



Public Document Pack

North Devon Council
Brynsworthy Environment Centre
Barnstaple
North Devon EX31 3NP

K. Miles
Chief Executive.

GOVERNANCE COMMITTEE

A meeting of the Governance Committee will be held in the Barum Room - Brynsworthy on **TUESDAY, 14TH NOVEMBER, 2023 at 6.30 pm.**

(NOTE: A location plan for the Brynsworthy Environment Centre is attached to the agenda front pages. For meetings held at Brynsworthy only, you can join the meeting virtually via Microsoft Teams. There are also limited spaces to attend the meeting in person. Please check the Council's website for the latest information regarding the arrangements that are in place and the requirement to book a place 2 working days prior to the meeting. Taking part in meetings (northdevon.gov.uk)

Members of the Governance Committee Councillor Norman (Chair)

Councillors Bushell, Haworth-Booth, Jones, Orange, Quinn, Stevenson, Walker and Whitehead

AGENDA

10. Update to Delegated Powers in the Constitution (Pages 5 - 50)
Report by the Senior Solicitor and Monitoring Officer (attached).

If you have any enquiries about this agenda, please contact Corporate and Community Services, telephone 01271 388253

6.11.23



North Devon Council protocol on recording/filming at Council meetings

The Council is committed to openness and transparency in its decision-making. Recording is permitted at Council meetings that are open to the public. Members of the public that attend meetings must be aware that these meetings are open to the public and so therefore both individuals and the Council itself have the right to record the meeting. The Council understands that some members of the public attending its meetings may not wish to be filmed. The Chair of the meeting will make sure any request not to be filmed is respected.

The rules that the Council will apply are:

1. The recording must be overt (clearly visible to anyone at the meeting) and must not disrupt proceedings. The Council will put signs up at any meeting where we know recording is taking place.
2. The Chair of the meeting has absolute discretion to stop or suspend recording if, in their opinion, continuing to do so would prejudice proceedings at the meeting or if the person recording is in breach of these rules.
3. We will ask for recording to stop if the meeting goes into 'part B' where the public is excluded for confidentiality reasons. In such a case, the person recording should leave the room ensuring all recording equipment is switched off.
4. Any member of the public has the right not to be filmed. We ensure that agendas for, and signage at, Council meetings make it clear that recording can take place – anyone not wishing to be filmed must advise the Chair at the earliest opportunity to allow them to be directed to an area in the room where they will not be caught on camera. Subject to paragraphs 1, 2 and 3 above, audio recordings shall be permitted at all times during public meetings.
5. The recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or in a way that ridicules or shows a lack of respect for those in the recording. The Council would expect any recording in breach of these rules to be removed from public view.

Notes for guidance:

Please contact either our Corporate and Community Services team or our Communications team in advance of the meeting you wish to record at so we can make all the necessary arrangements for you on the day.

For more information contact the Corporate and Community Services team on **01271 388253** or email memberservices@northdevon.gov.uk or the Communications Team on **01271 388278**, email communications@northdevon.gov.uk.

North Devon Council offices at Brynsworthy, the full address is:
Brynsworthy Environment Centre (BEC), Roundswell,
Barnstaple, Devon, EX31 3NP.

Sat Nav postcode is EX31 3NS.

At the Roundswell roundabout take the exit onto the B3232, after about ½ mile take the first right, BEC is about ½ a mile on the right.

Drive into the site, visitors parking is in front of the main building on the left hand side.

On arrival at the main entrance, please dial 8253 for Corporate and Community Services.

All public meetings held at Brynsworthy Environment Centre are held on the ground floor and are accessible through the main entrance to the building or via a ramp located adjacent to the main entrance



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Covering note to supplemental item on Item 10 Governance Committee 14
November 2023

Additional recommendation:

- 2.2 To recommend to Full Council the proposed amendments to Part 2 Article 4 and to Part 3 Annexe 1 of the Constitution as annexed to this report.

Reasons for this additional recommendation:

- 3.2 The proposed amendment to the Constitution as referenced in recommendation 2.2 is on advice from the Council's external Port Marine Safety Code audit and from the Council's external specialist solicitors, Ashfords, to make it clear where the responsibility of the harbours the Council is responsible sit especially in relation to the Duty Holder function.

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NORTH DEVON DISTRICT COUNCIL

1. ARTICLE 1 – THE CONSTITUTION

1.1 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

1.2 The Constitution

This Constitution, and all its appendices, is the Constitution of North Devon District Council.

1.3 Interpretation of Terms

Throughout this Constitution references to the masculine gender shall be taken to mean both the masculine and the feminine gender and expressions in the singular shall include, where appropriate, the plural.

2. **ARTICLE 2 MEMBERS OF THE COUNCIL**

2.1 **Composition and Eligibility**

2.1.1 **Composition**

The Council will comprise 42 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.

2.1.2 **Eligibility**

Only registered voters of the District or those living or working there will be eligible to hold the office of Councillor.

