

# **NDDC CONSTITUTION**

## **Part 4**

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### **COUNCIL PROCEDURE RULES**

#### 1. **ANNUAL MEETING OF THE COUNCIL**

##### 1.1 **Timing and business**

In a year when there is an ordinary election of councillors, the annual meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May.

The annual meeting will:

- 1.1.1 elect a person to preside if the Chair and Vice Chair of the Council is not present;
- 1.1.2 elect the Chair of the Council;
- 1.1.3 elect the Vice-Chair of the Council;
- 1.1.4 in an election year, the outgoing Chair will preside until the election of a new Chair.
- 1.1.5 elect the Leader and Deputy Leader;
- 1.1.6 appoint such committees as the Council considers appropriate agree the Scheme of Officer Delegations (as set out in Part 3 of this Constitution); and
- 1.1.7 consider any business set out in the notice convening the meeting.

##### 1.2 **Selection of Councillors on Committees and Outside Bodies**

At the annual meeting, the Council meeting will:

- 1.2.1 decide which committees and sub-committees to establish for the forthcoming municipal year;
- 1.2.2 decide the size and terms of reference for those committees;

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- 1.2.3 decide the allocation of seats to political groups in accordance with the political balance rules;
- 1.2.4 receive nominations of councillors to serve on those committees;
- 1.2.5 appoint the Chairs and Vice-Chairs of Committees save where the Constitution expressly provides otherwise; and
- 1.2.6 appoint non-voting Members to any Committee as it deems appropriate;
- 1.2.7 make appointments to outside bodies except where appointment to those bodies has been delegated by the Council .

#### 2. ORDINARY MEETINGS

Ordinary meetings of the Council will take place in accordance with the approved programme. The order of business at ordinary meetings will be as follows:

- 2.1 elect a person to preside if the Chair and Vice-Chair are not present until such time as they are present;
- 2.2 apologies for absence;
- 2.3 approve the minutes of the last meeting and sign the minutes of the last meeting of Council;
- 2.4 receive any announcements from the Chair;
- 2.5 any business required by statute to be undertaken before any other business;
- 2.6 business brought forward by or with the consent of the Chairman;
- 2.7 receive questions from, and provide answers to, the public in relation to matters which in the opinion of the Chair are relevant to the Council's functions;
- 2.8 receive petitions from the public in relation to matters which in the opinion of the Chair are relevant to the Council's functions;

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- 2.9 Deal with questions from Members in accordance with Rule 10.
- 2.10 consider motions;
- 2.11 receive any declarations of interest from Members;
- 2.12 where the meeting has been called by Members under the provisions of Schedule 12 of the 1972 Act to consider the business specified in the summons;
- 2.13 where a meeting has been summoned to consider:
- 2.13.1 a change of name of the area of the authority under section 74 of the 1972 Act;
  - 2.13.2 the promotion or opposition of a bill under section 239 of the 1972 Act;
  - 2.13.3 the presentation of a petition to The Queen praying for the grant of a charter under section 245 of the 1972 Act; and
  - 2.13.4 a report from the Chief Financial Officer under section 114 of the 1988 Act; and
  - 2.13.5 a report from the Monitoring Officer under section 5 of the 1989 Act.
- 2.14 Where the meeting is the last ordinary meeting before 2 April in any year,
- and where the Council has not set an amount for their Council Tax for the ensuing financial year, to consider the setting of such amount;
- 2.15 To consider items of business if any which were on the agenda of the last meeting of the Council and which were not disposed of or did not lapse;
- 2.16 Receive a report from the Leader and receive questions and answers on the report;
- 2.17 Receive reports from the Council's committees and receive questions and answers on those reports;

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- 2.18 Receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- 2.19 Consider any other business specified in the summons to the meeting, including consideration of proposals from the Strategy and Resources Committee in relation to the Council's budget and policy framework and reports of the Policy Development Committee;

### 3. **EXTRAORDINARY MEETINGS**

#### 3.1 **Calling extraordinary meetings of Council**

The Proper Officer may call Council meetings in addition to ordinary meetings and those listed below may request the Proper Officer to call additional Council meetings:

- 3.1.1 the Council by resolution;
- 3.1.2 the Chair of the Council;
- 3.1.3 any five Members of the Council if they have signed a requisition presented to the Chair of the Council and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition;
- 3.1.4 The Monitoring Officer;
- 3.1.5 The Chief Financial Officer;
- 3.1.6 The Chief Executive;

#### 3.2 **Business**

The business to be conducted at an extraordinary meeting shall be restricted to the item(s) of business contained in the request for the extraordinary meeting and there shall be no consideration of previous minutes or reports from committees etc.

#### 3.3 **Calling extraordinary meetings of Committees etc**

The Council shall fix the date, time and place of ordinary meetings of Committees subject to the Chair of the relevant Committee having the right to change the date, time or venue of a Committee meeting at their

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discretion. Those listed below may call extraordinary meetings of Committees or Sub- Committees:

3.3.1 The Chair or Vice Chair of Council

3.3.2 **The Chair or Vice** Chair of the relevant Committee or Sub-Committee

3.3.3 The Chief Executive

#### 4. **TIME, PLACE AND DURATION OF MEETINGS**

##### 4.1 **Time and Place of Meetings**

The time and place of meetings will be determined by the Proper Officer and notified in the summons.

##### 4.2 **Duration of Meetings**

At an ordinary meeting of the Council, when 3 hours have elapsed after the commencement of the meeting, the Chair shall, at the conclusion of the debate on the item of business then under consideration, put the matter in hand to the vote and then adjourn the meeting to a time fixed by the Council, Committee or SubCommittee at the time of the adjournment unless the Members resolve to continue the sitting.

#### 5. **NOTICE OF AND SUMMONS TO MEETINGS**

The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules. At least five clear working days before a meeting, the Proper Officer will send an electronic summons signed by him to every Member of the Council. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

#### 6. **CHAIR OF MEETING**

The person presiding at the meeting may exercise any power or duty of the Chair. Where these rules apply to committee and sub-committee meetings, references to the Chair also include the Chair of committees and sub-committees.

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#### 7. QUORUM

The quorum of a meeting will be one quarter of the whole number of Members provided that in no case shall the quorum be less than three voting members or in the case of a Sub Committee of the Licensing and Community Safety Committee two voting members. During any meeting if the Chair counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately for fifteen minutes. If after fifteen minutes the person presiding, after again causing the number of Members present to be counted, declares that there is still no quorum, the meeting shall end. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

#### 8. QUESTIONS BY THE PUBLIC

##### 8.1 General

8.1.1 Subject to 8.3 below members of the public may ask questions at ordinary meetings of the Council.

8.1.2 The total time allocated for questions by the public should be limited to 15 minutes.

##### 8.2 Order of questions

Questions will be asked in the order that notice of them was received, except that the Chair may group together similar questions.

##### 8.3 Notice of questions

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Senior Solicitor and Monitoring Officer at least 9 clear working days before the day of the meeting. Each question must give the name and address of the questioner, make it clear to whom the question is directed and identifies the meeting of Council to which it is intended to be put. Questions will be no more than 100 words long unless otherwise agreed with the Chair in advance of the meeting.

##### 8.4 Number of questions

At any one meeting no person may submit more than one question and no more than one such question may be asked on behalf of one

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organisation. There shall be no more than two public questions considered at any one meeting.

#### 8.5 Scope of questions

The Senior Solicitor and Monitoring Officer may reject a question if it:

- 8.5.1 is not about a matter for which the Council has a responsibility or which affects the District;
- 8.5.2 is defamatory, frivolous or offensive;
- 8.5.3 is substantially the same as a question which has been put at a meeting of the Council in the past six months;
- 8.5.4 requires the disclosure of confidential or exempt information, or
- 8.5.5 is otherwise inappropriate

#### 8.6 Record of questions

The Senior Solicitor and Monitoring Officer will enter each question in a book open to public inspection and will immediately send a copy of the question to the Councillor to whom it is to be put. Rejected questions will include reasons for rejection.

Copies of all questions will be circulated to all Councillors and will be made available to the public attending the meeting.

#### 8.7 Asking the question at the meeting

The Chair will invite the questioner to put the question to the Councillor named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Chair to put the question on their behalf. The Chair will put the question on the questioner's behalf and may indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

#### 8.8 Supplementary question

A questioner who has put a question in person may also put one supplementary question without notice. A supplementary question must arise directly out of the original question or the reply. The Chair may reject a supplementary question on any of the grounds set out in Rule 8.5 above.

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#### 8.9 Answers

An answer may be given orally or in writing at the meeting or in writing after the meeting. Any written answer will be circulated to all Councillors

#### 8.10 Discussion

No discussion will take place on any question or answer.

### 9. PETITIONS FROM THE PUBLIC

#### 9.1 Notice of Petition

If a citizen wishes to present a petition to a Council meeting, notice must be given by that citizen, or by a Member on their behalf, at least 9 clear working days before the meeting. Petitions to be debated at the Council meeting will have been selected according to the Petitions Scheme.

#### 9.2 Presentation of Petitions

The petition organiser, or a Member acting on their behalf, will be allowed 5 minutes to present the petition at the meeting. Only one person may speak to present a petition. No Member may present a petition if that Member has signed the petition.

9.3 The Council will then debate the petition for a maximum of 30 minutes.

9.4 The Council will decide how to respond to the petition at the meeting. Such response may include:

- 9.4.1 taking the action requested;
- 9.4.2 not taking the action requested;
- 9.4.3 commissioning further investigation into the matter, eg by the relevant Committee;
- 9.4.4 to hold further meetings with the petitioners;

9.5 The petition organiser will receive written confirmation of this decision which will also be published on the Council website.

#### 9.6 Number of Petitions

At any one meeting no person or organisation may present more than one petition.

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#### 9.7 Scope of Petitions

The Chief Executive may reject a petition if it:

- 9.7.1 does not qualify under the scheme;
- 9.7.2 is vexatious, abusive or otherwise inappropriate;
- 9.7.3 is a petition qualifying under another enactment;
- 9.7.4 is excluded by order;
- 9.7.5 relates to a planning decision;
- 9.7.6 relates to a licensing decision;
- 9.7.7 relates to any other matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment,
- 9.7.8 is the same or substantially the same as a petition which has been discussed as a meeting of the Council in the previous 6 months, or
- 9.7.9 it requests that a senior council officer gives evidence at a public meeting.

#### 10. QUESTIONS BY MEMBERS

##### 10.1 On reports of the Leader or committees

At a meeting of the Council, other than the Annual meeting, a Member of the Council may ask the Leader or the chair of a committee any question without notice upon an item contained within a report of the Leader or a committee when that item is being received or under consideration by the Council.

##### 10.2 Questions on notice at full Council

Subject to Rule 10.4, a Member of the Council may ask:

- 10.2.1 the Chair;

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10.2.2 the Leader of the Council; or

10.2.3 the chair of any committee or sub-committee,

a question on any matter in relation to which the Council has powers or duties or which affects the District.

#### 10.3 Questions on notice at Committees and Sub-Committees

Subject to Rule 10.4, a member of a committee or sub-committee may ask the chair of it a question on any matter in relation to which the Council has powers or duties or which affects the District and which falls within the terms of reference of that committee or sub-committee.

#### 10.4 Notice of questions

A member may ask a question under Rule 10.2 or 10.3 if either:

10.4.1 they have given notice of the question in writing or by electronic mail no later than midday 9 clear working days before the day of the meeting to the Proper Officer or in the case of a question raised under 10.2.2 no later than 9.00am on the day which is one clear working day before the day of the meeting; or

10.4.2 the question relates to urgent matters, they have the consent of the Chair and member to whom the question is to be put and the content of the question is given to the Senior Solicitor and Monitoring Officer by 12.00 noon on the day of the meeting.

For the purpose of this rule, a matter is urgent if:- (a) it could not have been known about and so notice under 10.4.1 above could not have been given, and (b) if the subject matter is of such a nature that consideration of it at the next meeting would not be reasonable.

#### 10.5 Order of Questions

Questions of which notice has been given under Rule 10.2, 10.3 or 10.4.2 will be listed on the agenda in the order determined by the Chair of the Council, committee or sub-committee.

#### 10.6 Content of Questions

Questions under Rule 10.2 or 10.3 must, in the opinion of the Chair:

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- 10.6.1 contain no expressions of opinion;
- 10.6.2 relate to matters on which the Council has or may determine a policy and for which the Council has responsibility;
- 10.6.3 not relate to planning or licensing applications to be determined or determined by the Council
- 10.6.4 not be defamatory, frivolous or offensive in nature; and
- 10.6.5 not relate to the appointment, dismissal, remuneration condition of service of any person employed by the Council, or the conduct of any Member.

