal Act (Inclosure award or Quarter Sessions record). Make reports on that evidence alone, and not keep demanding more documentation which is superfluous; the record of the legal event should be sufficient.
  - Make orders for routes which are thought not to be contentious.
  - Training – by IPROW, and for economies share day with neighbouring authorities. IPROW will provide bespoke days for surveying authorities who have particular problems.
  - Short term (say 2 years) contract for an experienced and proven ROW professional with the remit to reduce the DMMO application backlog.
  - Do not employ people without experience and then spend years training them internally with staff who should be processing

applications, so delaying DMMO processing work.

- Attempt to have objections withdrawn rather than just stacking the cases up to be sent to PINS many years later.

Mrs Rachel Thompson MBE, Consultant to the Trails Trust/Founder member of Horse Access Campaign UK submitted, regarding the process review – modifying the definitive map and statement –suggestions to save time:

Investigation and report

IR4: all published maps should be available at County Hall, if IR5 is taken forward (research volunteers digitising) most archives would be readily available.

IR5: use of volunteer resource – yes agree

IR6: Interview users by phone. Yes absolutely agree. All users should be interviewed immediately an application is presented due to severe time delays in investigating.

IR8: if there is conclusive evidence such as an express dedication / acceptance or a publicly awarded carriage road or bridleway in an inclosure award, further research is unnecessary. Furthermore, where there is conclusive evidence of a public right of way these should be immediately recorded on the Definitive Map and Statement by legal event order, saving hours of process time.

IR10: yes agree. Produce one good well researched report and let the matter rest.

Decision- making

D2: give up committee site visits altogether. These applications are judged on the evidence, not what the route looks like on the ground. This too often leads to judgements made on suitability, which is not the test. Trust the officer's decision.

D3: borderline evidence – trust the officer. If the evidence is borderline, the decision should err on the side of the public.

Past Determination

PD1: adopt neutral stance for opposed orders – disagree – Local Authorities have a legal duty to protect public rights. If the LA has made an order, it must defend it and negotiate with objectors to withdraw. If it seems likely that there will be objections, other than from the landowner, during the course of the inquiry, go for a dedication either express or HA80 s25.This was done with great effect in the past.

PD2: yes agree. Carry out the investigation, decide LA stance then let it rest, far too much time wasted arguing minor points, let the inspector weigh it up.

PD3: disagree. Again the LA has a duty to protect the rights of the public and should ensure the best case goes forward to public inquiry. Again consider trying to achieve a dedication.

Lynne Myland, of the Isle of Wedmore Horse Riders and Carriage Drivers Access Group submitted, following on from the recent Regulation Committee's agreement to support the proposed changes to how

applications to modify the definitive map are processed. Decision Making -D2 "Minimise site visits for committee decisions". I would like to make the following point - The decisions should be Quasi Judicial and should be decided on the evidence placed in front of the committee, not on a visit to see the suitability or desirability. The officers will make a site visit; I believe site visits by Regulation Cttee unnecessary because they risk being influenced by suitability and recent topographical changes. I will not be able to attend the meeting but very much appreciate the opportunity to have this opportunity to give my opinion for the Scrutiny Committee to consider. Venetia Craggs, of Axbridge Bridleways submitted: 4.4 Mentions Site Visits this is a total waste of time and money as Google can be used very successfully. Of course time also changes the way over 100/200 years. If the Committee insist on a site visit then they will need an expert to point out the various landmarks, eg old ditches, walls, wayfaring trees, bench marks. old gate posts, etc. Any Officer who makes a final decision must be very well trained in the legality of rights of way. and " protect and assert the rights of the public" before the landowners. It Appears that User evidence claims are not being researched immediately. This of course is unfair as many users die before the claim is looked into or comes to a Public Inquiry. Perhaps more help from Northumberland CC might be helpful. The Vice Chair of the Committee invited the Lead Officer to reply to the statements that had been received and he spoke to confirm the Council's position and responded to the various points raised by members of the public.	
Rights of Way Service Update - Agenda item 5	**Action**
The Committee considered this update report on the Rights of Way (RoW) Service, that provided a focus on applications to modify the Definitive Map & Statement. The Committee had received a report on this topic last November and asked the RoW Service to undertake a review of this area of work and the report contained an overview of the review findings, which were summarised in Appendix 1 of the report. It was reported that there were currently in the region of 330 undetermined applications to modify the Definitive Map and Statement of Rights of Way. In each case the applicant considered that the legal record was in error and should be corrected. Members noted that the size of the backlog raised two main areas of	

concern:
1)The authority is under a statutory duty (Wildlife & Countryside Act 1981) to determine applications 'as soon as reasonably practicable,' which based on current resources and determination rates, was not possible;
2) Directions issued by the Secretary of State (SoS) to determine applications within a specified time frame meant that the order in which applications were determined was affected, with determination of some of the oldest applications being delayed due to resources being redirected to focus on SoS directions.