2.2 **Election and Terms of Councillors**

The regular election of Councillors will be held on the first Thursday in May every four years beginning in 2019. The Terms of Office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

2.3 **Roles and functions of all Councillors**

2.3.1 **Key roles**

All Councillors will:

- (a) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (b) contribute to the good governance of the whole of the area and actively encourage community participation and citizen involvement in decision making;
- (c) effectively represent the interest of their ward and of individual constituents;
- (d) respond to constituent's enquiries and representations, fairly and impartially;

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- (e) participate in the governance and management of the Council;
- (f) be available to represent the Council on other bodies;
- (g) maintain the highest standards of conduct and ethics; and
- (h) participate in training and development opportunities offered by the Council.

Further details on roles and responsibilities are contained in Part 7 of the Constitution (Member Role Descriptions). Councillors may fulfil more than one role and the detail is intended to cover these main roles.

2.4 Rights and Duties

2.4.1 Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.

2.4.2 Councillors should consider the situation carefully and, if appropriate, seek guidance from the Monitoring Officer before making information public which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.

2.4.3 For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules contained in Part 4 of this Constitution.

2.5 Conduct

Councillors will at all times observe the Members’ Code of Conduct and the Protocol on Member/Officer Relations, and when sitting on the Planning Committee, the Planning Code of Conduct, set out in Part 5 of this Constitution.

2.6 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

3. **ARTICLE 3 CITIZENS AND THE COUNCIL**

Citizens have a number of rights and responsibilities. The following list is a general summary of rights in terms of information, the opportunity to participate and the ability to make complaints.

3.1 **Citizens' Rights**

Citizens have the following rights. Their right to information and to participate are explained in more detail in the Access to Information Procedure Rules contained in Part 4 of this Constitution:

3.1.1 **Voting and petitions**

Citizens on the electoral roll for the area have the right to:

- (a) Vote;
- (b) Sign a petition to request a referendum for an elected mayor form of Constitution; and
- (c) Sign any other petition they wish to support.

3.1.2 **Information**

Citizens have the right to:

- (a) attend meetings of the Council and its Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- (d) see agendas, reports and background papers, and any records of decisions made by the Council and Committees, except where confidential or exempt information is likely to be disclosed;

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- (e) inspect the Council's accounts and make their views known to the external auditor;
- (f) ask questions at Council meetings; and
- (g) subject to the rules applicable from time to time, to attend the Council's Planning Committee and address the Committee.

3.1.3 Complaint

Citizens have the right to complain to:

- (a) the Council itself under its Complaints Scheme;
- (b) the Ombudsman; or
- (c) the Monitoring Officer about a breach of the Councillor's Code of Conduct.

3.2 Citizens' Responsibilities

Citizens must not harass, be violent, abusive or threatening to Councillors or officers and must not wilfully harm things owned by the Council, Councillors or officers.

4. **ARTICLE 4 THE FULL COUNCIL**

4.1 **Introduction**

The full Council is a formal meeting of all Councillors. The full Council is required by law to take certain important decisions including setting the Council's Budget and Council Tax and approving a number of key plans and strategies, which together form the Policy Framework (listed below). The full Council must also by law take decisions on a number of specific matters.

The full Council provides a central forum for debate and gives the opportunity for Councillors and members of the public, the opportunity to ask questions about the Council or matters affecting the Council.

4.2 **The Council**

4.2.1 **Role**

A meeting of the Council is one at which all 42 members are entitled to attend, speak and vote. The Council is responsible for approving the Budget and Policy Framework of the Council. It will carry out some functions itself but others will be delegated to Committees or named officers.

4.3 **Policy Framework**

The Policy Framework means the following three categories of plans and strategies:

4.3.1 Those required by law to be adopted by the Council, namely:

- (a) Sustainable Community Strategy;
- (b) Crime and Disorder Reduction Strategy/Community Safety Strategy; and
- (c) Local Plan and Development Plan.

4.3.2 Those which the Council has chosen to adopt as part of the Policy Framework, namely:

- (a) Corporate Plan, and

(b) Housing Strategy.

4.3.3 Any plan or strategy required by law to be sent to a Minister of the Crown for approval.

4.4 Budget

Responsibility for the Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, determining the Council tax base, setting the Council tax level, decisions relating to the control of the Council's borrowing requirements, investments, the control of its capital expenditure and the setting of expenditure limits and permitted budget transfers.

4.5 Functions of the full Council

Only the full Council will exercise the following functions:

- 4.5.1 adopting and changing the Constitution;
- 4.5.2 approving or adopting material changes to the Policy Framework and the Budget;
- 4.5.3 approving the Statement of Accounts and the Council's Final Accounts;
- 4.5.4 any matter where the Strategy and Resources Committee is proposing to make a decision which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- 4.5.5 appointing and removing the Leader;
- 4.5.6 except where otherwise provided by any statutory provision, appointing the Chair and Vice-Chair of Committees including the Harbour Board and determining which Committees, Sub-Committees, working parties, Boards, Panels etc. shall be established as standing committees, the terms of reference of each body, the number of members (voting and non-voting) that each consists of and making the necessary appointments to the bodies;