#### 10.7 Response

An answer may take the form of:

- 10.7.1 a direct oral answer at the meeting;
- 10.7.2 where the desired information is in a publication of the Council or other published work, a reference to that publication;
- 10.7.3 where the reply cannot conveniently be given orally, a written answer circulated within 10 working days to the questioner, or
- 10.7.4 in respect of a question submitted under 10.2.2 and in accordance with 10.4.1, a written response will be provided at the meeting and if possible will be communicated to all Councillors by mid-day of the day of the meeting.

#### 10.8 Supplementary question

A Member asking a question under Rule 10.2 or 10.3 may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply and must not consist mainly of a statement or be a repeat of the original question.

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#### 10.9 Length of Questions

When a Member asks a question under Rule 10.2 or 10.3 the Member answering such a question may speak for no longer than 5 minutes unless the Chair consents to a longer period.

#### 10.10 Time Allowed for Questions at Council Meetings

10.10.1 The time allowed for consideration of questions submitted under Rule

10.2 shall not, without the consent of the Council, exceed 30 minutes

10.10.2 At the conclusion of the answer to the question under consideration at the expiry of the relevant period of 30 minutes (or such longer period to which the Council has consented) from the time when the first questioner started to speak, the Chair shall conclude the item and any remaining questions shall be responded to in writing before the next ordinary meeting of the Council.

10.11 There shall be no discussion on any matter raised by a question from a Member on notice but a motion may be moved without notice that the subject matter be referred to an appropriate Committee and on such a motion being seconded, it shall immediately be put to the vote.

### 11. MOTIONS ON NOTICE

#### 11.1 Notice

Except for motions which can be moved without notice under Rule 12, written notice of every motion must be delivered to the Senior Solicitor and Monitoring Officer 9 clear working days before the Council meeting at which it is to be considered. Motions received will be entered in a book open to public inspection.

#### 11.2 Motion set out in agenda

Motions for which notice has been given will be listed on the agenda in the order determined by the Chief Executive.

#### 11.3 Scope

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Motions must be about matters for which the Council has a responsibility or which affect the District and must not be illegal, improper or defamatory in nature.

#### 11.4 One Motion per Member

No Member may give notice of more than one motion for any Council meeting, except with the consent of the Chair.

#### 11.6 Lapse of a Motion

Where notice of a motion has been given for any meeting, and that motion is neither moved, seconded nor deemed to have been referred to a Committee under 11.7 below, the notice shall lapse and the motion shall not be moved without further notice.

#### 11.7 Referral to Committee

Where a notice of motion has been given for any meeting and that motion is within the terms of reference of any Committee the motion shall be deemed to have been referred to the next meeting of the Committee within whose terms of reference it falls and any question as to the appropriate Committee to which the motion is to be referred shall be determined by the Chair of Council.

### 12. MOTIONS WITHOUT NOTICE

The following motions may be moved without notice:

- 12.1 to appoint a Chair of the meeting at which the motion is moved;
- 12.2 in relation to the accuracy of the minutes;
- 12.3 to change the order of business in the agenda;
- 12.4 to refer something to an appropriate body or individual;
- 12.5 to appoint a committee or member arising from an item on the summons for the meeting;
- 12.6 to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- 12.7 to withdraw a motion;

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- 12.8 to amend a motion, subject to the provisions of the Budget and Policy Framework Procedure Rules in relation to amendment of the proposals for the Council's Budget and Policy Framework;
- 12.9 to proceed to the next business;
- 12.10 that the question be now put;
- 12.11 to adjourn a debate;
- 12.12 to adjourn a meeting;
- 12.13 to suspend a particular Council Procedure Rule;
- 12.14 to exclude the public and press in accordance with the Access to Information Procedure Rules;
- 12.15 to not hear further a Member named under Rule 19.3 or to exclude them from the meeting under Rule 19.4; and
- 12.16 to give the consent of the Council where its consent is required by this Constitution;
  - 12.17 that the vote now be taken
  - 12.18 that a vote be by way of a recorded vote or ballot
  - 12.19 to refer to a Committee any petition that has been presented to Council,
  - 12.20 that a motion, amendment or business of an objectionable nature be not entertained or permitted,
  - 12.21 on consideration of a report or recommendation, a motion to adopt the report or recommendation or a motion which is in response to the report or any recommendation including a motion to refuse or amend the same

### 13. **RULES OF DEBATE**

#### 13.1 **No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

#### 13.2 **Right to require motion in writing**

Unless notice of the motion has already been given, the Chair may require it to be written down and handed to him before it is discussed.

#### 13.3 **Secunder's speech**

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When seconding a motion or amendment, a member may reserve their speech until later in the debate.

#### 13.4 Content and length of speeches

13.4.1 Speeches must be directed to the question under discussion or to a personal explanation or point of order.

13.4.2 A speech by the mover of a motion may **not exceed 5 minutes** without the consent of the Chair.

13.4.3 Subject to paragraph 13.4.4 below, speeches by other Members may not **exceed 3 minutes** without the consent of the Chair.

13.4.4 When the Council's annual budget is under discussion, the leader of each political group on the Council may speak for **up to 5 minutes** or such longer period as the Chair shall allow.

#### 13.5 When a Member may speak again

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

13.5.1 to speak once on an amendment moved by another member;

13.5.2 to move a further amendment if the motion has been amended since he/she last spoke;

13.5.3 if his first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);

13.5.4 in exercise of a right of reply;

13.5.5 on a point of order; and

13.5.6 by way of personal explanation.

#### 13.6 Amendments to motions

13.6.1 An amendment to all motions at Council meetings must be relevant to the motion and will either be:

- (a) to refer the matter to an appropriate body or individual for consideration or reconsideration;

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- (b) to leave out words;
- (c) to leave out words and insert or add others; or
- (d) to insert or add words
- (e) as long as the effect of (b) to (d) is not to negate the motion.

13.6.2 Notwithstanding 13.6.1 (e) above, where a motion to approve, refuse or defer an application for planning permission or a license has been made and seconded, it shall be capable of amendment by a motion to approve rather than refuse or defer, or to refuse rather than approve or defer, as the case may be.

13.6.3 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

13.6.4 If an amendment is not carried, other amendments to the original motion may be moved.

13.6.5 If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

13.6.6 After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

#### 13.7 Alteration of motion

13.7.1 A Member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified by the show of hands.

notice  
13.7.2 A Member may alter a motion which he/she has moved without the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

13.7.3 Only alterations which could be made as an amendment may be made.

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#### 13.8 Withdrawal of motion

A Member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

#### 13.9 Right of reply

13.9.1 The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote but shall not introduce a new matter.

13.9.2 If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.

13.9.3 The mover of the amendment shall have the right of reply to the debate on his amendment immediately before the amendment is put to the vote.

#### 13.10 Motions which may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

13.10.1 to withdraw a motion;

13.10.2 to amend a motion;

13.10.3 to proceed to the next business;

13.10.4 that the vote now be taken

13.10.5 to adjourn a debate;

13.10.6 to adjourn a meeting;

13.10.7 to exclude the public and press in accordance with the Access to Information Procedure Rules;

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13.10.8 to not hear further a Member named under Rule 19.3 or to exclude them from the meeting under Rule 19.4; and

13.10.9 that the subject of debate be referred to a Committee or other appropriate body having power to deal with the same

#### 13.11 **Closure motions**

13.11.1 A Member may move, without comment, the following motions at the end of a speech of another Member;

(a) to proceed to the next business;

(b) that the vote now be taken;

(c) to adjourn a debate; or

(d) to adjourn a meeting.

13.11.2 If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, he/she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

13.11.3 If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

13.11.4 If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chair thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

#### 13.12 **Point of order**

A point of order is a request from a member to the Chair to rule on an alleged irregularity in the procedure of the meeting. A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of

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Procedure or the law. The member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final.

#### 13.13 Personal explanation

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the Chair on the admissibility of a personal explanation will be final.

#### 13.14 Participation

A Member appointed to the Planning Committee or any Committee or Sub-Committee sitting in a quasi judicial role who arrives at a meeting of that Committee or Sub-committee during the consideration of an item, or leaves a meeting at any time during the consideration of an item, shall not propose or second any motion or amendment or cast a vote in relation to that item.

#### 13.15 Additional Issues

At a meeting of the Council, Members shall stand when speaking, unless unable to do so, and shall address the Chair. While a Member is speaking, other Members shall remain seated unless rising for a point of order, a point of information or in personal explanation.

### 14. MEMBERS RIGHT TO PLACE ITEMS ON COMMITTEE AGENDAS

#### 14.1 Members Right

A member of a Committee has the right to request that a matter of policy be placed on the Committee agenda for consideration by the Committee. A Member who is not a member of the Committee may also have the same right where the item relates to an issue that directly affects the Member's ward.

#### 14.2 Procedure

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The Member shall give the Chief Executive notice in writing not less than 7 clear days before the relevant meeting of the content of the item. The Chief Executive shall consider whether the item can properly be considered by the Committee subject to consultation with the relevant Chair.

#### 15. VOTING

##### 15.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the motion was put.

##### 15.2 Chair's casting vote

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

##### 15.3 Method of Voting

Unless a recorded vote is demanded or required under Rule 15.4 or a ballot is demanded under Rule 15.5, the Chair will take the vote by a show of hands, or by use of the Council's electronic voting system if any, or if there is no dissent, by the affirmation of the meeting.

##### 15.4 Recorded vote

If the majority of members present at the meeting demand it, or if a vote is to be taken on a "budget decision" as defined within the Local Authorities (Standing Orders)(England) Regulations 2001 as amended, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. A demand for a recorded vote will override a demand for a ballot.

##### 15.5 Ballot

On a motion being moved and seconded and supported by the majority of Members present, the vote on an item of business will be by ballot.

##### 15.5 Right to require individual vote to be recorded

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Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

#### **15.6 Voting on appointments**

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

### **16. MINUTES**

#### **16.1 Signing the minutes**

The Chair of the Council, a Committee or Sub Committee will sign the minutes of the proceedings at the next suitable meeting of that body. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy. The minutes are deemed as "draft" until approved as a correct record by the next meeting.

#### **16.2 No requirement to sign minutes of previous meeting at extraordinary meeting**

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of Schedule 12 to the Local Government Act 1972 (an extraordinary meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of Schedule 12 relating to signing of minutes.

#### **16.3 Form of minutes**

Minutes of full Council meetings will contain all motions and amendments in the form and order the Chair put them.

### **17. RECORD OF ATTENDANCE**

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

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#### 18. **EXCLUSION OF PUBLIC**

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Part 4 of this Constitution or Rule 20 (Disturbance by Public).

#### 19. **MEMBERS' CONDUCT**

##### 19.1 **Speaking at meetings**

When a Member speaks at full Council he/she must stand and address the meeting through the Chair. If more than one member signifies their intention to speak, the Chair will ask one to speak. Other Members must remain silent whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.

##### 19.2 **Chair speaking**

When the Chair speaks during a debate, any member speaking at the time must stop.

##### 19.3 **Member not to be heard further**

If a Member persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

##### 19.4 **Member to leave the meeting**

If the Member continues to behave improperly after such a motion is carried, the Chair may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

##### 19.5 **General disturbance**

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as he/she thinks necessary.

#### 20. **DISTURBANCE BY PUBLIC**

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#### 20.1 Removal of member of the public

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If they continue to interrupt, the Chair will order their removal from the meeting room.

#### 20.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.

### 21. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

#### 21.1 Suspension

All of these Council Rules of Procedure except Rule 1.1, 16.1, 15.5 and 16.2 may be suspended by motion on notice or without notice by a majority of those members voting and present in the room at the time. Suspension can only be for the duration of the meeting. Rule 1.1 can only be suspended by motion on notice and the motion must have the support of a majority of those members present and voting.

#### 21.2 Amendment

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

### 22. APPLICATION TO COMMITTEES AND SUB-COMMITTEES

All of the Council Rules of Procedure apply to meetings of full Council. Only Rules 4 - 7, 10 - 23 (but not Rule 19.1) apply to meetings of committees and sub- committees.

### 23. APPOINTMENT OF SUBSTITUTE MEMBERS ON COUNCIL BODIES

23.1 The substitution rules will not apply to meetings of the Strategy and Resources Committee, Governance Committee or Licensing and Community Safety Committee save that substitute Members may attend, speak and vote at meetings of a Sub Committee appointed by the Licensing and Community Safety Committee provided that the substitute Member appointed also sits on the Licensing Committee.

