



North Devon Council

Report Date: 14th June 2022

Topic: Constitution Update

Report by: Simon Fuller, Senior Solicitor and Monitoring Officer

1. INTRODUCTION

- 1.1. At Annual Council on 6 April 2022 it was resolved that the Scheme of Delegations (as amended) for the discharge of the functions for the year 2022/23 as set out in Part 3 of the Constitution be DEFERRED for review by Governance Committee on 14 June 2022 before returning for ratification by full Council.
- 1.2. At Licensing and Community Safety Committee on 12 April 2022 it was RECOMMENDED that Governance Committee agree to update North Devon Council's Constitution allowing the Licensing and Community Safety Committee delegated power to set Hackney Carriage Fares.
- 1.3. A wider review of Parts 2, 3 and 4 has been carried out for consideration by Governance Committee

2. RECOMMENDATIONS

- 2.1. That Governance Committee RECOMMEND that Full Council approve the proposed amendments to Parts 2, 3 and 4 of the Constitution as annexed to this report, including the Scheme of Delegations for the discharge of the functions for the year 2022/23.

3. REASONS FOR RECOMMENDATIONS

- 3.1. A full review of the Constitution has been undertaken with the intention of bringing it up to date, correcting omissions, responding to audit recommendations, responding to the recommendation from Licensing and Community Safety Committee and providing additional delegated powers to officers to allow for the day to day management of key assets such as Green Lanes and the Pannier Market.

4. REPORT

- 4.1. The Constitution has been amended as shown in tracked changes in the Appendix.
- 4.2. The reason for each change is as set out below:

Part and paragraph in Constitution	Reason for amendment
Part 2 Article 4.5.6 and Article 8.2	For consistency "Ilfracombe" removed from Harbour Board to reflect the name elsewhere in the Constitution.

Part 2 Article 12.3	Allows for any Head of Service to attest the seal or authenticate documents along with statutory officers and their deputies who already could – this assists with hybrid working as it ensures there are officers available in the office to authenticate important and urgent documents.
Part 3, Annexe 1, Para 4(g)	In line with the recommendation of the Licensing and Community Safety Committee, this delegates that committee with being able to fix fares/charges for hackney carriages rather than this needing to go to Strategy and Resources Committee (currently this is referred to Strategy and Resources Committee by Licensing and Community Safety Committee).
Part 3, Annexe 1, Para 6 and Annexe 2, Para 10	Amended the reference to a singular harbour to cover any harbours administered.
Part 3, Annexe 2, Para 4.13	Updates this provision to reference quotes as well as tenders and agreements as well as contracts as these were omitted previously leaving this unclear.
Part 3, Annexe 2, Para 4.25	In line with the amendment to Part 2 – this makes it clear that all Heads of Service can attest the Council's seal or sign a document.
Part 3, Annexe 2, Para 5.60	Typographical error corrected
Part 3, Annexe 2, Para 7.7-7.13	<p>These paragraphs consolidate the previous delegated powers for the Head of Place Property and Regeneration but also adds to them. These provisions make these delegations clearer and removes ambiguity. This does add additional delegated powers to officers, particularly at paragraph 7.8 which should allow greater freedom to officers to negotiate (in consultation with Senior Management Team, the Leader, the Deputy Leader and the Lead Member) smaller scale property transactions (up to £250,000), so primarily residential purchases and sales which need to be completed swiftly, reserving anything over this value to need to be taken to Strategy & Resources Committee. Additionally the greater discretions allowed by these amendments are necessary to allow the Council's property management company to be able to take appropriate and prompt actions in respect of Green Lanes Shopping Centre and the Estates team in respect of the Council's property portfolio. Finally powers as regards licences, wayleaves and easements have been clarified and consolidated. In accordance with legal requirements as to transparency, any decisions with a material financial</p>