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- 4.5.7 appointing representatives to joint authorities, joint committees and other outside bodies unless the appointment has been delegated by the Council;
- 4.5.8 adopting a scheme for members' allowances;
- 4.5.9 changing the name of the Council's area;
- 4.5.10 conferring the title of honorary Alderman or Freeman of the District;
- 4.5.11 confirming the appointment of the Head of Paid Service; Chief Financial Officer and designating the Monitoring Officer and the taking of any disciplinary action against these Officers and Chief Officers and the designating of "Proper Officers";
- 4.5.12 the approval or adoption of applications to the Secretary of State for approval of a programme of disposal of 500 or more properties or where consent is required for disposal of land used for residential purposes;
- 4.5.13 making, amending, revoking, re-enacting or adopting by-laws and promoting or opposing the making of local legislation or personal Bills;
- 4.5.14 adopting a Code of Conduct for Members (Councillors);
 - 4.5.15 taking decisions in respect of functions which have not been delegated by the Council to Committees, Sub-Committees or officers;
- 4.5.16 the making of Procedure Rules, including in relation to Contracts and Finance;
- 4.5.17 the delegation of functions to Committees, Sub-Committees and officers, subject to the right to amend the Delegation Scheme from time to time as may be required;
- 4.5.18 all other matters which, by law, must be reserved to the decision of the Council as a whole;

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- 4.5.19 to consider and decide on recommendations of Committees not within their delegation or which a committee has referred to the Council for decision;
- 4.5.20 to consider reports on lawfulness and maladministration;
- 4.5.21 to consider reports and recommendations from the Policy Development Committee
- 4.5.22 to take all decisions in respect of delegating functions to another local authority;
- 4.5.23 to set the Council Tax base and the Council Tax;
- 4.5.24 any function under a local Act;
- 4.5.25 agreeing and publishing a pay policy covering the remuneration of the Council's most senior officers;
- 4.5.26 approving the Capital and Treasury Management Strategies; ~~and~~
- 4.5.27 appointing and removing Lead Members where considered appropriate, the role of the Leads Members being set out in Annexe 3 of Part 3; and
- 4.5.28 to discharge the duties and powers of a Statutory Harbour Authority in respect of all harbours administered by the council and in accordance with relevant legislation, regulations, Harbour Orders, General Directions or byelaws.

4.6 **Council Meetings**

There are three types of Council meeting:

- 4.6.1 the annual meeting;
- 4.6.2 ordinary meetings; 4.6.3
- extraordinary meetings.

and they will be conducted in accordance with the Council Procedure Rules contained in Part 4 of this Constitution.

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4.7 Responsibility for Functions

The Council will keep under review the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions.

5. ARTICLE 5 – CHAIRING THE COUNCIL

The Chair and Vice-Chair of the Council will be elected by the Council annually. The Chair, and in his/her absence the Vice-Chair, will have the following responsibilities:-

- 5.1 to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- 5.2 to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
- 5.3 to ensure that the Council meeting is a forum for the debate of matters of concern to the local community;
- 5.4 to promote public involvement in the Council's activities;
- 5.5 to attend or be represented at such civic and ceremonial functions as the Council and the Chair determines appropriate;
- 5.6 to determine any matter referred to the Chair under the Budget and Policy Framework Procedure Rules in Part 4 of the Constitution;
- 5.7 Subject to the reigning monarch, the Chair of the Council shall be the first citizen of the administrative area of the Council; and
- 5.8 Neither the Chair of the Council nor the Vice-Chair shall be a Member of the Strategy and Resources Committee

6. ARTICLE 6 – POLICY AND PERFORMANCE

6.1 Introduction

6.1.1 The Council has chosen to form a Committee to assist in developing the Budget and policies including those within the Policy Framework.

6.1.2 As well as internal matters, the Policy Development Committee will focus on external issues which may have an impact on the Council or its citizens.

6.2 Policy Development Committee

6.2.1 In order to achieve this, the Council has appointed a Policy Development Committee which will:-

- (a) make reports or recommendations to the Council or the Strategy and Resources Committee in relation to policies or strategies of the Council or in respect of matters that it considers ought to be included within policies or strategies of the Council and which relate to Council functions;
- (b) consider matters relating to the performance of the Council,
- (c) act on and respond to policy issues referred to it by Strategy and Resources Committee, and
- (d) consider any general matter of concern which affects the Council's area or its inhabitants but which also directly relates to or affects a Council function.

6.3 Specific Functions

6.3.1 The Policy Development Committee may:-

- (a) assist the Council in the development of its Budget and Policy Framework by in depth analysis of policy issues;
- (b) conduct research, community and other consultation in the analysis of policy issues and possible options;

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- (c) question members of the Committees and Chief Officers from the Council about issues and proposals affecting the area or the performance of the Council;
- (d) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interest of local people are enhanced by collaborative working; and
- (e) consider the impact of policies to assess if they have made a difference.

7. ARTICLE 7 – LEADER OF THE COUNCIL

7.1 Leader

7.1.1 Election

The Leader shall be a Councillor elected to the position of Leader by the Council at the Annual Meeting each year.

7.1.2 Term of Office

(a) The Leader will hold office for one year until a new appointment is made at the next Annual Meeting or until any of the following events arise:- (i) he/she resigns from the office; or

(ii) he/she is not returned or does not stand as a Councillor at an election, or

(iii) he/she is disqualified from being a Councillor; or

(iv) where the Council passes a resolution removing him from office.

(v) By suspension from being a councillor under or by virtue of Part III of the Local Government Act 2000, in which case they shall not hold office for the period of such suspension.

