

## **ANNEXE 2 – OFFICER DELEGATIONS**

### **1. PREFACE**

- 1.1 The purpose of this part of the Constitution is to bring together delegations to officers and roles and responsibilities of officers. Officers may be delegated to make decisions in respect of any matter other than those which by law are reserved only to Full Council.
- 1.2 Section 101 of the Local Government Act 1972 provides that:
- (a) A Council may delegate its powers (except those incapable of delegation) to a committee or an officer
  - (b) A Committee may delegate its powers to a sub-committee or an officer
  - (c) Powers which have been delegated may be exercised by the delegating body.
- 1.3 Any delegation to a Committee or an Officer shall be exercised in compliance with the Council's Constitution, any other policies or conditions imposed by the Council and with the law
- 1.4 In making any decision regard shall be had to the principles of decision-making as set out in Article 11 of the Constitution.
- 1.5 In exercising their delegated powers Officers will consult any appropriate Member. This would normally include:
- (a) Ward Councillor(s)
  - (b) the Chair of the relevant Committee, or in his absence the Vice-Chair
  - (c) the Leader, or in his absence the Deputy Leader
- 1.6 In exercising their delegated powers Officers will consult any appropriate officer, in particular where there are significant financial, legal, property or human resource implications of the proposed action or decision

### **2. INTERPRETATION**

- 2.1 For the avoidance of doubt unless the context otherwise requires reference to:
- (a) "the Council" shall be deemed to include any of its meetings including the Committees and Sub-Committees;

(b) “the Planning Acts” shall mean the Town and Country Planning Act 1990, the Town and Country Planning (Listed Building and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, Growth and Infrastructure Act 2013, Housing and Planning Act 2016, the Caravan Sites and Control of Development Act 1960, Localism Act 2011, Neighbourhood Planning Act 2017 and the Planning Act 2008 (and in respect of them all any amendments as may be made from time to time) and any regulations and orders made pursuant to the same or other legislation including in particular, but without prejudice to the generality of the foregoing the Use Classes Order 1987, General Permitted Development Order 2015, the General Development Procedure Order 2015, the Community Infrastructure Levy Regulations 2010, Environmental Impact Assessment Regulations 2017, the Brownfield Land Register Regulations 2017, Self-Build and Custom Housebuilding Regulations 2016, the Hedgerow Regulations 1997, and Town and Country Planning (Control of Advertisements) (England) Regulations 2007, (including in respect of them any amendments as may be made from time to time).

(c) Reference to the masculine shall include reference to the feminine and vice versa

2.2 Any reference to an Act or Regulations shall be deemed to be a reference to that piece of legislation as amended or replaced

2.3 An officer may nominate another named Officer to carry out any powers and duties which have been delegated to him providing this nomination is recorded in the register referred to in 2.4 below.

2.4 Member Services will hold a register of all amendments to delegated powers

### **3. CHIEF EXECUTIVE**

3.1 To act as Head of the Paid Service under Section 4 of the Local Government and Housing Act 1989.

3.2 To act as Returning Officer for Council Elections in accordance with Section 35 of the Representation of the People Act 1983 (the 1983 Act) and to designate polling places in accordance with section 18 and 18B of the 1983 Act, such power to be exercised only where a decision was required at short notice and it is not possible to await a decision of Council.

- 3.3 To act as Electoral Registration Officer for the County in accordance with Section 8 of the 1983 Act.
- 3.4 To guide and, where appropriate, direct Heads of Service in the exercise of their delegated functions in order to achieve the overall corporate aims and objectives of the Council
- 3.5 To grant exemptions on the political restriction of officer posts under the Localism Act 2011.
- 3.6 To exercise all powers referred or delegated to any other officer (except Chief Financial Officer and Senior Solicitor and Monitoring Officer) when that officer is either absent or otherwise unavailable.
- 3.7 All powers delegated in the “All Heads of Service” section are also delegated to the Chief Executive.
- 3.8 To undertake any roles, actions or measures, including power to consider and determine any matter, allocated to a Head of Service within the Constitution whether specifically identified in the delegated powers to officers or otherwise.

**Health and Safety**

- 3.9. Responsibility for implementing any policies adopted by the Council that relate to health and safety.