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- 23.2 The Senior Solicitor and Monitoring Officer may consider a request from a Member of a Council Body, Leader or Deputy Leader of a political group to appoint a substitute Member, providing that the substitute Member is from the same political group.
- 23.3 In order to be eligible to sit as substitutes on the Planning Committee and the Governance Committee, Members must have received formal training in relevant procedures and the law.
- 23.4 A member of the Planning Committee may only appoint a substitute to sit on that Committee if the substitute has been appointed to the Planning Committee Substitution Panel by Full Council. Substitute Members will have all the powers and duties of any ordinary Member of the committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting. For the avoidance of doubt no substitution is permitted to the Substitution Panel. An appointed substitute Member of the Planning Committee must be present for the whole of the meeting.
- 23.5 Substitute Members may attend meetings in that capacity only:
- 23.5.1 to take the place of the ordinary Member for whom they are designated substitute;
  - 23.5.2 except where the meeting is a meeting of a Sub Committee of the Licensing and Community Safety Committee, where the ordinary Member will be absent for the whole of the meeting;
  - 23.5.3 where the ordinary Member has notified the Senior Solicitor and Monitoring Officer of the intended substitution at least one hour before the start of the relevant meeting.

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### ACCESS TO INFORMATION PROCEDURE RULES

#### 1. SCOPE

1.1 These rules apply to all formal meetings of the Council and any Committee or Sub- Committee. For the avoidance of doubt, the Rules do not apply to informal meetings involving Councillors or to Working Groups.

#### 2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the General Data Protection Regulations 2018.

#### 3. RIGHTS TO ATTEND MEETINGS

3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules.

3.2 If a member of the public or press interrupts the proceedings at any meeting the Chair may warn him. If he/she continues the interruption and a warning has been given, the Chair may order his removal from the meeting place.

3.3 In the event of a general disturbance in any part of the meeting place open to the public, the Chair may order that part to be cleared.

3.4 If the Chair considers the orderly dispatch of business impossible, he/she may without question adjourn the meeting.

3.5 The above powers of the Chair are in addition to any other power vested in

him.

#### 4. NOTICES OF MEETING

The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at Lynton House Commercial Road Barnstaple EX31 1DG and on its website at [www.northdevon.gov.uk](http://www.northdevon.gov.uk).

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#### 5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

5.1 All Members of the Council shall be provided with the front agenda pages of all Council and committee meetings and full copies of the agenda and reports including those containing exempt and/or confidential information can be requested and will be provided electronically.

5.2 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and available on the website at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors).

#### 6. SUPPLY OF COPIES

##### 6.1 Supply of Copies at the Meeting

The Council will make available to the public present at a meeting a reasonable number of copies of the agenda and of the reports for the meeting (save during any part of the meeting to which the public are excluded).

##### 6.2 The Council will supply copies of:

- 6.2.1 any agenda and reports which are open to public inspection;
- 6.2.2 any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 6.2.3 if the Proper Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs.

#### 7. ACCESS TO MINUTES ETC. AFTER THE MEETING

The Council will make available copies of the following for six years after a meeting or a decision:

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- 7.1 the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of Council and Committees or Sub committees, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- 7.2 records of decisions taken by individual Members or officers,
- 7.3 a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- 7.4 the agenda for the meeting; and
- 7.5 reports relating to items when the meeting was open to the public.

#### 8. **BACKGROUND PAPERS**

##### 8.1 **List of background papers**

The Officer preparing a report will set out in such report a list of those documents (called background papers) relating to the subject matter of the report which in his opinion:

- 8.1.1 disclose any facts or matters on which the report or an important part of the report is based; and
- 8.1.2 which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

##### 8.2 **Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

#### 9. **SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at and made available to the public at Lynton House Barnstaple.

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#### 10. EXCLUSION OF ACCESS OF THE PUBLIC TO MEETINGS

##### 10.1 Extent of Exclusion

The public may only be excluded under 10.2 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

##### 10.2 Confidential information – requirement to exclude public

The public must be excluded from meetings and from access to reports whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

##### 10.3 Exempt information – discretion to exclude public

The public may be excluded from meetings and from access to reports whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Such a decision to exclude the public is to be made by resolution of the relevant decision making body. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

##### 10.4 Meaning of confidential information

Confidential information means information given to the Council by a Government Service or Agency on terms which forbid its public disclosure or information which cannot be publicly disclosed by any enactment or Court Order.

##### 10.5 Meaning of exempt information

Exempt information means information falling within the following categories (subject to any qualification).

#### **Categories of Exempt Information**

1. *Information relating to any individual*
2. *Information which is likely to reveal the identity of an individual*

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3. *Information relating to the financial or business affairs of any particular person (including the authority holding that information).*
4. *Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connect with any labour relating matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.*
5. *Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*
6. *Information which reveals that the authority proposes-*
  - (a) *to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or*
  - (b) *to make an order or direction under any enactment.*
7. *Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.*

The above categories are subject to qualifications and to the public interest test. These are laid down in Schedule 12A to the Local Government Act 1972.

#### 10.6 **Extent of Exclusion**

The public may only be excluded under 10.1 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

NOTE Information falling within any of paragraphs 1 – 7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

#### 10.7 **Exclusion of Members**

Where a Sub-Committee of the Licensing Committee is held and the press and public are excluded under these provisions, any Members who are not members of that Sub Committee who are present shall also be excluded.

### 11. **EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

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11.1 If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in his/her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed. If the information is exempt information, the category of the exempt information must also be marked on the report.

11.2 The relevant body is requested in the agenda to confirm the action set out in 11.1 by resolution. Arrangements will be made to recall the press and public immediately should the motion not be passed.

11.3 If the matter is considered in public, any related report will also become available to the public.

### 12. **RECORD OF DECISIONS**

After any meeting of the Council or any of its Committees, whether held in public or in private, the Senior Solicitor and Monitoring Officer or, where no Officer was present, the person presiding at the meeting, will produce a written record of every decision taken at that meeting as soon as practicable. The record will include:

12.1 a record of the decision including the date it was made;

12.2 a record of the reason for the decision;

12.3 details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;

12.4 a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision;  
and

12.5 in respect of any declared conflict of interest, a note of dispensation if granted by the  
relevant local authority's head of paid service.

### 12.6 **Inspection of background papers**

12.6.1 Subject to Rule 17, when a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with Rule 5, at the same time-

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(a) a copy of a list compiled by the Proper Officer of the background paper to the report or part of the report, must be included in the report or, as the case may be, part of the report; and

(b) at least one copy of each of the documents included in that list,

must be available for inspection by the public at the offices of the Council and on [www.northdevon.gov.uk](http://www.northdevon.gov.uk).

#### 13. **JOINT COMMITTEES**

These Access to Information Rules apply to the Council's Joint Committees.

#### 14. **ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

##### 14.1 **Material relating to business to be transacted at a Public Meeting**

14.1.1 All Members of the Council will be entitled to inspect any document (except those available only in unpublished draft form) in the possession or under the control of the Council or its Committees which contains material relating to any business previously transacted at a private meeting unless (a) or (b) applies:

(a) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information; or

(b) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract.

##### 14.2 **Meetings of Committees sitting in a Quasi-Judicial role**

Where a Committee or Sub-Committee is meeting in a quasi-judicial role and a resolution is passed to exclude the press and public under Rule 10 and Rule 11, any Member present who is not a member of the Committee or Sub Committee will also be excluded.

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#### 15. NATURE OF RIGHTS

These rights of a Member are additional to any other right he/she may have.

#### 16. MEMBERS' OTHER RIGHTS TO INFORMATION AND TO SPEAK AT COMMITTEES

16.1 A Member of the Council may, for the purposes of his duty as a Member and no other, inspect any document that has been considered by a committee or the Council including background papers. Applications should be made to the Senior Solicitor and Monitoring Officer and, if available, copies will be supplied upon request.

16.2 A member shall not knowingly inspect or request a copy of any document relating to a matter in which he/she:

16.2.1 is professionally interested; or

16.2.2 has a pecuniary, prejudicial or personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

16.3 This shall not preclude the Senior Solicitor and Monitoring Officer from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either the Freedom of Information Act or the General Data Protection Regulations 2018.

16.4 All reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

16.5 A Councillor who is not a member of the Planning Committee may attend that Committee and speak on an item that affects their ward and in relation to all other Committees may attend and speak on a matter with the discretion of the Chair.

#### 17. CONFIDENTIAL INFORMATION, EXEMPT INFORMATION

17.1 Nothing in these Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

17.2 Nothing in these Rules:

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17.2.1 authorises or requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Senior Solicitor and Monitoring Officer, that document or part of a document contains or may contain confidential information; or

17.2.2 requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Proper Officer, that document or part of a document contains or is likely to contain exempt information or the advice of a political advisers or assistant.

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### **BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

#### **1. ADOPTION OF THE BUDGET AND THE FRAMEWORK**

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the Committees to implement it.

1.1 In approving the Budget and Policy Framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the a Committee or officer, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the policy and budgetary framework are reserved to the Council.

#### **2. PROCESS FOR DEVELOPING THE BUDGET**

2.1 The Council will follow the process set out in the Financial Procedure Rules in Part 4 of the Constitution. In addition, the draft budget will be reported to Policy Development Committee prior to firm proposals being recommended to Council and the views of the Policy Development Committee will be taken into account by Strategy and Resources Committee when drawing up the final recommendations to Council. Immediately after a vote is taken at a budget decision meeting of the authority, there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting and for the purposes of this provision:-

(a) a “*budget decision*” means a meeting of the relevant body at which it makes a calculation (whether originally or by way of substitution) in accordance with any of sections 31A, 31B, 34 to 3A, 42A, 42B, 45 to 49, 52ZF and 52ZJ of the Local Government Finance Act 1992, or issues a precept under Chapter 4 of Part 1 of that Act. This includes a meeting where the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting, and

(b) references to a “*vote*” are references to a vote on any decision relating to the making of the calculation or the issuing of the precept as the case may be.

#### **3. DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

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3.1 Subject to the provisions of paragraph 4 Committees and Sub Committees and officers may only take decisions which are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget approved by full Council, then that decision may only be taken by the Council, subject to paragraph 5 below and subject also to article 11.7 of Part 1 of the Constitution.

3.2 Paragraph 3.1 above shall not apply where a decision is made by an officer or by the Planning Committee contrary to the then adopted Development Plan forming part of the Policy Framework

#### 4 VIREMENT

4.1 In the event that virement across budget heads or budgets becomes necessary or desirable, it shall be carried out in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution. Beyond that limit, approval to any virement across budget heads shall require the approval of the Full Council.

#### 5 IN-YEAR CHANGES TO POLICY FRAMEWORK

The responsibility for agreeing the Budget and Policy Framework lies with the Council and decisions by any committee or officers or joint arrangements must be in line with it. No changes to any policy or strategy which make up the policy framework may be made by those bodies or individuals except those changes:

5.1 which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint;

5.2 necessary to ensure compliance with the law, ministerial direction or government guidance;

5.3 in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration;

for which provision is made within the relevant budget or policy.

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### FINANCIAL PROCEDURE RULES

#### DEFINITIONS

“Chief Financial Officer” shall be the holder of the post having responsibility for the statutory duties set out in Section 151 of the Local Government Act 1972 as identified by the Council.

Any reference to the “Chief Financial Officer” in Standing Orders or Financial Procedure Rules shall refer to the post holder defined above or a nominee, except in so far as any duty is required by statute to be performed personally by the post holder. A record of nominees and the duties allocated shall be kept by the Chief Financial Officer.

#### 1 GENERAL

1.1 These financial procedure rules form part of the Constitution and may not be amended without a Council resolution.

1.2 The Chief Financial Officer is responsible for the proper administration of the Council's financial affairs and must be consulted on any matter that could materially affect the Council's finances.

1.3 Interpretation of these financial procedure rules is the responsibility of the Chief Financial Officer.

1.4 The Council operates a delegated budget system. It is the responsibility of all budget holders to ensure they are familiar with these procedural rules and adhere to them.

#### 2 ACCOUNTING

2.1 The accounting procedures and records shall meet the standards that, in the opinion of the Chief Financial Officer, deliver financial information and control to a level required by him to be satisfied that the council's financial affairs can be properly administered.

2.2 Accounting duties shall be allocated to ensure wherever possible that-

- (a) The duties of providing information on amounts due to or from the Council (together with calculating, checking and recording)

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shall be separated as far as possible from the duty of collecting or paying; and

- (b) Officers who examine or check the accounts of cash transactions should not be engaged in any of these transactions.

2.3 All paid accounts and vouchers shall be available for examination by Members of the Council at all reasonable times.

2.4 Financial records must be retained for audit and taxation purposes. Guidance on retention periods is contained in Schedule 1 to this document.

### 3. AUDIT

3.1 The Council has responsibility for maintaining an effective system of internal Audit. This responsibility has been formally delegated to the Chief Financial Officer.

3.2 The accounting and financial operations of the Council shall be subject to a continuous internal audit under the independent control and direction of the Chief Financial Officer.