(vi) Is required to cease holding office by a lawful change to this Constitution.

(b) in the event of any casual vacancy in the position of Leader the Deputy Leader shall act in the Leader's place until the appointment of a new Leader by the Council.

7.2 Deputy Leader

7.2.1 Paragraphs 7.1.1 and 7.1.2 above shall also apply to the appointment and removal of the Deputy Leader

8. ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

8.1 Introduction

The Council will appoint committees to undertake a variety of regulatory and other functions that are the responsibility of the Council but which do not have to be carried out by the full Council.

8.2 Standing Committees

The Standing Committees are listed below and full details of their functions can be found in Part 3

Strategy and Resources Committee

Planning Committee

Licensing and Community Safety Committee

Governance Committee

Harbour Board

North Devon Crematorium Joint Committee

Joint Building Control Committee

Policy Development Committee

Appointments Committee

8.3 Other Committees and Sub-Committees

8.3.1 The Council will appoint such other committees as it considers appropriate to exercise any of its functions including any Committee restricted in functions to a geographical area.

8.3.2 Any committee appointed by the Council may at any time appoint additional sub-committees and panels throughout the year. Their terms of reference and delegation of powers to them shall be explicit and within the appointing Committee's terms of

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reference. They may also delegate any of their powers to one or more officers.

- 8.3.3 The Council, a Committee or a Sub-Committee may appoint such task teams or working groups as they consider appropriate in order to consider and report on specific matters.
- 8.3.4 Standing Committees and any other Committees or SubCommittees will be subject to the Regulations on political balance made under the Local Government and Housing Act 1989.

9. ARTICLE 9 – JOINT ARRANGEMENTS

9.1 Introduction

There are a number of circumstances where the Council is entitled to carry out certain functions jointly with another local authority.

9.2 Joint Arrangements

9.2.1 The Council may establish joint arrangements with one or more local authorities to exercise functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.

9.2.2 Details of any joint arrangements including any delegations to joint committees are to be set out in Part 3 to this Constitution.

9.3 Access to Information

9.3.1 The Access to Information Rules in part VA of the Local Government Act 1972 (as amended) will apply.

9.4 Delegation to and from Other Local Authorities

9.4.1 The Council can delegate functions to another local authority.

9.4.2 The decision whether or not to accept such a delegation from another local authority is reserved to the Full Council.

9.5 Contracting Out

The Council may contract out to another body or organisation functions:-

9.5.1 which may be exercised by an Officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or

9.5.2 under contracting arrangements where the Contractor acts as the Council's Agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

10. **ARTICLE 10 - OFFICERS**

10.1 **Management Structure**

10.1.1 **General**

The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.

10.1.2 **Chief Officers**

The Council will engage persons for the following posts, who will be designated Chief Officers. The Head of Paid Service shall have responsibility and power to amend the functions and areas of responsibility of the Chief Officers as he/she considers necessary to deliver the Council’s functions, vision and priorities. Such changes will be carried out in accordance with any relevant Human Resources policies.

Post Functions and Areas of Responsibility

Post	Duties

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<p>Chief Executive/Head of Paid Service</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Overall corporate management and operational responsibility including overall management and responsibility for all officers. <input type="checkbox"/> Provision of professional advice to all parties in the decision making process. <input type="checkbox"/> Together with the Monitoring Officer, responsibility for a system of record keeping for all Council's decisions. <input type="checkbox"/> Representing Council on partnership and external bodies (as required by statute or the Council).
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10.1.3 Head of Paid Service, Monitoring Officer and Chief Financial Officer

The Council will designate the following posts as shown:

Designation	Post
Head of Paid Service	Chief Executive
Monitoring Officer	Senior Solicitor and Monitoring Officer
Chief Financial Officer	Director of Resources and Deputy Chief Executive

Such posts will have the functions described in 10.2, 10.3 and 10.4 below.

10.1.4 Structure

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers.

[This is set out in Part 1 of this Constitution.]

10.2 Functions of the Head of Paid Service

10.2.1 Discharge of Functions by the Council

The Head of Paid Service will keep under review the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

10.2.2 Restrictions on Functions

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Financial Officer if he/she is a qualified accountant.

10.3 Functions of the Monitoring Officer

10.3.1 Maintaining the Constitution

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.

10.3.2 Ensuring Lawfulness and Fairness of Decision Making

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council, if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

10.3.3 Supporting the Governance Committee

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Governance Committee.

Notwithstanding the duty of confidentiality, the Monitoring Officer shall be at liberty to disclose any information relating to

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the Council's affairs, and provide copies of any records or documents belonging to the Council to the Governance Committee, for the purposes of investigation or determination of a complaint against a Member.

10.3.4 Conducting Investigations

The Monitoring Officer will conduct investigations into matters relating to alleged breaches of the Members' Code of Conduct and carry out any other actions as directed by the Governance Committee and make reports or recommendations in respect of them to the Governance Committee.

10.3.5 Proper Officer for Access to Information

The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

10.3.6 Advising Whether Decisions are within the Budget and Policy Framework

The Monitoring Officer will advise whether decisions of the Strategy and Resources Committee are in accordance with the budget and policy framework.