**Human Resources**

- 3.10. To consider, amend and revise the manpower establishment provided any such amendments or revision is in accordance with any approved manpower plan and budgetary framework of the Council.
- 3.11. To appoint temporary staff or authorise the appointment of external resources to undertake work normally undertaken by a Service subject to the costs thereof not exceeding the available budget.
- 3.12. To consider, refuse or approve with or without modification:
  - (a) essential car users allowances;
  - (b) applications for car loans in accordance with Council policy.
- 3.13. To determine whether to approve or refuse staff applications to undertake second employment
- 3.14. To determine pursuant to Part V of the Local Government Discretionary Payments Regulations 1996:

- (a) the amount of any injury allowance payable to an officer; and
  - (b) any time period(s) associated therewith or to any death benefit payments referred to in those provisions.
- 3.15. To hear and determine any grievance or grievance appeal passed to the Chief Executive for his determination whether pursuant to any policy of the Council or otherwise.
- 3.16 To appoint, discipline and/or dismiss officers in accordance with Council policies and procedures, including the power to nominate any other officer to undertake such powers, except where that power is reserved to a Committee or to Full Council under the Officer Employment Procedure Rules set out within Part 4 of the Constitution.
- 3.17 To agree minor revisions to existing employment policies and/or procedures.
- 3.18 To interpret employment policies, custom and practice and implement processes and/or decisions based on either the policy or the custom and practice of the Council.
- 3.19 To act on the advice of medical practitioners with regard to retiring employees on grounds of ill health.
- 3.20 To negotiate revised terms and conditions of employment with recognised trades unions.
- 3.21 To develop employment policies and negotiate with recognised trades unions prior to adoption by Council.
- 3.22 To apply employment legislation as appropriate which may impact on staff terms and conditions, including pay.
- 3.23 To act as the lead counter-signatory for the Council and nominate other counter-signatories for the Council in respect of the Disclosure and Barring Service.
- 3.24 To sign employment related documents, e.g. Compromise Agreements, etc.
- 3.25 To determine applications for flexible and early retirement and also for early release of pension where the decision will not result in a net cost to the Council.

**General**

- 3.26 To respond to consultation papers where timescales for responses do not fit in with the Council's timetable of meetings.
- 3.27 To attest the Council seal and sign any document necessary to give effect to:
- (a) a resolution of the Council ; and/or

- (b) the exercise of a power or function delegated by the Council, provided that any such attestation or signing accords with Article 12 of the Constitution.
- 3.28 To undertake any roles, actions or measures, including power to consider and determine any matter, allocated to the Chief Executive within the Constitution whether specifically identified in the delegated powers to officers or otherwise.
- 3.29 For the purpose of surveillance operations to which the Regulation of Investigatory Powers Act 2000 apply (or any statutory provision modifying, replacing or re-enacting the same) the power:
  - (a) to authorise a surveillance operation; and
  - (b) to designate other officers to exercise the power to authorise surveillance operations to other officers,
  - (c) provided that such designations is only given to those officers who have responsibility for the management of an investigation.
- 3.30 To authorise the making of an application under the Crime and Disorder Act for an Anti-Social Behaviour Order in consultation with the Monitoring Officer.
- 3.31 To re-allocate the delegations as set out in this Annexe as necessary from time to time to give effect to any re-designations of post titles, re-allocation of service responsibility or vacancy of post.
- 3.32 Coordination of the Member Training and Development Programme including
  - (a) management of the approved Member Training and Development Budget and
  - (b) authorisation of Member attendance at conferences, seminars and other training and development events.

### **Council and Committees**

- 3.33. To receive Group nominations for relevant Committees and Sub-Committees subject to Council being notified of the Group appointments.
- 3.34. To consider and determine whether to refer to the Planning Committee any application pursuant to the Planning Acts that, in the opinion of the Chief Executive is an application which:
  - (a) is on or could have significant implications for, land owned or controlled by the Council;
  - (b) the scale of which is such as to warrant a clear separation of responsibilities between Members with primary responsibility for considering future

development schemes for such land and Members who will be responsible for determining applications under the Planning Acts.

- 3.35. To carry out such actions and take such decisions so as to give effect to any procedures set out in Part 4 of this Constitution.
- 3.36. To summon a meeting of the Council where at his discretion, he believes there are circumstances warranting the same, provided the circumstances necessitating the calling of the meeting are identified on the agenda for that meeting.