In response to a question it was stated that 39 SoS directions had been received since July 2016, the deadlines for 24 of which had now passed. It was noted that 6 of those had been complied with on time, with 9 being determined after the deadline and a further 9 still awaiting a determination.

To improve the determination/referral rate it was explained that either additional resources would be required or there would need to be a change to the process. A streamlined process had been adopted some years ago and was largely still in place, however the levels of scrutiny from applicants and objectors meant that on most occasions a fully streamlined process was not achievable. It was noted that a typical investigation would take approximately 6 months to determine (allowing for research, consultation periods, consideration of responses).

The last 5 years has seen continuous process improvement including report structure and being able to use standard text across similar applications. Previous staff turnover and vacant posts had not helped service delivery, but recent stability in this area, coupled with the continuous improvement had begun to improve performance but ultimately would not be enough to improve the current backlog or long delays in investigating recently submitted applications.

For the purposes of the process review, consideration had been given on how further efficiencies could be achieved was broken down into 3 distinct stages of dealing with applications; i) Investigation & Report (IR), ii) Decision-making (D), and iii) Post Determination (PD). The proposed changes would see the wait for determinations being reduced from 30 years to 23 years.

During the consideration of the report, issues/concerns were raised, questions
asked/answered and further information was provided on:

- It was acknowledged that the work the Council did was very thorough and detailed, although in some respects it was thought there was room for improvement and the on-going backlog was unacceptable. Officers were encouraged to work with others so there was not a 'them and us' feeling, and to look for a better way to deal with it. It was stated that nationally there were continuing staff resources/shortages;

• It was noted that the team was just focusing on fulfilling its statutory duties, and in respects of current RoW applications they did listen to user groups and make contact and were mindful of planning inspector guidance and interpretations. It was also noted that the level of detail required for processing each RoW was always high and therefore resource intensive and additional staff would help; • Members heard that the backlog had been an issue for some time and it was noted that recent years had since the backlog increase, due to many applications being received; • It was explained that a number of applications had been received from the Horse Society and looking at Somerset as a whole there appeared to be more applications in the South Somerset area. There were no private sector resources the Council could utilise and the job within the Council was graded lower and therefore lower paid than in other authorities meaning recruitment could be difficult; • The work of the third sector and volunteers was acknowledged particularly for cataloguing and helping to improve the quality of applications assisted the determination process, and it was stressed the Council had to remain impartial; • Regarding the issue of taking applications out of turn, i.e. so that they were not considered in strict chronological order and it was noted that if an application was taken 'out of turn' it would bump something else further down, and it was probably best left to appeal process to determine; • The importance of the RoW network to a rural County like Somerset was recognised however it was also noted that the difficult financial position meant that all claims for additional resources had to be considered very carefully against a business case; • It was noted that all applications were processed using a RoW 'scorecard' and included considerations such as road safety, the status of the route and the public benefit. There was no geographic weighting of way of processing the applications as they were considered strictly in date order so as not to distort the system; • Some RoW had been ancient tracks, drove ways and byways and could be traced back to the Doomsday book and were a valued part of Somerset's history and it was asked if such routes were mapped if they could not be designated and/or preserved? In response it was noted that mapping of RoW was led by the applications held but that the ancient aspect was not a consideration reflected in scorecard system, but any historic evidence would be considered; • It was asked about neighbouring authorities and if they had similar backlogs and it was noted that staffing levels in other RoW teams were in line with the proposals contained in the report; • It was suggested that consideration be given to sharing resources with the District Councils if this could help speed up application determinations; • The Cabinet Member commended Officers for their diligent work noting applications were often very complex and difficult and given the continuing level of applications it would be important for the Council to address work carefully and correctly with the available	

resources. The Committee agreed a recommendation to the Cabinet Member, Highways and Transport that representatives from the Bridleway Associations be invited to take part in discussion of the issues with the Rights of Way service team on a 6-monthly basis and that the service seeks to work with District Councils and volunteers.	
Revenue Outturn 2018-19 Budget Monitoring - Agenda item 6	**Action**
The Committee considered this report, introduced by the Deputy Leader of Council, that provided an update on the Council's final revenue budget outturn position. It was reported that there had been an underspend of £5.909m against a net budget of £317.882m (-1.86%). It was explained that this had been achieved through a tighter financial grip on spending, taking difficult decisions to make budget reductions and a determination to significantly rebuild resilience through reserves. This achievement was attributed to staff, managers and all Members who had contributed to a turnaround that placed the Council in an improved and more resilient position. However, it was acknowledged that it remained imperative that the tighter financial grip was maintained to enable the Council to further improve its financial foundations. It was noted that in recognition of the need for services to continue to manage service delivery across financial years, it would be sensible to carry forward funding to 2019/20 where specific individual rationale was clearly set out (section 3 of appendix A and section 4 of appendix B of the Cabinet outturn report). It was stated that total requests for carry forwards were £0.417m and the Cabinet would be asked to approve those. The Committee wished to pay tribute to the exceptional work of officers, and several Members noted that each time they had asked a question or requested additional information the details requested had been provided and shared in a timely way. Members reflected that it would now be important to ensure the progress made over the last 12 months was carried forward over the next few years, and the challenge of maintaining financial sustainability could not be underestimated. Members also noted that the progress the Council had made had been due in large part to the identified savings being realistic and deliverable and this had represented a change from previous years, as 98% of the additional savings identified in MTFP2 had been achieved. Members also welcomed the improved financial reporting during 2018/19 with more frequent and detailed reports to Cabinet, the Audit committee and Scrutiny meetings and it was confirmed that this improved approach would continue throughout 2019/20 to ensure on-going transparency in financial reporting.	