3.3 The Chief Financial Officer or his authorised representative shall have authority

to -

- (a) enter any Council premises within the Council's ownership or control at all reasonable times;
- (b) have access to all records and documents relating to financial and other transactions of the Council;
- (c) require explanations on any matter under investigation;
- (d) require any Council employee to produce cash, stores or any other Council property under his control.

3.4 In any case of suggested or potential irregularity in the exercise of the Council's functions, the Head of Service concerned shall immediately notify the Chief Financial Officer who shall determine any necessary action.

3.5 The Chief Financial Officer shall have direct access to and freedom to report to Members, the Chief Executive and any member of the Senior Management Team as required.

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#### 4 FINANCIAL PLANNING AND CONTROL

- 4.1 The format of the Capital and Revenue estimates shall be determined by the Chief Financial Officer. The draft budget shall be submitted to each relevant Committee for discussion prior to submission of the overall budget to the Strategy and Resources Committee if so delegated.
- 4.2 The Strategy and Resources Committee shall submit the draft budget, together with any amendments recommended by Policy Development Committee to the Council with a recommendation of the Council Tax to be levied in accordance with the Budget and Policy framework rules.
- 4.3 (a) Every Member shall be provided with a copy of the proposed Capital Programme and Revenue estimates and their implications on the Council Tax prior to the Council meeting called to set the Council Tax.
- (b) The Council shall set the Council Tax for the coming year.
- 4.4 (a) No capital liability shall be incurred (except as otherwise provided for in the Constitution including the Financial Procedure Rules) unless provision is included in the approved Capital Programme or Full Council approval is first secured.
- (b) No revenue liability shall be incurred (except as otherwise provided for in the Constitution including the Financial Procedure Rules) unless provision is included in the approved budget (as may be amended from time to time), is covered by authorised virement or Full Council approval is first secured.
- 4.5 (a) Revenue virement up to a limit of £5,000 may be exercised by a Head of Service or delegated budget holder holding a budget between heads of expenditure or between heads of income within their control provided there is no net change in the Council's overall budget and subject to any virements from a direct employee budget head being approved by the Chief Financial Officer.
- (b) Any revenue virement either above £5,000, or between income and expenditure, must be approved by the Chief Financial Officer who shall report any such approval to the Senior Management Team.

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- (c) Any virement from earmarked reserves must be approved by the Chief Financial Officer who shall report any such approval to Strategy and Resources Committee.
- (d) Any capital virement up to £25,000 in relation to a previously approved capital scheme must be approved by the Chief Financial Officer who shall report any such approval to the Senior Management Team. Any capital virement above £25,000 requires formal approval through Council, committee or sub- committee (as the case may be).
- (e) All virement adjustments must be reported in writing to the Chief Financial Officer or any officer authorised by him to receive such notification as soon as reasonably practicable after the decision is made.

4.6 Other than as provided for in the Constitution (including the Finance Procedure Rules), no contractual commitment in excess of £10,000 in respect of land or capital works shall be entered into:

- (a) prior to a report being taken to and approved by Full Council; and
- (b) appropriate budgetary provision exists in relation to the same.

4.7 Any report to a committee involving expenditure shall contain details setting out the planned means of financing the proposal.

4.8 The Chief Financial Officer shall provide each Officer holding a budget with periodical statements of receipts and payments under each budget head. The Officer holding the budget (or any other Officer authorised by him) shall monitor their financial performance against approved estimates.

4.9 When an Officer holding a budget becomes aware that a budgeted item of expenditure may be exceeded and/or income not achieved, the Officer holding the budget shall report thereon to the Chief Financial Officer. The report should set out how variation is proposed to be handled using virement powers or identify any need for a supplementary estimate as necessary.

4.10 In consultation with the Chair of Strategy and Resources Committee (or in his absence the Vice Chairman, the Chief Executive (or if unavailable any Head of Service), may incur such expenditure as in his opinion is appropriate to address an urgent situation even if there is no identifiable budgetary provision. Any such expenditure together with details of any proposed method of financing shall be notified to the Chief Financial Officer as soon as

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practicable thereafter and a report taken to the next available meeting or Full Council.

- 4.11 The Chief Financial Officer will set in place a timetable and allocate responsibilities for the production of the final accounts as soon as possible after the year end.
- 4.12 Following the closure of the Final Accounts, the Chief Financial Officer shall ascertain whether any underspend of actual expenditure against the original budget has occurred for report to the Council.
- 4.13 The annual accounts of the Council to the 31<sup>st</sup> March shall be compiled by the Chief Financial Officer and published within such time scales as are from time to time prescribed. Every Member shall be supplied with a set of final accounts.

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#### 5 BANKING ARRANGEMENTS

- 5.1 All arrangements with the Council's bankers shall be made by the Chief Financial Officer who is authorised to operate such bank accounts (including National Giro) as he/she considers necessary.
- 5.2 All cheques (including National Giro) shall be ordered by the Chief Financial Officer who shall make arrangements for their safe custody.
- 5.3 All cheques (including National Giro) shall:
- (a) bear the facsimile signature of the Chief Financial Officer or, for the purpose only of using existing cheques held in stock, the facsimile signature of the immediate past holder of the post of Chief Financial Officer or
  - (b) be signed by the Chief Financial Officer or the Chief Executive or any other authorised bank signatory.
- 5.4 All cheques of £10,000 or above shall be countersigned by the Chief Financial Officer or any other Officer referred to in paragraph 5.3 (b) above.
- 5.5 Any alterations to the banking arrangements, including the opening and closing of bank accounts, shall be the responsibility of the Chief Financial Officer.

#### 6 EXPENDITURE

- (a) Petty Cash
  - (i) The Chief Financial Officer shall provide:  
such petty cash floats as he/she considers appropriate for Council Officers who need them for paying petty cash and other expenses. The accounts are to be kept on the imprest system.
  - (ii) Payments from the petty cash floats shall be limited to minor items of expenditure and other items as approved by the Chief Financial Officer. Payments shall be supported by a receipted voucher.

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- (iii) Officers responsible for petty cash floats shall, on request, give the Chief Financial Officer a certificate on the state of the accounts.
  - (iv) An Officer who ceases to be entitled to hold a petty cash float shall account to the Chief Financial Officer for the amount advanced to them.
- (b) Orders for Work, Goods and Services
- (i) Official orders shall be issued for all work, goods or services to be supplied to the Council except for supplies of public utility services; periodical payments (e.g. rent and rates); petty cash purchases and any other exceptions approved by the Chief Financial Officer.
  - (ii) Orders made by telephone shall be immediately confirmed by an official order which may consist of an email.
  - (iii) The format of official orders shall be approved by the Chief Financial Officer. Official orders are to be authorised only by those officers authorised by the appropriate Head of Service who is responsible for all orders issued from the Service.
  - (iv) A copy of each order number shall be supplied to the Chief Financial Officer with the invoice for the supplies duly authorised for payment.
  - (v) The Council shall produce and maintain a Procurement Policy (as amended from time to time).
  - (vi) Prior to making any commitment, officers must familiarise themselves with the requirement for quotations and tendering set out in the Constitution, Contracts Procedure Rules and Financial Procedure Rules.
- (c) Payments
- (i) Payments of money due from the Council shall normally be made by cheque (or other instrument) drawn on the Council's bank or National Giro Accounts or by electronic transfer of funds from the Council's bank account.

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- (ii) Invoices and payment vouchers shall be examined, verified and certified by the Officer holding a budget who is responsible for the initial order or service. A Head of Service may, in accordance with procedures in standing orders, further delegate authorisation powers to members of his staff to certify on his behalf. A Head of Service shall send a list of these officers so authorised, together with specimen signatures to the Chief Financial Officer.
- (iii) The certifying officer should ensure where appropriate that –
  - (i) The works, goods or services invoiced for have been received, carried out, examined and approved;
  - (ii) The prices, arithmetic and allocation are correct;
  - (iii) The expenditure has been properly incurred and is a proper liability of the Council; and
  - (iv) The amount has not already been passed for payment.

Items (i) and (ii) should be independently verified insofar as they are relevant by an Officer other than the one authorising the voucher for payment.

- (iv) Certified accounts shall be passed to the Chief Financial Officer without delay. The Chief Financial Officer may examine the invoice and shall be entitled to make enquiries and receive such information as he/she requires.
  - (v) Any permissible amendments to accounts must be in ink and initialled by the certifying officer.
  - (vi) Officers holding budgets shall notify the Chief Financial Officer of any outstanding expenditure for the previous financial year, not later than the date specified and notified by the Chief Financial Officer.
  - (vii) The Chief Financial Officer shall maintain the Council's tax records and is responsible for the completion and return of all associated returns by the due date.
- (d) Travelling and Subsistence Allowances

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- (i) All claims for payment of car allowances, subsistence allowances, travelling and incidental expenses, shall be submitted, and duly certified on a form supplied by the Chief Financial Officer. Claims are to be made up to a date each month determined by the Chief Financial Officer and submitted to him within 7 days thereof.
  - (ii) A Head of Service may, in accordance with procedures under standing orders, authorise members of staff to certify claims on their behalf and shall send a list of those officers so authorised, together with specimen signatures, to the Chief Financial Officer. Claims in respect of any individual must be authorised independently of that person.
  - (iii) The certification shall be taken to mean that the certifying officer is satisfied that the journeys were authorised, expenses properly and necessarily incurred and allowances are properly payable by the Council.
  - (iv) Officers claims submitted more than 3 months in arrears will only be paid with express approval of the Chief Financial Officer.
  - (v) Payments to Members for travelling and other allowances shall be claimed on a form supplied by the Chief Financial Officer and shall be certified by the Chief Executive or other delegated officer. All claims for a financial year should be made by the following 30th April.
- (e) Salaries and Wages
- (i) Payment of all salaries, wages, gratuities, etc. to employees or former employees of the Council shall be made by the Chief Financial Officer.
  - (ii) Each Head of Service shall provide the Chief Financial Officer via the Human Resources Manager as soon as possible with details of any matter affecting the payment of such emoluments, in particular –
    - (a) appointments, resignations, dismissals, suspensions, secondments and transfers;

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- (b) absence from duty for sickness or other reasons (apart from approved leave, training, etc.);
  - (c) changes in remuneration (excluding normal increments and nationally negotiated pay awards); and
  - (d) information required for Superannuation, tax and national insurance purposes.
- (iv) Appointments of all staff shall be made in accordance with the Council's policies (as amended from time to time), establishment, grades and rates of pay. Proposed permanent variations to the establishment must be submitted to Strategy and Resources Committee for approval, unless delegated to another body or individual.
- (v) Time records or other pay documents, including pay records for casual staff, shall be certified by or on behalf of the Head of Service on a form approved by the Chief Financial Officer. Each Head of Service shall provide the Chief Financial Officer with a list of those officers authorised to sign on his behalf, together with specimen signatures.
- (vi) Each submitted document must be signed by an appropriate officer, in line with the approved signatory list, before it is processed.
- (vi) Heads of Service must inform the Chief Financial Officer and the Human Resources Manager of any additional benefits proposed for staff (cars, phones, clothing etc.) in order to determine any additional tax liabilities or remuneration issues.

## 7 CONTRACTS FOR BUILDING CONSTRUCTIONAL OR ENGINEERING WORK

7.1 The Chief Executive, or such other responsible officer, shall maintain a contracts register. All contract orders shall be held on the e-procurement system which will record payments made to contractors or for professional fees for any contract.

7.2 All interim payments to contractors shall be shown on the e-procurement system showing the value of work to date, the balance remaining and the amount of retention held.

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- 7.3 Every extra or variation to a contract shall be authorised by the designated Project Officer, Architect or Engineer as nominated by the Project Officer in writing for the contract.
- 7.4 Any variation shall be reported to the Chief Financial Officer and the Strategy and Resources Committee where a substantial change in the design of any works or additional expenditure is involved. The Project Officer shall only need to report additional expenditure on a contract where the final cost is likely to exceed the contract sum by 15% or £15,000 whichever is the greater.
- 7.5 The Chief Financial Officer shall, as far as he/she deems appropriate, examine contract accounts. He/she shall be entitled to make such enquiries and receive such information and explanation as he/she may require to satisfy himself as to the accuracy of the accounts.
- 7.6 Claims from contractors for matters not clearly within the terms of any existing contract shall be referred to the Senior Solicitor and Monitoring Officer for consideration of the Council's legal liability and, if necessary, to the Chief Financial Officer for financial consideration before a settlement is reached.
- 7.7 Where completion of a contract is delayed, the designated Project Officer shall take appropriate action in respect of any claim for liquidated damages.
- 7.8 Project Officers should consider the need for a bond or parent company guarantee for all contracts in excess of ~~£7540~~,000 and if necessary should consult with the Chief Financial Officer and/or the Senior Solicitor and Monitoring Officer.