### **Member Claims**

- 3.37. To determine Members' claims for travelling allowances, including the power to determine whether to authorise attendance at meetings.

### **Contracts**

- 3.38. In accordance with paragraph 12.2 of Part 4 of the Constitution, to consider and determine whether a proposed contract can be entered into:
  - (a) with fewer than three quotes having been obtained; or
  - (b) otherwise than the lowest quote received.

### **Proper Officer**

- 3.39 To act as 'Proper Officer' for all functions detailed in the Local Authorities (Referendum) (Petitions and Directions) (England) Regulations 2000,
- 3.40 To act as 'Proper Officer' for all functions detailed in the Constitution not otherwise specifically delegated to another officer; including the power:
  - (a) to consider and nominate in writing any other officer to act as a 'Proper Officer' where this is permitted by law; and
  - (b) to negotiate and approve variations to an officers terms and conditions of employment, in order to facilitate the same, provided that any such appointment or variations do not exceed any budget allocated for such a purpose.

### **Emergency Powers**

- 3.41. In the event of an emergency defined by the Chief Executive as a major emergency, which may include designated officers attending at Gold or Silver

Control (as defined in the Council's Major Incident Plan or successor document) then the Chief Executive, without consultation with any other person, may:

- (a) incur expenditure whether forming part of an identifiable budget or otherwise;
- (b) to authorise any lawful action on behalf of the Council;
- (c) The Chief Executive will act in accordance with the following requirements:
- (d) to maintain a record of response and expenditure as set out in the Major Incident Plan;
- (e) to inform the Chief Financial Officer of all details of any expenditure incurred as soon as reasonably practicable;
- (f) to report any expenditure to the next available meeting of Council.

### **Miscellaneous**

- 3.42 To authorise and maintain a list of assets of community value and to make adjudications and decisions in relation thereto.
- 3.43 To consider and determine the security arrangements for information held electronically.
- 3.44 To consider and accept or refuse offers of re-purchase and determine applications for consent pursuant to covenants imposed on right to buy sales under.
- 3.45 In common with the Chief Financial Officer, to apply and act as a personal licence holder for the North Devon Community Lottery and to manage and oversee that Lottery and to approve appropriate policies and procedures associated with it, in consultation with the Leader and Lead Member for Commercialisation and Resources.

### **Urgent Decision Making**

- 3.46 To take a decision on any matter falling within the remit of any Committee in cases of urgency where it is not reasonably practicable to obtain prior approval of a Committee SUBJECT TO:
  - 3.46.1 to the prior consultation, where practicable, with the Leader or Deputy Leader and the Chair or Vice Chair of the relevant Committee, and
  - 3.46.2 the proviso that this power will not extend to the determination of any application submitted pursuant to the Planning Acts or under the Licensing Act 2003 or the Gambling Act 2005, and
  - 3.46.3 the decision being reported to the next meeting of the relevant Committee and the next meeting of Strategy and Resources Committee

#### **4 ALL HEADS OF SERVICE**

- 4.1 The Heads of Service referred to in this scheme of delegations are those designated as such by the Head of Paid Service.
- 4.2 Heads of Service are empowered to carry out those specific functions of the Council delegated to them in this Annexe 2 or in Part 4 of this Constitution. In doing so Heads of Service are expected to follow principles of decision making in Article 11 of the Constitution.
- 4.3 Functions are to be construed in a broad and inclusive fashion and include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.
- 4.4 To consider and approve or refuse (with or without modification) any grant application provided:
- (a) the expenditure is within the allocated budget; and
  - (b) any such determination is made in accordance with a relevant policy of the Council.
- 4.5 To introduce, set and vary as necessary fees and charges for the delivery of services and for the issue of any licence, registration, permit, consent or approval.
- 4.6 To serve, receive and act upon notices, give or refuse consents, issue determinations, apply for permissions, make orders, and grant licences in the exercise of any discretionary power or in complying with any duty of the Council.
- 4.7 To provide goods and/or services to other local authorities and public bodies under the Local Government (Goods and Services) Act 1970.
- 4.8 Each Head of Service shall act as the designated Proper Officer for the following functions under the Local Government Act 1972:
- (a) to identify which background papers disclose facts on which a particular report or an important part of the report is based (Section 100D(5)(a) of the Act)
  - (b) to prepare a list of background papers and to make arrangements for production of copies of background papers (Section 100D(1)(a) and (b) of the Act) (such delegation relates to the Chief Officer(s) in whose name(s) the report is prepared).