10.3.7 Providing Advice

The Monitoring Officer will provide advice to all Councillors on:

- the scope of powers and authority to take decisions,
- maladministration,
- financial impropriety,
- probity, and
- budget and policy framework issues.

Where the Monitoring Officer considers that a Member(s) has acted contrary to his advice it is open to him to issue a report to

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the Council under s.5 of the Local Government and Housing Act 1989, or seek judicial review, as he/she considers appropriate in the circumstances.

10.3.8 Restrictions on Posts

The Monitoring Officer cannot be the Chief Financial Officer or Head of Paid Service.

10.4 Functions of the Chief Financial Officer

10.4.1 Ensuring Lawfulness and Financial Prudence of Decision Making

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Financial Officer will report to the Full Council and the Council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

When the report is completed the Chief Financial Officer shall send a copy to:

- (a) the current auditor of the Council's accounts; and, (b)
- each Member of the Council.

10.4.2 Administration of Financial Affairs

The Chief Financial Officer will have responsibility for the administration of the financial affairs of the Council.

10.4.3 Contributing to Corporate Management

The Chief Financial Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

10.4.4 Providing Advice

The Chief Financial Officer will provide advice to all Councillors on:

- the scope of powers and authority to take decisions,
- maladministration,
- financial impropriety,
- probity, and
- budget and policy framework issues

and will support and advise Councillors and officers in their respective roles.

10.4.5 Give Financial Information

The Chief Financial Officer will, where required and authorised to do so by law and by the Council, provide financial information to the media, members of the public and the community.

10.4.6 Budget preparation

To be responsible for securing the preparation of the budget.

10.5 **Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Financial Officer**

The Council will provide the Monitoring Officer and Chief Financial Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

10.6 **Conduct** Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

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10.7 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 4 of this Constitution.

11. ARTICLE 11 DECISION MAKING

11.1 Responsibility for Decision Making

The Council will issue and keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

11.2 Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:

- 11.2.1 proportionality (i.e. the action must be proportionate to the desired outcome);
- 11.2.2 due consultation and the taking of professional advice from officers;
- 11.2.3 respect for human rights and the law;
- 11.2.4 a presumption in favour of openness;
- 11.2.5 clarity of aims and desired outcomes;
- 11.2.6 consideration of any alternative options;
- 11.2.7 consideration of the resource implication in taking the proposed option;
- 11.2.8 the implications of, and the risks associated with taking or not taking the proposed option; and
- 11.2.9 the giving of reasons for the decision and the proper recording of those reasons.

11.3 Type of Decision

11.3.1 Decisions reserved to Full Council

Decisions relating to the functions listed in Article 4 (functions of the Full Council) will be made by the Full Council and will not be delegated.

11.4 Decision Making by the Full Council

Subject to Article 11.6, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

11.5 Decision Making by Other Committees and Sub-Committees Established by the Council

Subject to Article 11.6, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

11.6 Decision Making by Council Bodies Acting as Tribunals

The Council, a councillor or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

11.7 Urgent Decision Making

The Chief Executive shall have powers set out in the Scheme of Officer Delegations in order to take decisions that would normally fall under the remit of a Committee in situations where it is not practicable to report that matter to the Committee.

12. ARTICLE 12 – FINANCE, CONTRACTS AND LEGAL MATTERS

12.1 **Financial Management** The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 4 of this Constitution.

12.2 **Contracts**

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

12.3 **Authentication of Documents**

12.3.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or other person authorised by him, unless any enactment or otherwise authorises, requires, or the Council has given requisite authority to some other person.

12.3.2 Any contract entered into on behalf of the Council shall be subject to the Contract Procedure Rules. Contracts and agreements must be signed by, or made under common seal of the Council and attested by, at least one authorised signatory as provided by Article 12.3.3 or in Part 3 of this Constitution.

12.3.3 In addition to any other person who may be authorised by resolution of the Council, the proper officer for the purposes of authentication of documents under the Local Government Acts shall be any one of the following:

- The Chief Executive;
- The Monitoring Officer;
- The Deputy Monitoring Officer;
- The Chief Financial Officer;
- The Deputy Chief Financial Officer;
- Any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution.

12.3.4 Any other documents not falling within 12.3.1 or 12.3.2 above may be signed by any of the Officers listed in 12.3.3 or any other officer so authorised by any such persons in accordance with their delegated powers.

12.4 Common Seal of the Council

12.4.1 Common Seal

The Common Seal of the Council shall be kept in a safe place in the custody of the Monitoring Officer.

A decision of the Council, or any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision.

12.4.2 Sealing and Execution of Documents

The common seal of the Council shall be affixed to a document only on the authority of:- (a) a resolution of the Council;

(b) a resolution of a Committee or Sub-Committee which the Council has empowered to authorise the use of the seal;

(c) a decision by the Council, or by a Committee, SubCommittee or officer exercising delegated functions, to do anything where a document under the common seal is necessary or desirable as part of the action; or (d) any of the officers listed in 12.3.3 above.

12.4.3 Record of Sealing of Documents

Any entry of the sealing of every deed or document to which the Common Seal has been affixed shall be made by the Senior Solicitor and Monitoring Officer and consecutively numbered in a book to be provided for the purpose.