### 8 INCOME

- 8.1 Each Head of Service shall provide the Chief Financial Officer with details of work done, goods supplied, services rendered, or any other amounts due, sufficient to enable the Chief Financial Officer to arrange for accounts to be raised for the recovery of the sums involved.
- 8.2 Each Head of Service is responsible, in conjunction with the Chief Financial Officer, for outstanding arrears relating to their service area. Aged debts outstanding will be reported to the Senior Management team and the Strategy and Resources Committee.
- 8.3 Heads of Service shall notify the Chief Financial Officer promptly of all contracts, leases and other agreements entered into which result in money due to the

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Council. The Chief Financial Officer shall have the right to inspect any relevant documents, etc. as he/she may require.

8.4 All receipts, tickets, etc. relating to income, shall be ordered and supplied (or under directions) by the Chief Financial Officer who shall satisfy himself/herself as to the arrangement for their control.

8.5 All Council money received by an Officer shall be paid directly to one of the Council's bank accounts, or to the Council's cash office within five working days of receipt.

Receipts paid into the cash office will be paid to the council's bank account. No deduction shall be made from such money without the express authority of the Chief Financial Officer. Each banking officer shall ensure that the paying in slip has a reference to the related debt or origin of each cheque banked.

8.6 No cheques shall be cashed out of Council money or Third Party cheques accepted unless authorised by the Chief Financial Officer.

8.7 Transfer of Council money from one member of staff to another must be recorded, together with the signature of the receiving officer.

### 9 STORES AND STOCKS

9.1 Heads of Service shall be responsible for the care and custody of all stocks and stores in their Service.

9.2 Stocks shall not be held in excess of normal requirements without committee approval.

9.3 Heads of Service shall arrange for periodic independent test checks of stocks and stores and shall ensure that all stocks are checked at least once in every year.

9.4 Heads of Service shall supply the Chief Financial Officer with sufficient information on stores for accounting costing and financial records.

9.5 Surplus materials, stores or equipment shall be disposed of by competitive tender or public auction, including internet based auction sites, unless the Chief Financial Officer has previously agreed that the likely disposal value makes this unnecessary.

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#### 10 INSURANCES/SECURITY/RISK MANAGEMENT

- 10.1 The Chief Financial Officer shall effect all insurance cover and liaise with the Council's insurers on all matters including claims.
- 10.2 Heads of Service shall promptly advise the Chief Financial Officer of all new risks, properties, vehicles or plant which may require insurance cover and of any alterations affecting existing insurance. It is the responsibility of all Heads of Service to complete risk assessments and maintain such systems, procedures and controls as are necessary to manage and reduce risk.
- 10.3 Heads of Service shall promptly notify the Chief Financial Officer of any loss, liability, damage or event, which may lead to a claim.
- 10.4 All appropriate Council employees shall be insured by fidelity guarantee insurance.
- 10.5 The Chief Financial Officer shall regularly review all insurance subject to consultation with Heads of Service if necessary.
- 10.6 No indemnities shall be given without authority of the Chief Financial Officer and the Council's insurers.
- 10.7 Heads of Service shall promptly advise the Chief Financial Officer of any property whose custody has been temporarily accepted on behalf of the Council.
- 10.8 All valuables held on behalf of a Third Party e.g. jewellery, watches, documents of title, etc. shall be securely held under arrangements agreed by the Heads of Service with the Chief Financial Officer.
- 10.9 Heads of Service are responsible, in consultation with the Chief Financial Officer, for the security of all buildings, stocks, stores, furniture, equipment, cash, etc., under their control.
- 10.10 Maximum limits for cash holdings shall be agreed with the Chief Financial Officer and shall not be exceeded without his permission.
- 10.11 Keys to safes, etc. are to be carried by the person responsible. Any losses must be immediately reported to the Chief Financial Officer.
- 10.12 The Business is responsible for the security of the information held in the central computer network. Heads of Service are responsible for security of information held on computers in their units.

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10.13 Any losses as a result of theft or fraudulent activity will be dealt with in accordance with the Council's Anti-Fraud and Corruption Strategy (as amended from time to time).

#### 11 INVENTORIES

11.1 Heads of Service shall, in consultation with the Chief Financial Officer as to the form and content, maintain an inventory of all furniture, fittings, equipment, vehicles, plant and machinery held in their departments.

11.2 Heads of Service shall maintain an annual check on all items on the inventory and shall take action on any surplus or deficiency in consultation with the Chief Financial Officer.

11.3 The Council's property shall not be removed outside of the ordinary course of the Council's business without the authority of the responsible Head of Service.

11.4 The ICT Manager shall maintain an inventory of all computer equipment. Heads of Service must inform the ICT Manager of any changes to this inventory.

#### 12 ESTATES

12.1 The Head of Place, Property and Regeneration shall have custody of all title deeds and shall be responsible for their security.

12.2 The Head of Place, Property and Regeneration shall maintain a terrier of all land and buildings owned by the Council in a form approved by the Chief Financial Officer.

The terrier shall contain the following details:

holding committee; purpose for which held; location; extent and plan reference; purchase details; particulars of interest held; rents payable and tenancies granted.

#### 13 TREASURY MANAGEMENT

13.1 This function will be discharged in accordance with the CIPFA Code on Treasury Management. All investments of money under its control shall be made in the name of the Council or such nominee as it approves.

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- 13.2 All securities owned by or in the name of the Council or its nominees shall be held in custody by the Council's bankers.
- 13.3 All borrowing shall be effected in the Council's name.
- 13.4 The Chief Financial Officer shall be the Council's registrar of stocks, bonds and mortgages, and shall maintain a record of all Council borrowing.
- 13.5 Any officer acting as trustee by virtue of his official position shall, unless otherwise provided by the deed, deposit all securities, etc., relating to the trust with the Chief Financial Officer.
- 13.6 Borrowing limits will be reviewed annually and approved by Full Council. Officers with delegated powers may raise loans within approved borrowing limits (as amended from time to time), provided the same is in accordance with the terms of the code of practice for local authority borrowing (as amended from time to time).
- 13.7 Investments of surplus revenue funds or capital receipts may be invested in accordance with the terms of the Council's Treasury Management Policy (as amended from time to time), by Officers with delegated power for investing monies.
- 13.8 Full Council is required to receive and approve as a minimum three treasury Management reports each year, which shall incorporate policies, estimates and actual performance.
- 14 WRITE OFFS
- 14.1 Irrecoverable debts not exceeding £1,500 in respect of Council Tax, NNDR, and overpayments may be written off on the authorisation of the Chief Financial Officer.
- 14.2 Other irrecoverable debts not exceeding £1,500 may be written off on the authorisation of the Chief Financial Officer.
- 14.3 Irrecoverable debts in excess of £1,500 shall be reported to the Chief Financial Officer who may write off such debts following consultation with the Leader.
- 14.4 The Chief Financial Officer shall report at least annually on the stewardship of debts due to the Council.

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## Part 4

### SCHEDULE 1

#### NORTH DEVON DISTRICT COUNCIL

#### RETENTION OF ACCOUNTING RECORDS

Type	Description	Disposal
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#### **BANK ACCOUNT RECORDS**

<b>Cheques and associated records</b>	cheque book/butts for all accounts	2 years
	cancelled cheques	2 years
	dishonoured cheques	2 years
	fresh cheques	6 years
	paid/presented cheques	6 years
	stoppage of cheque payment notices	2 years
	record of cheques opened books	2 years
	cheque registers	2 years
	record of cheques drawn for 6 years payments	

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<b>Bank Deposits</b>	bank deposit books/slips/butts	2 years
	bank deposit summary sheets; 2 years summaries of daily banking; cheque schedules	
	register of cheques logged for 2 years collection	
<b>Bank reconciliations</b>	reconciliation files/sheets 2 years daily list of paid cheques 2 years unpaid cheque records 2 years	
<b>Bank statements reconciliations</b>	bank statements, periodic	2 years
bank certificates of balance		2 years
<b>Electronic banking</b>	cash transactions; payment Disposal <b>and electronic funds</b> instructions; deposits; withdrawals action in line <b>transfer</b> with paper records	
	Audit trails	Disposal action in line with paper records
<b>EXPENDITURE RECORDS</b>		
<b>Cash books and sheets</b>	expenditure sheets	6 years

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<b>Petty cash records</b>	cash books/sheets	6 years
	petty cash records/books/sheets	2 years
	petty cash receipts	2 years
	postal cash book/sheets; 2 years postage/courier account/cash records; register of postage expenditure; postage paid record; postage books/sheets	
summary cash books	2 years	
<b>Creditors</b>	creditors' history records; 6 years lists/reports	
<b>Statements</b>	statements of accounts outstanding; 2 years outstanding orders	
<b>Subsidiary records</b>	statements of accounts – 2 years rendered/payable	
	copies of extracts and expenditure 1 year dissections	
	credit note books 2 years debit note books 2 years	
<b>Vouchers</b>	Vouchers – claims for payment, 6 years purchase orders, requisition for goods and services, account payable invoices...etc	
<b>LEDGER RECORDS</b>		
<b>General subsidiary and ledgers</b>	general and subsidiary ledgers 6 years produced for the purposes of preparing certified financial statements or published information	
	creditors' ledgers	6 years
<b>Journals</b>	journals – prime records for the 6 years raising of charges	

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### Part 4

journals – routine adjustments 2 years

**Trail and balances** year-end balances, reconciliations 6 years and variations to support ledger balances and published accounts

#### **RECEIPTS AND REVENUE RECORDS**

**Books/butts** receipt books/butts; office copy of 6 years receipts – cashiers', cash register, fines and costs, sale of publications, general receipt books/butts/records

postal remittance books/records 6 years

**Cash registers** copies of forms  
6 years  
reconciliation  
sheets 6 years

audit rolls 2 years summaries/analysis records 2 years  
reading books/sheets 2 years

**Revenue records** revenue cash books/sheets/records; 6 years receipt cash books/sheets

**Debtors records and invoices** copies of invoices/debit notes 6 years rendered on debtors (invoices paid./unpaid, registers of invoices, debtors ledgers, etc)

source documents/records used for 6 years raising of invoices/debit notes

**Debts and refunds** copies of invoices and copies of 2 years source documents

records relating to unrecoverable 6 years revenue, debts and overpayments (register of debts written off, register of refunds...etc)

#### **SALARIES AND RELATED RECORDS**

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<b>Salary records</b>	employees pay histories	6 years
	salary records	6 years

#### ***OTHER FINANCIAL RECORDS***

<b>Asset registers</b>	assets/equipment registers/records	6 years after the asset of disposed of
<b>Depreciation registers</b>	records relating to the calculation of annual depreciation	6 years after the asset of disposed of
<b>Financial statements</b>	statements/summaries prepared for inclusion in annual reports	6 years

# NDDC CONSTITUTION

## Part 4

### OFFICER EMPLOYMENT PROCEDURE RULES

This part deals with the appointment and dismissal of staff.

#### PRESCRIBED STANDING ORDERS

These Rules incorporate the standing orders prescribed under the Local Authorities (Standing Orders)(England) Regulations 2001 as amended.

#### DEFINITIONS

“Chief Officer” means the Statutory Chief Officers, Non Statutory Chief Officers and the Deputies of those persons as defined within s2 of the Local Government and Housing Act 1989

“Chief Financial Officer” shall mean any officer appointed under s151 of the Local Government Act 1972

“Head of Paid Service” shall mean the officer appointed under section 4(1) of the Local Government and Housing Act 1989

“Independent Persons” means a person appointed by the Council under s28(7) of the Localism Act 2011

“Monitoring Officer” means any officer appointed under s5 of the Local Government and Housing Act 1989

“Proper Officer” means the Human Resources Manager

“Relevant Independent Person” means an Independent Person appointed by the Council or where there are fewer than two such persons, such Independent Persons as have been appointed by another authority.

### 1. RECRUITMENT AND APPOINTMENT

#### 1.1 Declarations

1.1.1 The Council has drawn up procedures which include a requirement that any candidate for an appointment as an Officer must state in writing whether they have any relationship with any councillor or officer of the Council;

1.1.2 No candidate so related to a Councillor or an Officer will be appointed without the authority of the Head of Paid Service or where the relationship is between the candidate and the Head of Paid Service, the authority of the Proper Officer.