## **Human Resources**

- 4.9 Provided that the Chief Executive has nominated the Head of Service for such a purpose, to recruit, select and appoint any officer below Head of Service.
- 4.10 Provided that the Head of Service has been nominated by the Chief Executive for such a purpose, in relation to an officer to hear, consider and determine:
- (a) any grievance and/or harassment matter;
  - (b) any disciplinary/capability or health/long term sickness matter providing the officer is below Head of Service level; and any appeal in relation to a decision resulting from a grievance, harassment and/or disciplinary matter other than a decision taken by a Head of Service; including in all cases, power to authorise such action as the Head of Service deems appropriate in relation to any determination that is made (whether formal or informal) including the suspension and/or dismissal of any officer.
- 4.11 To determine the outcome of job evaluation processes based on the rule of the Job Evaluation Scheme and its application to the Council's pay and grading structure.
- 4.12 To take informal or formal disciplinary action (including power to dismiss an Officer provided the Head of Service has been nominated by the Chief Executive) should any officer within the Service fail to achieve or breach standards of conduct or performance as may be set by the Council.
- 4.12A To award honoraria to officers within their Service in strict compliance with the requirements, and up to the limit, as specified within the Local Agreement on Honoraria.

## **Contracts/Agreements**

- 4.13 Within service budgets, to accept quotes and tenders, place contracts, enter into agreements and procure other resources within or outside the Council subject to compliance with the Council's Financial Procedure Rules and Contract Procedure Rules.
- 4.14 To terminate contractual and other commissioning arrangements.
- 4.15 That, in respect of covenant 3.4 of the Transfer dated 21st February 2000 to North Devon Homes Limited of the Council's former housing stock, authority be delegated to the Head of Service to issue a waiver of that covenant where:

- (a) in the opinion of the Head of Service it would be appropriate to do so; and
- (b) the effect of the waiver is to allow the incorporation of that land into an existing domestic garden and for no other purpose.

## **Finance**

4.16 To vire up to £5,000 within budget heads, subject to:

- (a) all virements being reported to the Chief Financial Officer; and
- (b) approval by the Chief Financial Officer of any virements from income to expenditure, provided any such virement does not result in a net change in the Council" overall budget.

4.17 To authorise instructions:

- (a) for the raising of customer accounts;
- (b) to cancel customer accounts;
- (c) to recommend write off of customer accounts.

4.18 To investigate and resolve complaints (whether made through the formal Council complaint procedure or otherwise) relating to the Service, provided that where a resolution of a complaint involves the payment or waiving of money then the same can be met without any increase to the Service's budget and is no more than £750.

4.19 To determine a reasonable charge for the preparation, production and sale of notices, agreements, orders, licenses and any other documents, including for copying or the undertaking of any other associated work.

4.20 To undertake any roles, actions or measures, including power to consider and determine any matter, allocated to the Head of Service within the Constitution whether specifically identified in the delegated powers to officers or otherwise.

4.21 Where the Head of Service has the power to institute criminal proceedings he shall be able to issue a formal warning instead. This is subject to:

- (a) him having full regard to any guidance that may be issued for the benefit of crown prosecutors, and
- (b) in the event of any doubt consulting with the Monitoring Officer.

4.22 To authorise officers and any other persons (including inspectors appointed on behalf of the Council) to carry out inspections and to exercise powers of entry for any purpose which in the opinion of the Head of Service is reasonably necessary for the performance of a delegated or referred power or duty.

- 4.23 The responsibility for the monitoring, storage, archiving and destruction of documentation held by their Service provided the same is in accordance with Council policies.
- 4.24 To authorise and sign identity cards on behalf of any officer within their Service as may be necessary for the proper performance of their duties.

**Attesting the seal:**

- 4.25 To attest the Council seal and sign any document necessary to give effect to:
  - (a) a resolution of the Council; and/or
  - (b) the exercise of a power or function delegated by the Council, provided that any such attestation or signing accords with Article 12 of the Constitution.