It was noted that to further strengthen the Council's financial resilience, it was proposed that the services' net underspend (including the unused Corporate Contingency) would be used to: • Carry forward requests submitted by Services (as detailed in section 4 and appendix B of the Cabinet report); • Eliminate the deficit balance on the Repairs & Maintenance (R&M) and Buildings Maintenance Indemnity Scheme (BMIS) reserves, and; • Create an earmarked reserve of £2.556m to enable the Council to support ongoing priorities with delegated authority to be given to the Leader, Cabinet Member for Resources, Chief Executive and Director of Finance. There was a brief discussion of the areas where that had held a negative reserve and those areas had been remedied except for Dillington House. It was explained that negative reserve of £1.3m associated with Dillington House were being actively considered and Officers were working with the Manager to put together a robust business plan to recover that position. The Vice Chair thanked the Officers for the report and noted that the improvement to the Council's financial position was welcome news and she reflected that all Members would be keen to ensure the change of approach and the positive results it had yielded were maintained. The revenue outturn report for 2018/19 was accepted and it was requested that future reports contained a 'waterfall chart' to aid understanding.	
Capital Receipts Flexibilities Update - Agenda item 7	**Action**
The Committee considered this report that reminded members that in 2016 the Government had issued statutory guidance on the Flexible Use of Capital Receipts. Members noted that the Council had used the Capital Receipts flexibilities to fund a total of £14.987m of revenue transformational activity within services across 3 years from 2016/17 to 2018/19. The directive had given Councils the ability to use Capital Receipts received in the year to fund expenditure incurred on projects that were designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery to reduce costs and/or transform service delivery in a way that reduced costs or demand for services in the future years for any of the public sector delivery partners. It was noted that the directive could be used by Councils up to and including the financial year 2021/22. Up to 31 March 2018 the Council made use of this flexibility totalling £6.389m to fund the transformation costs of the Learning Disabilities service and back office support services, IT and Business Change. There was a brief discussion on how Officers ensured expenditure	

qualified as transformational against capital receipts funding in accordance with the legislation, and it was noted a full review of business cases had been carried out in March 2018. This review consisted of consideration by a panel of officers that was chaired by a member of the Council's Senior Leadership Team followed by a final review panel made up of the Chief Finance Officer and the Chief Executive. As a result, £8.598m of expenditure had been funded under this flexibility. There was a question about capital receipts and Members heard in response that the amount of capital receipts held at 31 March 2019 (end of financial year 2018/19) had been £6.066m, of which £3.971m was committed to fund the capital programme, the majority being economic development projects, leaving available unearmarked capital receipts of £2.095m. It was also noted that the 2018 review of business cases also included potential costs of future transformational work, totalling £3.656m over the years 2019/20 and 2020/21. The Vice Chair noted that the process of reviewing activity had ensured that business cases were robust and this had helped improve efficiencies and utilise resources across the Council. The Committee agreed to note the update and review process undertaken and accepted the approach set out for 2019/20 and future years.	
Scrutiny for Policies and Place Committee Work Programme - Agenda item 8	**Action**
The Vice Chair invited the Governance Manager to outline the key points relating to the Cabinet Forward Plan and Committee's work programme. It was noted that: • The Property Disposal and County Farms Update would now be considered at the September meeting; • An item regarding the Climate Change Task & Finish Group would now be considered at the October meeting. Members were also reminded that the next meeting would be held in the Taunton Library meeting room.	
Any other urgent items of business - Agenda item 9	**Action**
The Vice Chair asked for volunteers to replace Cllr Lewis on the Joint Waste Scrutiny Panel and Cllr Munt agreed to join the Joint Waste Scrutiny Panel. The Vice Chair asked for volunteers to replace Cllr Lewis and Cllr Leyshon on the Local Enterprise Partnership (LEP) Scrutiny Panel. There were no volunteers and there was a brief discussion concerning if the replacements needed to be Members of the Committee and if political proportionality applied to LEP appointments. The Governance Manager agreed to email all Members with further information.	

The Vice Chair, after ascertaining there were no other items of business, thanked all those present for attending and closed the meeting at 11.46am.	