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#### 1.2 Seeking support for appointment

1.2.1 The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

1.2.2 No Councillor or employee of the Council will seek support for any person for any appointment with the Council.

#### 2. RECRUITMENT OF CHIEF EXECUTIVE/HEAD OF PAID SERVICE AND CHIEF OFFICERS

Where the Council proposes to appoint a Chief Executive/Head of Paid Service or a Chief Officer, including on a joint basis with another public body, and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:

2.1 draw up a statement including the following:

2.1.1 the duties of the Officer concerned; and

2.1.2 any qualifications or qualities to be sought in the person to be appointed;

2.2 make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

2.3 make arrangements for a copy of the procedures mentioned in paragraph 1 to be sent to any person on request.

#### 3. PROCEDURE FOR RECRUITMENT OF HEAD OF PAID SERVICE MONITORING OFFICER AND CHIEF FINANCIAL OFFICER

3.1 The appointment of the Head of Paid Service, Monitoring Officer and Chief Financial Officer shall be the responsibility of the Full Council following a recommendation on the appointment from the Appointments Committee.

3.2 The Appointments Committee or a Sub Committee of it shall carry out the interview process and will make a recommendation on the appointment to the Full Council.

3.3 In respect of the appointment of the Monitoring Officer and Chief Financial Officer, the interview process shall be chaired by the Head of Paid Service or a person nominated by him.

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#### 4. PROCEDURE FOR THE DISMISSAL OF HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCIAL OFFICER

- 4.1 The dismissal for disciplinary reasons of the Head of Paid Service, Monitoring Officer and Chief Financial Officer shall be the responsibility of Full Council.
- 4.2 Before taking a decision, Full Council shall receive advice from a panel consisting of the Appointments Committee or a Sub Committee of it, two or more Relevant Independent Persons and such other persons as may be considered appropriate by Full Council ("the Panel").
- 4.3 The Panel must be appointed at least 20 working days before the meeting of Full Council at which a decision is to be made as to whether to dismiss the officer.
- 4.4 The Council shall appoint to the Panel the Relevant Independent Persons in accordance with the following priority order:-
  - (a) A relevant Independent Person who has been appointed by the authority and who is a local government elector,
  - (b) Such other Relevant Independent Person appointed by the Council,
  - (c) A Relevant Independent Person appointed by another authority.

#### 5. RESPONSIBILITY FOR RECRUITMENT OR DISMISSAL OF OTHER OFFICERS

- 5.1 The function of the appointment and dismissal of and taking disciplinary action against any other officer will be discharged by the Head of Paid Service subject to any delegations contained within Part 3 of this Constitution, and shall not be the responsibility of Councillors.
- 5.2 Councillors will not be involved in disciplinary action against any Officer below Chief Officer except where such involvement is necessary for any investigation or inquiry or where the Council's procedures as adopted from time to time allow a right of appeal to Councillors.

#### 6. SUSPENSION

- 6.1 The Head of Paid Service, the Chief Financial Officer, or the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. The suspension will be on full pay and must terminate no later than 2 months after the suspension takes effect.

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#### 7. APPEALS

None of the above shall prevent a Councillor serving as a member of an appeals committee or body established to consider an appeal by:

7.1 any person against any decision relating to the appointment of that person as a member of staff of the authority; or

7.2 a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff unless the dismissal relates to a capability issue, misconduct, some other substantial reason, some other statutory enactment or planned retirement where the member of staff has less than six months' notice – in these instances the appeal shall be conducted by a senior officer.

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## Part 4

### CONTRACT PROCEDURES RULES

#### PART 1 General

##### 1. Definitions and interpretation

In these Contract Procedure Rules the following words and expressions shall have the following meanings:

- 2006 Regulations** the Public Contracts Regulations 2006 (as amended by the Public Contracts (Amendment) Regulations 2009 and as may be further amended from time to time)
- 2015 Regulations** the Public Contracts Regulations 2015 (as amended)
- Central Purchasing Body** an authority that:
- (a) acquires goods or services intended for one or more contracting authorities;
  - (b) awards public contracts intended for one or more contracting authorities; or
  - (c) concludes Framework Agreements for works, goods or services intended for one or more contracting authorities
- Contracts Finder** a web-based portal provided, pursuant to the 2015 Regulations, by or on behalf of the Cabinet Office
- Controlled Organisation** an organisation which:
- (a) carries out more than 80% of its activities with the Council (or the Council jointly with other public authorities);
  - (b) the Council (or the Council jointly with other public authorities) exercises decisive influence over in respect of both its strategic objectives and significant decisions; and
  - (c) has no private sector ownership or any intention that there should ever be
- Dynamic Purchasing System** an electronic market place through which the Council and other contracting authorities can source requirements by inviting tenders from economic operators admitted to the system

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<b>Financial Procedure Rules</b>	the Financial Procedure Rules set out in Part 4 of the Constitution
<b>FTS</b>	the Find a Tender Service
<b>Framework Agreement</b>	an agreement, procured by a Central Purchasing Body, which sets up a framework which allows the Council to call off a contract with a supplier/contractor to provide goods, services or works without having to run its own procurement, provided such contract is called off in accordance with the terms of the agreement
<b>Innovation Partnerships</b>	long term partnerships which allow for both the development and subsequent purchase of new and innovative products, services or works
<b>ITT</b>	invitation to tender in the form available from Legal Services
<b>Leader</b>	the Leader of the Council
<b>Officer</b>	any officer of the Council designated by their Head of Service to deal with the contract in question
<b>PQQ</b>	pre-qualification questionnaire in the form available from the Legal Services Unit
<b>Pre-Procurement Stage</b>	the stage of the commissioning process where the subject of a procurement is conceived ending on the earliest of: (a) the publishing of an advertisement or notice seeking expressions of interest for the contract, in any form whatsoever; (b) an expression of interest or offer being sought or responded to; or (c) a contract being entered into or a framework agreement being concluded
<b>Procurement Documentation</b>	shall include RFQ, PQQ, ITT (as defined in these Contract Procedure Rules) and associated documentation as relevant to the procurement being conducted
<b>Procurement Portal</b>	an online procurement portal compliant with paragraph 7.1 of these Contract Procedure Rules

**Regulations** ~~the 2006 Regulations and~~ the 2015 Regulations as amended, extended or re-enacted from

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time to time and includes any subordinate legislation for the time being in force made under it.

<b>RFQ</b>	a request for quotation in the form provided on the Procurement Portal or available from the Legal Services Unit
<b>RFW</b>	a request for waiver from compliance with these Contract Procedure Rules in the form available from the Legal Services Unit
<b>Specification</b>	a description of exactly what goods, services, works or outcomes are to be provided under a contract
<b>Standstill Period</b>	as provided by the Regulations, the mandatory period of at least 10 calendar days between the notification of the intended award of a contract and the actual award of a contract
<b>Suitability Questions</b>	questions to assess whether a potential supplier can meet the Minimum Standard required to be invited to tender
<b>Verifying Officer</b>	the Senior Solicitor and Monitoring Officer or such other officer appointed by them to open tenders on the Procurement Portal

## 2. Compliance with the Contract Procedure Rules

2.1 These Contract Procedure Rules refer to the selection, award and entry into any contract by the Council and by any person or representative acting on behalf of the Council or Council partnership.

2.2 Every contract to be entered into on behalf of the Council shall comply with:

- (a) domestic legislation, common law and UK procurement legislation;
- (b) the Financial Procedure Rules; and
- (c) any other policies and procedures of the Council, insofar as they are directly relevant to that contract.

2.3 It shall be a condition of any contract between the Council and any person who is required to supervise a contract on behalf of the Council (where that person is not an Officer), that in relation to such a contract he/she shall comply with the requirements of these Contract Procedure Rules as if he/she

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were an Officer. Failure to comply with the Contract Procedure Rules may result in the termination of any contract between the Council and any person who is required to supervise a contract on behalf of the Council.

#### 2.4 Any non-compliance or breach of these Contract Procedure Rules shall follow the following procedure:

- (a) It will be reported immediately on discovery to the dedicated procurement email address and escalated to the Senior Solicitor & Monitoring Officer and the Head of Governance.
- (b) The Senior Solicitor & Monitoring Officer will undertake an investigation, where deemed necessary, with the investigation findings reported to the Senior Management Team.
- (c) Investigation findings will be referred to Human Resources where any breach of these Contract Procedure Rules requires further action in accordance with human resources policies, including disciplinary action.

2.4.2.5 In the event of failure by Officers to comply with the Contract Procedure Rules, the Council may invoke its disciplinary policy and procedure depending on all the circumstances of any such failures.

### 3. Delegated Authority

- 3.1 Any procurement carried out on behalf of the Council may be undertaken only by those Officers with the appropriate delegated authority to carry out such tasks as set out in the Council's scheme of delegation and such Officers authorised by Council and which have been notified and recorded in the register held by Members Services.

### 4. Exemptions and exceptions from the Contract Procedure Rules

4.1 Subject to the requirements of the Regulations and UK procurement legislation, the following contracts are exempt from the requirements of the Contract Procedure Rules:

- (a) contracts of employment;
- (b) contracts relating solely to the disposal or acquisition of an interest in land;
- (c) transactions conducted by the Chief Financial Officer in respect of dealing in the money market or obtaining finance for the Council; and

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- (d) the appointment of counsel or specialist legal representative by the Senior Solicitor and Monitoring Officer to advise the Council generally.

4.2 Subject to the requirements of the Regulations, the following contracts are exempt from the requirements of Part 3 of the Contract Procedure Rules:

- (a) contracts of a value less than £5,000;
- (b) contracts procured through a Central Purchasing Body in accordance with paragraph 20 below;
- (c) contracts with another public authority where such contracts include no private sector participation whatsoever and, in the opinion of the Senior Solicitor and Monitoring Officer:
  - (i) the contract establishes or implements a co-operation between the Council and other participating public authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
  - (ii) the implementation of co-operation as referred to in 4.2(c)(i) is governed solely by considerations relating to the public interest; and
  - (iii) the participating public authorities (including the Council) perform, on the open market, less than 20% of the activities concerned by the cooperation.
- (d) contracts with Controlled Organisations.

4.3 An exception from the provisions in these Contract Procedure Rules relating to the selection, award and entry into contracts may be made by:

- (a) resolution of the Council;
- (b) resolution of the Strategy and Resources Committee;
- (c) an urgent decision of Chief Executive in accordance with Article 11.8 of Part 2 of the Constitution; or

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- (d) by authorisation ~~via a RFW of the Head of Paid Service, the Monitoring Officer or the Chief Financial Officer~~ in accordance with paragraph 12.2 below

providing that they are satisfied that the exemption is justified on special circumstances and details of those special circumstances are recorded at the time the exception is given.

4.4 Whenever an exception is made under 4.3(a), 4.3(b) or 4.3(c) above, the Senior Solicitor and Monitoring Officer should make arrangements for an item to be placed on the agenda of the next meeting following of the Governance Policy Development Committee for that Committee to note the details of the exception and the reasons for it.

~~4.5 Where authorisation is given to waive these Contract Procedure Rules in accordance with paragraph 4.3 above an appropriate contract must be issued to the supplier and the details of the award entered onto the Contract Register, Contract Finder and the FTS as appropriate and as required by the Regulations.~~

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~~4.6 The Senior Solicitor & Monitoring Officer must keep a record of all cases where an exemption from these Procedures has been requested and authorised or declined and will report these to the Senior Management Team on a six-monthly basis.~~

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### 5. Equality

5.1 In the procuring of works, services and supplies, organisations that are awarded tenders are acting on behalf of the Council and will be expected to comply with current equality legislation in the same manner as the Council, in both employment and service delivery.

5.2 In accordance with the requirements of the Public Services (Social Value) Act 2012; where the Council is conducting a procurement of services, and the value of such services is estimated to be in excess of the relevant threshold pursuant to the Regulations, full consideration must be given, and, where appropriate, consultation undertaken and conclusions recorded, at the Pre-Procurement Stage in respect of:

- (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's area; and
- (b) how the Council may act with a view to securing that improvement in conducting the process of procurement.

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### 6. ~~Procurement Strategy~~~~Sustainability~~

6.1 The ~~Devon Districts Sustainable~~ Procurement Strategy ~~(and any variation, update or replacement to this Strategy from time to time)~~ must be adhered to in the procuring of all works, services and supplies.

### 7. Procurement Portal

7.1 The Council shall at all times maintain an effective Procurement Portal which must:

~~(a)~~ be an appropriate and secure system for transmitting

Procurement

~~(a)~~ Documentation and receiving responses to such Procurement Documentation;

(b) be capable of recording evidence and an audit trail of all activity in respect of a procurement; and

(c) be capable of preventing:

- (i) the opening of tenders until the deadline for the receipt of tenders has passed; and
- (ii) the editing of, or otherwise tampering with, tenders at any point.

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## PART 2

### Before entering into a contract/procurement

### 8. Preparation

8.1 In the case of every contract Officers must ensure that they have sufficiently planned the procurement of a contract by:

- (a) estimating its value in accordance with paragraph 9 below; and
- (b) taking preparatory action as required in the Pre-Procurement Stage as appropriate to the complexity and value of the contract.