13 ARTICLE 13 REVIEW AND REVISION OF THE CONSTITUTION

13.1 Duty to Monitor and Review the Constitution

13.1.1 The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

13.1.2 The Chief Financial Officer shall be responsible for keeping under review the Financial Procedure Rules set out in Part 4 of the Constitution and shall make any necessary amendments and revisions as are required from time to time. He/she shall report any amendments made to Part 4 for the next available Council meeting for noting.

13.2 Protocol for Monitoring and Review of Constitution by Monitoring Officer

A key role for the Monitoring Officer is to make recommendations to Full Council on ways in which the Constitution could be amended in order to better achieve the purposes. In undertaking this task, the Monitoring Officer may:

13.2.1 Observe meetings of the Member and officer structure;

13.2.2 Undertake an audit trail of a sample of decisions;

13.2.3 Record and analyse issues raised with him by Members, officers, the public and other relevant stakeholders; and,

13.2.4 Compare practices in this Council with those in comparable authorities, or national examples of best practice.

13.3 Changes to the Constitution

13.3.1 Approval

(a) Subject to 13.3.3 below, changes to the Constitution will only be approved by the Full Council.

(b) Where the table of Chief Officers in Article 10 or the Management Structure section of the Constitution needs to be updated, the Monitoring Officer may make

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the necessary changes upon receipt of notification from the Chief Executive that he/she has made changes to these structures following Council or relevant committee approval of such changes.

13.3.2 Any six members of the Council may propose amendments to this Constitution which shall be considered by Full Council.

13.3.3 Minor Changes

If, in the reasonable opinion of the Monitoring Officer, a change is:

- (a) A minor variation; or
- (b) Required to be made to remove any inconsistency or ambiguity; or
- (c) Required to be made so as to put into effect any decision of the Council or its committees,

the Monitoring Officer may make such a change following consultation with the Leader. Any such change made by the Monitoring Officer shall come into force with immediate effect but shall be referred to Full Council as soon as is reasonably possible and shall continue to have effect only if Full Council agree.

13.3.4 Legislative Change

Any part of the Constitution may be amended by the Monitoring Officer (in consultation with the Leader) where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer so decides or the legislation (where relevant) so provides. Such changes shall be reported to the next Council meeting.

14 ARTICLE 14 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

14.1 Suspension of the Constitution

14.1.1 Limit to Suspension

The Articles of this Constitution may not be suspended. The Council Procedure Rules in Part 4 of this Constitution may be suspended by the Full Council to the extent permitted within those Rules and the law.

14.1.2 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 on Council or the particular Committee is 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.

14.2 Interpretation

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

14.3 Publication

14.3.1 The Monitoring Officer will provide a copy of the Constitution to each Member of the Council upon delivery to him of that individual's declaration of acceptance of office on the Member first being elected to the Council.

14.3.2 The Monitoring Officer will ensure that copies are available for inspection at Council offices, and on the Council's website, and can be purchased by members of the local press and the public on payment of a reasonable fee.

PART 3 – RESPONSIBILITY FOR FUNCTIONS

Introduction

All of the powers and functions of the Council have been given by statute to Full Council. Full Council has chosen to delegate some of those functions to Committees and also to officers. Full Council has however retained certain functions for itself.

Annexe 1 – Powers and Duties of Committees sets out the functions delegated to Committees, *Annexe 2 – Officer Scheme of Delegation* sets out those delegated to Officers, *Annexe 3 – Powers and Duties delegated to Councillors* sets out those decision making powers delegated to individual Councillors and *Annexe 4 – Joint Arrangements* sets out the schemes for joint Committee operation that the Council has entered into.

General Principles

Decision making under this Part is subject to the normal principles of decision making set out in Article 11.2 of the Constitution and to the relevant Procedure Rules set out in Part 4.

Any powers that are delegated to officers under Annexe 2 are excluded from the powers delegated to Committees under Annexe 1.

The list of powers and functions in Annexes 1 and 2 are not exhaustive and should be interpreted broadly and in a purposive way. The powers contained within Annexe 1 include the power to develop and approve strategies and policies associated with those powers and functions other than those which Full Council must adopt and subject also to the Budget and Policy Framework Procedure Rules. The powers also contain the power to determine and issue any relevant application, consent or approval and take such action or request information associated with relevant enforcement action including service of notices.

ANNEXE 1 – POWERS AND DUTIES OF COMMITTEES

1. STRATEGY AND RESOURCES COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
Maximum of 13	The Chair shall be the Leader of the Council and membership will include all	1/3 with a minimum of 4	
	Group Leaders where political balance allows.		