	impact taken by officers must be published and so subject to scrutiny.
Part 3, Annexe 2, Para 7.17	This amendment takes account of multiple urgent decisions which the Chief Executive has had to take in terms of reducing or waiving pitch fees at the Pannier Market, particularly during the pandemic lock downs. Raising pitch fees, which is likely to be of greater concern to Members, has not been included, only reducing or waiving fees.
Part 3, Annexe 2, Para 11.15	Typographical error corrected – Ethics Committee changed to Governance Committee.
Part 3, Annexe 2, Para 12	Certain delegated powers reserved to the Senior Solicitor and Monitoring Officer moved verbatim to the new role of Head of Governance, which role is line manager to the Senior Solicitor and Monitoring Officer. It is understood that these powers were previously given to the previous role of Head of Corporate and Community and came under Senior Solicitor and Monitoring Officer after that role ceased to exist and it is more appropriate that they sit with the Head of Governance. There is one change to the wording, increasing the value of compensation payments which can be awarded following a complaint from £500 to £1000.
Part 4, Contract Procedure Rules Para 12.1, 13.1 and 18.2, and Financial Procedure Rules Para 7.8	It is proposed to increase the threshold at which the Council runs tenders from £40,000 to £75,000. This is in line with similar thresholds published by neighbouring authorities. It means that the procurement thresholds would be <ul style="list-style-type: none"> • £0-£5k – only one quote needed, • £5k-£75k – at least three quotes needed, • £75k to the threshold stated in law – open tendering
Part 4, Contract Procedure Rules Definition	Definition of Regulations updated to reflect current law
Part 4, Contract Procedure Rules Para 2.4	In line with audit recommendations this adds a procedure in where there is non-compliance with the Contract Procedure Rules where the Senior Solicitor and Monitoring Officer investigates and reports to Senior Management Team and the matter is referred to disciplinary where appropriate.
Part 4, Contract Procedure Rules Para 4.3(d)	This is updated to reference a defined term for ease but does not affect the nature of the paragraph.
Part 4, Contract Procedure Rules Para 4.4	It appears appropriate that setting aside the Contract Procedure Rules should be reported to Governance

	Committee and not to Policy Development Committee, given the former's audit function.
Part 4, Contract Procedure Rules Para 4.5	New provision following audit recommendation that contracts awarded via urgent decision or requests for waiver must have an appropriately worded contract and details of the contract published as appropriate.
Part 4, Contract Procedure Rules Para 4.6	New provision to reflect another audit recommendation that the numbers of exemptions to the Contract Procedure Rules be monitored and reported on regularly.
Part 4, Contract Procedure Rules Para 6	Updated to reflect the fact that there is no Sustainable Procurement Strategy and this has been replaced with the Devon Districts Procurement Strategy.
Part 4, Contract Procedure Rules Para 9	This has been updated to reflect the change in law that where a procurement is subject to the full requirements of the Public Contracts Regulations 2015 then valuations of contracts must be inclusive of VAT (previously it was net of VAT).
Part 4, Contract Procedure Rules Para 12.2	In response to audit recommendation there is a requirement to ensure compliance with the new para 4.5. Also the ability to approve a Request for Waiver from needing to seek at least three quotes is widened out to all Heads of Service, rather than just statutory officers.
Part 4, Contract Procedure Rules Para 17.2	This is updated because Corporate and Community no longer exists.
Part 4, Contract Procedure Rules Para 17.3	This paragraph is reserved to the extremely rare occasion that the Council has paper based tenders to remove the requirement to hold a separate register of tenders when these are received electronically. Mainly because this duplicates work since the Procurement Portal holds this for us.
Part 4, Contract Procedure Rules Para 24.1	This widens out the ability to approve an amendment to a contract from solely being the Senior Solicitor and Monitoring Officer to being any statutory officer or Head of Service, although those officers must do so in consultation with the Senior Solicitor and Monitoring Officer because the matter is likely to require a legal interpretation.

5. RESOURCE IMPLICATIONS

5.1. There are no resource implications.



6. EQUALITIES ASSESSMENT

6.1. An Equality Impact Assessment has not been completed as no equality issues are affected.

7. ENVIRONMENTAL ASSESSMENT

7.1. There are no environmental implications of this report.

8. CORPORATE PRIORITIES

8.1. These changes will aid in the Council's Corporate Priorities of achieving financial security and on focussing to deliver the best for our customers.

8.2. The proposed amendments, particularly to the delegated powers of the Head of Place Property and Regeneration, will assist in the Council's commercialisation agenda, allowing clarity and improved function in terms of property transactions and the management of key assets like Green Lanes Shopping Centre.

8.3. The proposed amendments will also assist in delivering the best for customers by making the Council more efficient through clarifying and consolidating powers and responding to audit recommendations to ensure that the Council can authenticate documents, deliver services and procure goods, works and services as efficiently as possible.

9. CONSTITUTIONAL CONTEXT

9.1. Article of Part 3 Annexe 1 paragraph: 5(a) and (b)

9.2. Referred or delegated power? Referred

10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

North Devon District Council's Constitution

12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Simon Fuller, Senior Solicitor and Monitoring Officer

APPENDIX TRACKED CHANGES VERSIONS OF CONSTITUTION PARTS 2, 3 AND 4