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#### 9. Estimating contract value

- 9.1 The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT (save where paragraph 15.1 applies where the value shall be inclusive of VAT), as estimated by the Officer, including any form of option and any renewals of the contract(s) as explicitly set out in the Procurement Documents.
- 9.2 Where there is any provision for prizes or payments to potential suppliers or tenderers this must be taken into account when calculating the estimated value of the procurement.
- 9.3 As the Council is comprised of separate operational departments, account must be taken of the total estimated value for all of those departments.
- 9.4 Where a contract for services does not indicate a total price, the basis of calculating the estimated contract value shall be:
- (a) in the case of fixed term contracts where that term is less than or equal to 48 months, the total value for their full term; or
  - (b) in the case of contracts without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48.
- 9.5 Where a contract for supplies relates to the leasing, hire, rental or hire purchase of products, the basis for calculating the estimated contract value shall be:
- (a) in the case of fixed term contracts, where that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value; or
  - (b) in the case of contracts without a fixed term, or a term which cannot be defined, the monthly value multiplied by 48.
- 9.6 Where a supply or service contract is, by nature, regularly procured or are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on either:
- (a) the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value

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which would occur in the course of the 12 months following the initial contract; or

- (b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.

9.7 In the case of the following service contracts, the basis for calculating the estimated contract value shall, where relevant, be as follows:

- (a) in the case of insurance services, the premium payable and other forms of remuneration;
- (b) in the case of banking and other financial service, the fees, commissions payable, interest and other forms of remuneration; and
- (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.

9.8 In the case of a contract for works, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority provided that they are necessary for executing the works.

9.9 The estimated value of a contract shall be calculated as at the moment at which the call for competition is sent or, in cases where a call for competition is not foreseen, at the moment at which the Council commences the relevant procurement procedure.

9.10 The method of estimating the value of a public services or works concession contract (which shall be where the consideration for the provision of the services or works consists either solely in the right to exploit the service/work or in this right together with payment) shall be:

- (a) for a public services concession contract: the total turnover of the concessionaire in consideration of the services being the object of the concession, as well as for the supplies incidental to such services, generated over the duration of the contract; or
- (b) for a public works concession contract: the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not propose to grant a concession.

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- 9.11 Where a contract is proposed to be awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots except that the Council may separately award individual lots where the estimated value, ~~net of VAT~~ (calculated in accordance with paragraph 9.1 above), of the lot(s) concerned:
- (a) is less than the threshold provided for this purpose in the Regulations; and
  - (b) the aggregate value of the lots awarded on this basis does not exceed 20% of the aggregate value of all of the lots into which the proposed contract has been divided.
- 9.12 In the case of Framework Agreements and Dynamic Purchasing Systems, the value to be taken into consideration shall be the maximum estimated value, ~~(calculated in accordance with paragraph 9.1 above) net of VAT~~, of all the contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System.
- 9.13 In the case of Innovation Partnerships, the value to be taken into consideration shall be the maximum estimated value (calculated in accordance with paragraph 9.1 above, net of VAT), of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.
- 9.14 For consistency, contract values should be calculated in accordance with the Regulations even when the Regulations are not applicable. This includes the requirement to aggregate the value of a series of orders or contracts placed with the same supplier.
- 9.15 Contracts for works, services and supplies, or any combination of them, are not to be split or subdivided with the effect of preventing them from falling within the scope of either these Contract Procedure Rules or the Regulations.

### 10. Pre-Procurement Stage

10.1 The Pre-Procurement Stage shall include:

- (a) ensuring that an appropriate Specification (relevant to the value of the contract) is prepared or otherwise put in place;
- (b) the identification of relevant contract terms;

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- (c) where a contract is not exempt from the requirements of Part 3 of these Contract Procedure Rules pursuant to paragraph 4.2 above:
    - (i) the preparation of all relevant Procurement Documentation (including, where applicable, an ITT prepared in accordance with paragraph 13.5 below); and
    - (ii) the engagement of all relevant officers (as appropriate to the value and/or complexity of the contract or procurement) to advise and assist; and
  - (d) any other preparation which the relevant Head of Service and/or the Senior Solicitor and Monitoring Officer deems appropriate.
- 10.2 The Pre-Procurement Stage may, where the relevant Head of Service deems it fit, include conducting preliminary market consultations with a view to preparing the procurement and informing economic operators of the Council's procurement plans and requirements.
- 10.3 Such consultations referred to in 10.2 may include seeking or accepting advice from independent experts, authorities or from market participants. Such advice can then be used in subsequent planning and conduct of contract and the procurement procedure provided that a suitable audit trail is maintained on the relevant Officer's file and the advice does not, in the opinion of the Senior Solicitor and Monitoring Officer, have the effect of distorting competition and does not breach requirements for non-discrimination and transparency.
- 10.4 Where an economic operator has advised the Council, or has been otherwise involved, in the Pre-Procurement Stage for a specific procurement and then wishes to participate in that procurement process that economic operator cannot automatically be banned from participating however appropriate measures must be taken to ensure, to the satisfaction of the Senior Solicitor and Monitoring Officer, that competition will not be distorted by the participation of that economic operator. Such measures shall include:
- (a) providing all potential suppliers with relevant information exchanged or arising out of the economic operator's prior involvement; and
  - (b) where the procurement process involves tendering, the provision of adequate time limits for the return of tenders.

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An economic operator may only be excluded on the basis of their prior involvement where, in the opinion of the Senior Solicitor and Monitoring Officer, there are no other means to ensure compliance with the duty to ensure equal treatment.

### PART 3 Procurement

#### 11. Procurement generally

- 11.1 All Procurement Documentation shall only be transmitted to interested parties via the Procurement Portal except in extenuating circumstances and with the authority of the relevant Head of Service.
- 11.2 Suppliers should also be required to respond to, or ask questions/seek clarification about, Procurement Documentation via the Procurement Portal except where a procurement is being conducted separately of the Procurement Portal in accordance with 11.1.
- 11.3 Oral communication between Officers and potential suppliers is permitted provided it does not affect essential elements of the procurement and provided that a record is kept of decisions made.

#### 12. Obtaining Quotations

- 12.1 Subject to 12.2 below (or unless Council or the Strategy and Resources Committee resolve, or there is an urgent decision of the Chief Executive, that a tender process contained in paragraph 13 shall be used in relation to the proposed contract) where the Council intends to enter into a contract with an estimated value between £5,000 and ~~£7439,999.99~~ (or such other sum as the Council may from time to time determine):
- (a) quotations from at least three alternative suppliers shall be obtained using an RFQ in accordance with paragraph 11 above; and
  - (b) only the lowest quotation received in respect to a RFQ shall be accepted
- 12.2 Where an Officer considers that they are unable to comply with paragraph 12.1s:
- (a) it is not appropriate in the circumstances for three quotes to be obtained; or

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(b) the lowest quotation received is not acceptable  
the Officer may only set aside the requirements of paragraph 12.1 with the approval of the Head of Paid Service, the Senior Solicitor & Monitoring Officer, ~~or~~ the Chief Financial Officer or any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution, such approval to be sought and recorded on a RFW. Once approved, a copy of the RFW shall be held on the relevant file of the Officer undertaking the procurement for at least the duration of the contract and the Officer must ensure compliance with paragraph 4.5 above.

#### 13. Lower value tendering under the Contract Procedure Rules

13.1 Where at the time of the decision to purchase goods, services or works on behalf of the Council it is reasonably believed that the value of the goods, services or works to which the proposed contract or Framework Agreement relates will be between ~~£7540~~,000 and the relevant thresholds set out in the Regulations, then tenders shall be invited in accordance with the procedure set out below.

13.2 A notice advertising the tendering opportunity and containing, as a minimum, the information set out in paragraph 13.3 shall be given in accordance with paragraph 14 below.

13.3 The notice shall:

- (a) express the nature and purpose of the contract;
- (b) invite tenders for its execution;
- (c) state the last date and time when tenders will be received, being a period not less than 10 working days from the date of the advert or such longer period as may be required by law; and
- (d) identify the form of the contract.

13.4 An ITT (prepared in compliance with 13.5) including a Specification and contract terms (or at least making specific reference to the applicable contract terms), all with content as agreed with the Senior Solicitor and Monitoring Officer, shall be published on the Procurement Portal with the notice set out in 13.2.

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- 13.5 An ITT must include full details of the Council's requirements for the contract which it is procuring and shall set out:
- (a) where deemed appropriate to a procurement by the relevant Head of Service, Suitability Questions that are (in the opinion of the Senior Solicitor and Monitoring Officer):
    - (i) relevant to the subject matter of the procurement;
    - (ii) proportionate;
    - (iii) limited to assessing whether minimum standards of suitability, capability, legal status and/or financial standing are met; and
    - (iv) compliant with the Regulations, including any ministerial guidance issued by pursuant to the 2015 Regulations; and
  - (b) the evaluation criteria pursuant to which the Council will award the contract although it may, if the Officer deems it fit, allow for the submission of variant bids to encourage supplier innovation.

#### 14. Notices

- 14.1 Where an Officer wishes to place an advert for a contract or Framework Agreement of a value in excess of £25,000 in the public domain or to otherwise advertise to potential suppliers generally, and/or is required to do so pursuant to paragraph 14.2, the Officer must (having regard to any guidance issued by the Minister for the Cabinet Office):
- (a) ensure that the opportunity is published on Contracts Finder within 24 hours of the time when it first advertises the contract award opportunity in any other way including publishing at least the following:
    - (i) the time by which any interested supplier must respond if it wishes to be considered;
    - (ii) how and to whom such a supplier is to respond; and
    - (iii) any other requirements for participating in the procurement;
  - (b) allow sufficient time for interested suppliers to become aware of the opportunity; and

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- (c) ensure all relevant documents are made available free of charge by a hyperlink to the Procurement Portal.

14.2 A contract compliant with paragraph 13.1 above shall be advertised by a suitably accessible advertisement published to an extent sufficient to enable the market to be opened up to competition. This shall include a notice placed:

- (a) on the Procurement Portal;
- (b) where deemed appropriate by the relevant Head of Service, taking into account and recording in the relevant file the likely interest in the contract (including the likelihood of any interest in the contract across the UK or the potential for international interest in the contract):
  - (i) in at least one local newspaper or other publication;
  - (ii) in a newspaper or journal (paper or web-based) circulating among such persons or bodies that undertake such contracts;
  - (iii) on FTS; and
- (c) in such publications as the law may from time to time require.

14.3 Without limiting the other requirements to publish details of an awarded contract as provided by the Regulations or as set out in paragraph 25 below, where an Officer has awarded a contract with a value in excess of £25,000 they must, regardless of how the contract was initially advertised, within a reasonable time following contract award, ensure that at least the following information is published on Contracts Finder:

- (a) winning contractor's name;
- (b) date of contract conclusion;
- (c) value of the contract; and
- (d) if the contractor is a small to medium sized enterprise or a voluntary, community or social enterprise.

### 15. Tendering under the Regulations

15.1 Where, at the time of the decision to purchase goods, services or works on behalf of the Council, it is reasonably believed that the value of the goods,

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services or works to which the proposed contract or Framework Agreement relates will be around or in excess of the relevant threshold set out in the Regulations, then the Procurement Documentation must be prepared in accordance with the Regulations and in full consultation with the Senior Solicitor and Monitoring Officer.

15.2 A procurement conducted pursuant to the Regulations must be undertaken using one of the following procedures to be decided by the relevant Head of Service in consultation with the Senior Solicitor and Monitoring Officer:

- (a) open procedure;
- (b) restricted procedure;
- (c) competitive procedure with negotiation;
- (d) competitive dialogue procedure; or
- (e) innovation partnerships procedure.

15.3 The procedures provided at paragraphs 15.2(c), 15.2(d) or 15.2(e) may only be used with the authority of the Head of Paid Service and where:

- (a) needs cannot be met without adaptation of readily available solutions;
- (b) the contract includes design or innovative solutions;
- (c) the requirement is complex in nature, in its legal and financial make-up or because of its risks;
- (d) technical specifications cannot be established with sufficient precision; or
- (e) unacceptable or irregular tenders have been received in response to a procurement conducted in accordance with the procedures provided at paragraphs 15.2(a) or 15.2(b).

15.4 For the avoidance of doubt the same notice provisions as that set out at paragraph 14.2 shall apply when tendering under the Regulations save that all such contracts must be advertised by an appropriate notice on the FTS and the content of such notice shall be as stipulated by the Regulations and agreed following full consultation with the Senior Solicitor and Monitoring Officer.