**Value Added Tax**

- 4.26 To properly account for VAT on all transactions carried out by their Service under arrangements determined by the Chief Financial Officer
- 4.27 To consult the Chief Financial Officer in all cases where the VAT treatment of any transaction is unclear so that the matter can be reviewed and appropriate treatment determined.
- 4.28 To consult the Chief Financial Officer in all cases where new projects, schemes, or services are proposed, well in advance of commitments being made, so that any effect on the Council's VAT position can be assessed, any necessary action taken to protect the Council's VAT recovery position and the financial implications of the proposal can be properly considered
- 4.29 To comply with any request from the Chief Financial Officer to cooperate with a VAT inspector and give access at all reasonable times to premises, personnel, documents, and assets they consider necessary for their work.

**5 HEAD OF PLANNING, HOUSING AND HEALTH Environmental Health and Housing**

- 5.1 In relation to applications for the grant, variation, renewal or transfer of any licences or registrations submitted pursuant to any of the provisions identified in Part B of schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000:
  - (a) to consider representations, conduct conciliation and mediation and determine whether to approve or refuse (with or without modification) the grant, variation, renewal or transfer the same, provided:

- (b) in the case of Premises Licenses or Club Premises Certificates this power does not include the power to revoke or refuse such grant, variation, renewal or transfer;
  - (c) in the case of all other applications, there have been no objections;
- 5.2 The power to suspend a premises licence or club premises certificate if the annual maintenance fee is not paid when it is due
- 5.3 To issue requests and requisitions for information in the performance of the Council's Environmental Health functions and Licensing functions
- 5.4 To consider and determine applications for film classification
- 5.5 In relation to houses in multiple occupation, to exercise discretionary powers relating to the registration scheme
- 5.6 In relation to Closing Orders under the Housing Acts, to authorise the alternative use of a property or part of a property
- 5.7 To authorise the service by duly appointed Authorised Officers, Authorised Persons of orders on behalf of the Council, and the initiation of related works, default, charging and recovery procedures
- 5.8 To undertake on behalf of the Council all those functions relating to health and safety identified in Part C of Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000: including the provisions contained in the Health and Safety at Work Etc Act 1974
- 5.9 Power to waive or vary the repayment conditions attached to renovation, common parts, Houses in Multiple Occupation, and relocation grants.
- 5.10 To initiate the review procedure under the Gambling Act 2005 on behalf of the licensing authority in respect of gambling premises, and to decide whether grounds for review are irrelevant, frivolous, vexatious or repetitive.
- 5.11 To provide any person with financial assistance for any property which is or is intended to be privately let as housing accommodation, under Section 24 of the Local Government Act 1988.
- 5.12 The power to suspend and revoke a hackney carriage or private hire driver's licence:
  - (a) with immediate effect where the interests of public safety require the suspension and/or revocation,

- (b) in any other case, with effect from the end of a period of 21 days beginning on the day when notice is given to the driver,
- 5.13 Power to carry out all functions which the Council has a duty to enforce or regulate as set out and referred to in the Animal Welfare Act 2006.
- 5.14 To determine requests for variation(s) to the annual table of fares, subject to the decision adhering to the following criteria:
  - (a) reasonable and fair to all stakeholders
  - (b) proportionate with the locality
  - (c) benchmarked with other local authorities
  - (d) justified; simple and easily calculated
  - (e) designed with a view to practicality
  - (f) in line with published best practice guidance
  - (g) mathematically correct and capable of being entered on to a meter
  - (h) structurally the same for vehicles of different seating capacity
  - (i) designed where possible to avoid either deliberate or accidental over-charging
- 5.15 To administer and enforce the new Pavement Licensing regime to be brought into effect by way of the Business and Planning Bill 2020.