Functions

- a) The development of the Budget and the Policy Framework with recommendations made to Full Council,
- b) Asset management
- c) Treasury management
- d) Resources and finance
- e) Performance of the Council including service plans
- f) Improvement
- g) Staffing and human resources
- h) Environmental Health
- i) Waste and Recycling

2. POLICY DEVELOPMENT COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
Minimum of 9	The Chair of the Committee may not be a member of the Strategy and Resources Committee	1/3 with a minimum of 4	

Functions

- (a) The power to consider matters and make recommendations to Council and Committees on matters as set out in Article 6.3 of this Constitution

3. PLANNING COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
15	<p>Members of the Committee must be trained prior to sitting on the Committee (NOTE: Failure to attend the required training will result in exclusion from sitting on the Committee)</p> <p>Substitute Members may only be appointed from an appointed and trained reserve list. Substitute Members must substitute for the whole of the meeting. (NOTE: substitute Members must be from the same political group).</p>	4	<p>If a Member:</p> <p>(a) Arrives at a meeting during the consideration of an item; or</p> <p>(b) Leaves a meeting at any time during the consideration of an item;</p> <p>they shall not:</p> <p>(i) propose or second any motion or amendment; or</p> <p>(ii) cast a vote</p> <p>(For the avoidance of doubt may still participate in the debate)</p> <p>An amendment which opposes a motion to grant or refuse a planning application is deemed to be a valid amendment.</p>

Functions

- (a) To consider and determine any matters arising under the Planning Acts, including the powers to take decisions, issue permissions and consents, to authorise enforcement action and serve such notices, request such information and take such action as is deemed appropriate.
- (b) To discharge any function relating to contaminated land in as much as the function involves determination of an application for a licence, approval, consent, permission or regulation, direct regulation of a person or enforcement of any such licence, approval, consent, permission or regulation.
- (c) To act as consultee in respect of matters relating to planning functions which are referred to the Council by other organisations.

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- (d) A referred power to consider and make recommendations on the content and adoption of documents comprising the local plan or other policies relating to planning functions

4. LICENSING AND COMMUNITY SAFETY COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
15	Members of the Committee must be trained prior to sitting on the Committee (NOTE: Failure to attend the required training will result in exclusion from sitting on the Committee)	4	<p>If a Member:</p> <p>(a) Arrives at a meeting during the consideration of an item; or</p> <p>(b) Leaves a meeting at any time during the consideration of an item;</p> <p>he/she shall not:</p> <p>(i) propose or second any motion or amendment; or</p> <p>(ii) cast a vote</p> <p>(For the avoidance of doubt may still participate in the debate)</p> <p>An amendment which opposes a motion to grant or refuse a licensing application is deemed to be a valid amendment.</p>

Functions

- (a) Licensing Authority functions under Licensing Act 2003 and the Gambling Act 2005.
- (b) Other licensing matters as set out in Part B of Schedule 1 to the 2000 Regulations.
- (c) Coastal pollution or the management of air quality.
- (d) To consider any appeals against the decision of officers in relation to any of the matters covered by paragraph (a) or (b) above.
- (e) Community safety
- (f) To act as Crime and Disorder Committee in accordance with and with the powers set out in the Police and Justice Act 2006, the Local Government and Public Involvement in Health Act 2007 and Regulations made under those Acts
- (g) To fix the rates or fares and all other charges in connection with the hire of hackney carriage vehicles in accordance with the powers set out in section 65 of the Local Government (Miscellaneous Provisions) Act 1976.

GOVERNANCE COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
9	<p>Membership of the Committee cannot include Strategy and Resources Members.</p> <p>Members of the Committee must be trained prior to sitting on the Committee (NOTE: Failure to attend the required training will result in exclusion from sitting on the Committee)</p>	3 – Provided at least two political groups are represented	The role of the Committee is to promote good behaviour amongst Councillors and to ensure that all business conducted by the Council is carried out within the law, in accordance with the Constitution and also in accordance with statutory Codes. It is also to promote improvement in governance issues

- (a) Audit functions including receiving and considering reports and making recommendations on them
- (b) Risk management and corporate governance including considering reports from the Local Government Ombudsman.
- (c) Reviewing the annual statement of accounts
- (d) Standards function including:
 - i. To promote and maintain high standards of conduct by Members and Co-opted Members of the Council.
 - ii. To make recommendations to the Council on the adoption, and revision of a local Code of Conduct for Members and Co-opted Members, and to monitor and review its operation.
 - iii. To make recommendations to the Council on the adoption, and revision of a Code of Conduct for officers of the Council.
 - iv. To approve guidance and protocols to supplement the Code of Conduct for Members and Co-opted Members.
 - v. To approve arrangements for dealing with written allegations of failure to comply with their Code of

Conduct by Council, Parish or Town Council Members or Co-opted Members.

- vi. To approve training and assistance for Members and Co-opted Members in conduct matters and to approve arrangements for advice to individuals on the treatment of interests and on conduct generally.
 - vii. To grant dispensations to Council Members to allow them to speak on, participate in the discussion of and/or participate in a vote on matters in which they have an interest and to approve the arrangements for dispensations generally.
- (e) Electoral matters including Community Governance Reviews
 - (f) Human Resources and Personnel matters including pensions issues
 - (g) To hear any appeal in respect of any grievance or disciplinary decision taken by officers

6. HARBOUR BOARD

Number of Members	Special Requirements	Quorum	Notes
45	<p>In addition to 45 Members <u>(at least one of which shall be a Ward Member for Ilfracombe East and one shall be the Ward Member for Lynton and Lynmouth)</u>, 45 Independent Members (who are not Members of the Council) are appointed to provide experience and expertise in harbour management. Appointments of independent Members shall be for a four year period to ensure continuity of experience and expertise available to the Board. Appointments may be renewed at the discretion of the Council for a maximum of two four year terms after which any further service on the Board can only be achieved following a competitive appointments process.</p>	3 (2 of whom must be members of the Council).	<p>All persons co-opted to serve on the Board shall be required to provide a written undertaking to comply with the Council's Members Code of Conduct and shall complete a register in accordance with that Code.</p> <p>The Chairman of the Board shall be appointed annually by Full Council and shall come from those Members of the Council appointed to serve on the Board.</p> <p>All Board Members shall have voting rights.</p>