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15.5 In addition to the procedures set out in paragraph 15.2 the Council may, in exceptional circumstances and only with the authority of the Head of Paid Service in consultation with the Senior Solicitor and Monitoring Officer, award a contract by negotiation without prior publication of the contract opportunity on the FTS where (subject to any additional justifications provided by the Regulations):

- (a) no tenders/suitable tenders or requests to participate have been received in response to a procedure provided in paragraph 15.2;
- (b) only one supplier could apply for artistic/technical/exclusive rights reasons (in the last two cases provided no reasonable alternative exists and that the absence of competition is not the result of an artificial narrowing of the requirement);
- (c) extreme urgency from events unforeseeable by the Council (which means that the time limits for the procedures set out in paragraph 15.2 cannot be complied with) and the extreme urgency of the need is not attributable to the Council; or
- (d) products involved are manufactured purely for the purpose of research, experimentation, study or development.

#### 16. Receipt of tenders

16.1 In accordance with the notice requirements set out in paragraphs 14 and 15.4, a procurement must be placed on the Procurement Portal and therefore, in accordance with paragraph 11, except where the relevant Head of Service determines the position should be otherwise (subject to the provisions of the Regulations), tenders must also be received through the Procurement Portal and should not be paper based.

16.2 Any tender received after the time and date specified in the ITT shall be rejected and shall not be considered under any circumstances.

16.3 Where the relevant Head of Service determines that a tendering process should be paper based the following tender receipt procedure shall be followed:

- (a) Every ITT shall contain a paragraph that makes it clear that no tender will be accepted unless:

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- (i) it is enclosed in a plain sealed envelope which shall bear the word "Tender" – followed by the subject to which it relates; and
  - (ii) the envelope does not include any other name or mark which is capable of identifying the sender.
- (c) Tenders received and accepted by the Council shall be kept in the custody of the Senior Solicitor and Monitoring Officer until the time and date specified for their opening.
- (d) Where a Tender is received after the specified deadline, the time of receipt will be recorded and, in addition, the tender envelope shall be stamped as 'Late'. Once all other tenders to which the contract relates have been opened the late tenders will be opened and stamped as 'Late'. The appropriate Officer can then inform the late tenderer that its tender was received after the deadline and therefore was not considered.

#### 17. Opening of tenders

17.1 Tenders to be opened via the Procurement Portal shall be opened by a Verifying Officer at one time and only in accordance with the requirements of the Procurement Portal.

17.2 Paper based tenders shall be opened at one time and only in the presence of:

- (a) one Member; and
- (b) one person from the ~~Corporate and Community Member~~ Services team (or such other team as the Head of Paid Service may otherwise direct); and
- (c) one of the following:
  - (i) the project leader of the project to which the contract relates; or
  - (ii) the Head of Service/Service Manager with responsibility for the function to which the contract relates; or
  - (iii) any other Officer nominated by either of them to perform such a role.

17.3 Details of any paper based tenders received, including the name of the organisation submitting the tender and the amount of the bid, shall be

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recorded in a register kept by the ~~Corporate and Community~~ Member Services team.

#### 18. Evaluation of tenders

- 18.1 All tenders, whether subject to the Regulations or otherwise, will be evaluated in accordance with the evaluation criteria set out in the ITT and upon no other basis whatsoever.
- 18.2 For each procurement subject to the Regulations, or where the value of the contract to be awarded exceeds £7549,000, the project leader or the Head of Service/Business Unit Manager will form an evaluation panel with responsibility for evaluating the tenders in accordance with paragraph 18.1.
- 18.3 All contracts, except where the lowest price was predetermined to be the appropriate criteria in the ITT (procurements with a value beneath the relevant financial threshold stipulated by the Regulations only), will be awarded on the basis of the offer that represents the most economically advantageous for the Council as determined in the ITT.
- 18.4 An Officer shall require tenderers to explain the price or costs proposed in their tender where such a tender appears to be abnormally low in relation to the works, supplies or services being procured.
- 18.5 Prior to the award of any contract due diligence will be carried out to ensure that the tenderer has the experience and/or financial means to perform the contract. For the sake of clarity, this includes contracts for the provision of advice or consultancy services.

#### 19. Award of contract

- 19.1 When a contract is awarded or a Framework Agreement is concluded pursuant to a tendering process under paragraphs 13 or 15 then all tenderers must be sent a notice simultaneously (via the Procurement Portal except where the tenders were paper based) notifying them of the Council's decision to award and specifying:
- (a) the criteria for the award of the contract;
  - (b) (or where the contract or Framework Agreement was concluded pursuant to a tendering process under paragraph 13, offering by way of a separate debrief) the reasons for the decision, including a brief summary of:

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- (i) (for a successful tenderer) the characteristics and relative advantages of the successful tender; or
- (ii) (for an unsuccessful tenderer) the reasons why the tenderer was unsuccessful;
- (c) the score (if any) obtained by:
  - (i) the tenderer which is to receive the notice; and
  - (ii) the tenderer to be awarded the contract or to become a party to the Framework Agreement;
- (e) the name of the tenderer to be awarded the contract or to become a party to the framework agreement; and
- (f) a statement of when the Council expects to enter into the contract or conclude the framework agreement.

19.2 When a contract is awarded or a Framework Agreement concluded pursuant to the procurement procedure in paragraph 15 any additional requirements as to contract award set out in the Regulations must also be complied with including:

- (a) that the notice set out in paragraph 19.1 must provide all additional information required by the Regulations including setting out the applicable Standstill Period; and
- (b) publishing a contract award notice compliant with the requirements of the Regulations on the FTS not later than 30 days following the award of the contract or conclusion of the Framework Agreement.

19.3 Where the Regulations require that a Standstill Period is observed by the Council, the Officer must ensure that the Council does not enter into a contract with its preferred supplier until the applicable Standstill Period has expired.

19.4 Letters of intent must only be used in exceptional circumstances and after consultation with, and the approval of, the Senior Solicitor and Monitoring Officer.

### **PART 4 Collaborative procurement**

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#### 20. Collaborative procurement

20.1 The Council may, following consultation with and approval of the Senior Solicitor and Monitoring Officer, procure goods, services or works from or through a Central Purchasing Body.

20.2 The Council shall be deemed to have complied with the Regulations and UK procurement legislation to the extent that the Central Purchasing Body has itself complied.

20.3 The Officer must ensure that the Council is clearly identified in the call for competition by the Central Purchasing Body and may only award a contract to the supplier(s) appointed by the Central Purchasing Body and in accordance with the terms of the multi-purchaser arrangement.

20.4 Procurement through a Central Purchasing Body may include one or more of the following multi-purchaser structures:

- (a) Framework Agreements: subject to the provisions of the Framework Agreement, call-off contracts can be awarded:
  - (i) directly to the supplier able to fulfil the order most efficiently (whether in terms of price, timing, scale or some other fact that is pre-determined by the Framework Agreement), if this can be established by applying the terms set out in the Framework Agreement; or
  - (i) following a mini-competition among those suppliers on the framework. The use of mini-competitions is required when:
    - (A) not all the terms of the proposed contract are laid down in the Framework Agreement; or
    - (B) it is not possible to select a supplier from the information made available when the Framework Agreement was awarded;
- (b) contract permitting further direct contracts with the Supplier: the Council will be bound by the terms agreed between the Central Purchasing Body and the supplier and the precise scope of the arrangement the Council may enter into with the supplier must be in compliance with that set out in the Central Purchasing Body's contract;

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- (c) contracting with the Central Purchasing Body as prime contractor: the Council will only deal with the supplier as a sub-contractor of the Central Purchasing Body and the Council must enter into an agreement with the Central Purchasing Body detailing the basis of their arrangement; and
- (d) Dynamic Purchasing Systems: the Officer must issue an ITT, provide adequate time for responses and award a contract in accordance with the Dynamic Purchasing System established by the Central Purchasing Body.

### PART 5 Contracts

#### 21. Contract terms generally

21.1 Every contract the Council enters into shall be in writing.

21.2 Where a contract requires execution it shall be executed in accordance with Article 12 of this Constitution.

#### 22. Terms and conditions of contracts of a value beneath the financial threshold provided in the Regulations

22.1 Subject to paragraph 22.2 below, where a contract is reasonably believed to be of a value beneath the relevant threshold set out in the Regulations then the Council's standard terms and conditions shall apply to that contract to the exclusion of any supplier terms and conditions that are provided in soft or hard copy. If supplier terms and conditions are provided they must be rejected and the rejection should be evidenced in writing.

22.2 Paragraph 22.1 shall not apply where:

- (a) an ITT, with content approved by the Senior Solicitor and Monitoring Officer, identifies alternative terms and conditions;
- (b) a Framework Agreement or Dynamic Purchasing System is being procured;
- (c) the contract for services is an IT contract;

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- (d) the contract is for works;
- (e) the contract is being procured from a Framework Agreement or from a Central Purchasing Body in accordance with paragraph 20;
- (f) the relevant Head of Service and/or the Senior Solicitor and Monitoring Officer deems that the Council's standard terms and conditions are not appropriate and/or that other terms and conditions are preferable, provided that a written record is kept of this reasoning, to remain on the relevant file of the officer undertaking the procurement;

provided such alternative terms and conditions are agreed with the Senior Solicitor and Monitoring Officer in advance of being entered into.

#### **23 Terms and conditions of contracts of a value in excess of the relevant financial threshold provided by the Regulations**

23.1 Contracts and Framework Agreements must be entered into on the terms and conditions in the form provided with the ITT and must set out any provisions required for inclusion by the Regulations.

23.2 Any exception to the requirement set out in paragraph 23.1 must be approved by the Senior Solicitor and Monitoring Officer.

#### **24. Changes to contracts/Framework Agreements**

24.1 A contract or Framework Agreement may only be varied or changed without re- advertisement if an Officer can show, to the satisfaction of:

- (i) the Senior Solicitor & Monitoring Officer; or
- (ii) the Head of Paid Service, or the Chief Financial Officer or any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution (in each case in consultation with the Senior Solicitor & Monitoring Officer) ~~Senior Solicitor and Monitoring Officer,~~

that (having regard, where relevant, to any additional requirements set out in the Regulations):

- (a) the change is provided for in the contract/Framework Agreement in clear, precise and unequivocal review clauses;
- (b) the change:

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## NDDC CONSTITUTION

### Part 4

- (i) requires additional works, services or supplies that have become necessary and where a change of supplier would not be practicable (for economic, technical or interoperability reasons) or involve substantial inconvenience/duplication of costs; and/or
- (ii) is unforeseeable by the Officer, acting diligently, provided these changes do not affect the nature of the contract/Framework Agreement;

and the value of such a change does not exceed 50% of the original contract price. Where such a change has been made to a contract procured pursuant to paragraph 15 the change must be in accordance with the Regulations and the appropriate notice must be published on the FTS;

- (c) corporate changes have occurred in the supplier linked to merger, takeover or insolvency provided:
  - (i) the new supplier complies with any pre-qualification criteria assessed in the procurement; and
  - (ii) the change in supplier does not require any other substantial amendments to the contract/Framework Agreement;
- (d) the modification to the original contract or Framework Agreement is not substantial, that is it:
  - (i) is not a modification which renders the contract/Framework Agreement materially different in character from the one concluded;
  - (ii) would not have resulted in a different outcome in the procurement;
  - (iii) does not shift the economic balance in favour of the supplier;
  - (iv) does not extend the scope of the contract considerably; or
  - (v) put in place a new contractor other than where this is allowed pursuant to paragraph 24.1(c); and/or

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### Part 4

- (e) the value of the modification (or the cumulative modifications where there is more than one) is less than:
    - (i) the relevant procurement threshold provided by the Regulations; and
    - (ii). 10% of the initial contract value for services or supplies contracts or 15% of the initial contract value for works contracts;
- provided also that the modification(s) do not alter the overall nature of the contract.

#### 25. Register of contracts

25.1 In accordance with the Local Government Transparency Code 2014 (and any subsequent or similar statutory requirement) the Senior Solicitor and Monitoring Officer shall keep and maintain a register of all contracts awarded by the Council of a value in excess of £5,000 including at least the following detail:

- (a) reference number;
- (b) title of the agreement
- (c) the Council department responsible;
- (d) description of the goods, services or works being provided;
- (e) the name and details of the supplier;
- (f) the sum to be paid over the length of the contract or the estimated annual spending or budget for the contract;
- (g) Value Added Tax that cannot be recovered;
- (h) start, end and review dates;
- (i) whether or not the contract was the result of a RFQ or an ITT; and
- (j) whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, the relevant registration number must be provided.

25.2 It shall be the responsibility of Officers to monitor their contracts and ensure that the Senior Solicitor and Monitoring Officer is provided with correct, up to date and appropriate information to allow full compliance with paragraph 25.1.