### **Appointments and Authorisations**

- 5.16 To appoint all Authorised Officers, Authorised Persons, Enforcement Officers and Inspectors as Proper Officers of the Council for the purpose of authenticating documents issued by them on behalf of the Council.
- 5.17 To act as Proper Officer of the Council for the purposes of the Public Health (Control of Disease) Act 1984 and of an alternate Proper Officer nominated by the Health Authority to act in the absence of the Proper Officer in accordance with the terms of the agreement with the Health Authority under Section 113 of the Local Government Act 1972 to act concurrently with the Manager
- 5.18 To authorise all duly appointed Authorised Officers, Authorised Persons, Enforcement Officers and Inspectors to carry out inspections and to exercise powers of entry and other powers necessary for the effective discharge of the Council's Environmental Health functions and Licensing functions as well as to remove abandoned vehicles (such term to include, without limitation, untaxed vehicles), on being satisfied on matters upon which the Council is obliged to be satisfied and that all statutory requirements are fulfilled.

## **Housing**

- 5.19 To allocate properties.
- 5.20 Powers under Part VI and Part VII of the Housing Act 1996 and powers to investigate allegations of illegal eviction and harassment and other private rented sector issues.
- 5.21 To authorise the payment of removal expenses to homeless families when considered necessary under Part VI of the Housing Act 1996 and to recharge accordingly.
- 5.22 To manage arrangements for the provision of temporary accommodation for those rendered homeless or evacuated in an emergency.
- 5.23 To pay sums and agree terms for securing private rented accommodation for those to whom a duty is owed under Part VII of the Housing Act 1996.
- 5.24 To be designated “Proper Officer” to execute any housing function provisions contained in any agreement under s106 of the Town and Country Planning Act 1990.

## **Planning**

- 5.25 To consider and determine any application (without prejudice to limitations on this power as provided by law or as provided elsewhere in the Constitution) submitted pursuant to the Planning Acts or any regulations or orders made pursuant to the Planning Acts (as revoked and replaced or amended from time to time) excluding an application:
  - (a) which in the opinion of the Head of Planning Housing and Health:
    - (i) is in conflict with the adopted Development Plan (as may be reviewed and/or amended from time to time); and
    - (ii) is of sub-regional or district wide significance; or
    - (iii) is for outline permission, reserved permission, full permission, listed building consent or is for the development of land without compliance with conditions under section 73 of the Town and County Planning Act 1990 and is on the Council's own land, on land occupied by the Council or has been submitted by the Council; or,
    - (iv) has been submitted by:
      - a. a Member (or their partner) or where the Member (or their partner) has submitted an application on behalf of another acting pursuant

to their employment, trade, profession or vocation (or have otherwise been formally contracted in connection with such application); or

- b. an Officer (or their partner) who at the time of submitting the application is part of the Planning Service (or, in the opinion of the Head of Planning Housing and Health, is in a role that is close to the planning process in respect of the application or otherwise exerts influence over that process), save that the Head of Planning Housing and Health may still determine the application so long as he has previously consulted with the Monitoring Officer and the Officer concerned does not participate in the processing or determination of the application; or

(b) which in the opinion of the Head of Planning Housing and Health, save otherwise provided for herein, ought to be determined by the Planning Committee (provided that in such a case, at the absolute discretion of the Head of Planning Housing and Health, the application may be first referred to a site inspection Committee after consultation with the Chairman of the Planning Committee and the Ward Member(s) for the ward in which the application site is situated; or

(c) in respect of which the Head of Planning Housing and Health receives within 28 days, unless agreed otherwise with the Head of Planning Housing and Health, of an application being registered, a written representation from a Member(s) containing sound planning reasons for the application to go to Planning Committee for decision. Should the Head of Planning Housing and Health be minded to refuse the request to suspend delegation they must consult with the Chair of Planning Committee. If the Head of Planning Housing and Health and Chair (or Vice-Chair if the application is called in by the Chair) of the Planning Committee cannot reach an agreement after consultation then the application will be brought to the Planning Committee for consideration. Factors to be weighed by the Head of Planning Housing and Health include the extent of public interest (recognising that this in of itself does not constitute material planning grounds), the wider community impact, the decision is a finely balanced one and/or the planning matters under consideration are of broad significance.

5.26 To exercise and determine all functions of the Council arising from the Planning Acts that can reasonably be regarded as ancillary to the process of determining applications.