Functions

- ~~1. To discharge the duties and powers of a competent Harbours authority in respect of all harbours administered by the council and in accordance with relevant legislation, regulations, Harbour Orders and byelaws.~~
- ~~2. To approve the Harbour service Business Plan including the Port Marine Safety Code.~~
1. To make recommendations to Full Council, on behalf of the Statutory Harbour Authority and Duty Holder under the Port Marine Safety Code, on the approval of

the Marine Safety Plan and all other plans and policies or on other issues affecting all harbours administered by the council as Statutory Harbour Authority.

2. To develop the long term strategy plan for all harbours governed by the Statutory Harbour Authority.

7. JOINT CREMATORIUM COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
7	There is a requirement for compliance with the current Joint Crematorium Committee Terms of Reference as set out in Annexe 4.		

Functions

- (a) To manage all matters relating to the functions of North Devon Crematorium with Torridge District Council

8. JOINT BUILDING CONTROL COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
2	There is a requirement for compliance with the current Joint Building Control Committee Terms of Reference set out in Annexe 4.		

Functions

- (a) To oversee the joint building control team,
- (b) To formulate a draft budget, including any fees and charges, for the joint building control service and to make recommendations on the same to the partner Authorities, and

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- (c) To produce an annual financial report on the costs/savings of the joint service and submit this to the partner authorities.

9. APPOINTMENTS COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
A minimum of 3 including all Group Leaders	Membership must include all Leaders of Designated political groups on the Council	3	Not to be politically balanced

Functions

- (a) To sit as a Panel to lead on and make recommendations on the appointment of the Chief Executive/Head of Paid Service, the Chief Financial Officer and Monitoring Officer subject to compliance with the Officer Employment Procedure Rules set out in Part 4 of this Constitution.
- (b) To hear consider and determine any grievance or other similar matter relating to or by the Chief Executive/Head of Paid Service; any disciplinary matter relating to the Chief Executive/Head of Paid Service, Monitoring Officer and Chief Financial Officer where the issue relates to the performance of such role.
- (c) To sit as a Panel or part of a Panel in relation to the dismissal of the Head of Paid Service, Chief Financial Officer and Monitoring Officer and to lead on conducting an investigation into the same

10. JOINT PLANNING POLICY COMMITTEE

Number of Members	Special Requirements	Quorum	Notes
14 (7 from each Partner Authority)	There is a requirement for compliance with the current Joint Planning Policy Committee Terms of Reference set out in Annexe 4.	7 (minimum of 3 Members from one Partner Authority and the remainder to make up a quorum from the other Partner Authority)	<p>The Chair will be appointed annually, and alternate between the two District Councils.</p> <p>The Membership will include the Leader of each Partner Authority, and Lead Members for Economy, Environment, Climate, Planning, Housing and Community from TDC with the equivalent from NDC, or such other members as TDC or NDC shall consider appropriate. Each Partner Authority may nominate 1 or more substitute Members to attend any meeting in place of an appointed Member.</p> <p>The Partner Authority hosting the first meeting shall appoint one of its nominated members as chairperson until the first meeting taking place after the elapse of 1 year from the appointment. On the expiry the Partner Authority which did not appoint the first chairperson shall appoint one of its nominated members as chairperson for a period of 1 year. This procedure shall be followed for the appointment of chairperson in subsequent years.</p>

Functions

The Joint Committee shall be responsible for, and shall have delegated to it, the following functions of the Partner Authorities:

- a) The preparation, review and/or approval of
 - Development Plan Documents;
 - Supplementary Planning Documents;
 - Joint documents that supplement/complement the Development Plan Documents (Namely, Local Development Schemes, Statements of Community Involvement, Authority Monitoring Reports and Infrastructure Funding Statements);
 - The outcomes from policy performance monitoring and the need to undertake any resultant actions, on such matters as the maintenance of housing delivery rates and a joint five year land supply to required levels;
 - Proposals for delivery of key infrastructure (e.g. flood defences, link road improvements, health infrastructure) where there are clear cross boundary implications; and
 - Responses to consultations from the government, other authorities, external agencies and other bodies, including transportation related consultations, where they would have a significant impact on the delivery of the Local Plan or on the Districts' environment.
- b) The consideration and noting of associated evidence documents (for example, Sustainability Appraisals and Habitat Regulations Assessments)
- c) Such other functions related to the above listed agreed functions which is agreed between the Partner Authorities should be included as an agreed function.

The delegated powers referred to above shall be limited to the preparation of agreed Development Plan Documents but shall not include the final adoption of such Development Plan Documents which shall be reserved to the respective Partner Authorities and referred back as a recommendation by the Joint Committee for a decision as to adoption by the respective Partner Authorities. The Joint Committee shall take account any reservations or objections subsequently received from either Partner Authority before referring the Development Plan Documents back for adoption