- 5.27 The power to make recommendations on Paragraph 5 Certificates under the Caravan Sites and Control of Development Act 1960.
- 5.28 To consider and determine any matter arising in respect of the Council's planning function.
- 5.29 To determine whether or not to issue and serve any notice which in the opinion of the Head of Planning, Housing and Health is appropriate in order to regulate planning breaches (including conditions attached to any permissions or consents) pursuant to the Planning Acts.
- 5.30 To make observations on proposed Tree Felling Licences to the Forestry Commission except that where the view of a Ward Councillor is in conflict with that of the Head of Planning Housing and Health, they be reported to the Committee for decision.
- 5.31 To take enforcement action to prevent the unauthorised holding of open air markets.
- 5.32 To prepare, issue, serve and confirm provisional Tree Preservation Orders.
- 5.33 The making of representations to the County Council in respect of road safety, subject to any matter having policy implications being referred to the Planning Committee.
- 5.34 To consider and determine applications for works to trees which were subject to Tree Preservation Orders or within Conservation Areas.
- 5.35 In consultation with the Senior Solicitor and Monitoring Officer, to consider and determine applications for certificates of lawfulness of existing use or development and certificates of lawfulness of proposed use or development pursuant to the Town and Country Planning Act 1990
- 5.36 Power to determine appropriate measures for inclusion in Appropriate Assessments under the Habitats Regulations
- 5.37 Power to amend the adopted Sustainability Appraisal Framework.
- 5.38 Power to determine hedgerow removal notifications, determine high hedge complaints and prepare and serve associated notices.
- 5.39 Power to determine whether to take action in respect of dangerous trees.
- 5.40 Power to identify and include candidate buildings of local importance on the Council's list of locally important buildings after consultation with the relevant ward member.



- 5.41 Power to consider and respond to consultation documents.
- 5.42 Power to determine applications for eligibility for entry to the self-build and custom build register.
- 5.43 Power to determine the 'developability' of SHLAA sites and when any housing can be expected to be delivered.
- 5.44 Power to prepare housing trajectories and reach a conclusion as to whether the Council has a 5 year housing land supply.
- 5.45 Subject to any necessary prior consultation with the North Devon Council Members sitting on the Local Plan Working Group, the Leader and relevant Ward Members, the power to determine, designate and/or set a neighbourhood area following application.

### **Building Control**

- 5.46 To determine and issue all Decisions and Notices arising under the Building Act 1984 and any building regulations.
- 5.47 To relax or dispense with Building Regulations and to sign and issue such decisions.
- 5.48 To withdraw Building Regulation approvals not exercised within three years.
- 5.49 To refer to the Magistrates' Court, Notices under Section 77 of the Building Act 1984 requiring dangerous buildings to be made safe, and to take, or instruct emergency action under the provisions of Section 78 of the Building Act 1984.
- 5.50 To carry out, or instruct contractors to carry out, works in default of a Court Order obtained pursuant to Section 77 of the Building Act 1984.
- 5.51 To institute proceedings for infringement of the Building Regulations.
- 5.52 To serve Notice requiring removal or alteration of work not conforming to the Building Regulations (Section 36 of the Building Act 1984). To sign and issue Demolition Notices in respect of works falling within Section 80 of the Building Act 1984.
- 5.53 To issue Notices under Sections 24, 71 and 72 of the Building Act 1984, requiring adequate entrances, exits and means of escape in case of fire in appropriate buildings.
- 5.54 To serve Notices under Section 79 of the Building Act 1984 relating to ruinous and dilapidated buildings.
- 5.55 To enter sites and premises to carry out and enforce the Statutory Powers and Duties, such visits to be properly recorded.

- 5.56 To carry out tests on sewers, drains and land and where necessary to take samples and conduct tests on other building materials.
- 5.57 To take emergency action under the provisions of Section 78 of the Building Act 1984 in respect of dangerous structures.
- 5.58 To take action to enforce Building Regulations, including the issue of written Notices.
- 5.59 To place officers within the building control team at the disposal of Mid Devon District Council under section 113 Local Government Act 1972

### **Crematorium**

- 5.61 To discharge any functions relating to the efficient management and running of North Devon Crematorium

### **6 CHIEF FINANCIAL OFFICER – DIRECTOR OF RESOURCES AND DEPUTY CHIEF EXECUTIVE**

- 6.1 The investment and re-investment of Council monies provided this is undertaken in accordance with the Financial Procedure Rules and any other relevant policies.
- 6.2 To draw, sign and endorse cheques on the Council's Bank Accounts, to pay approved accounts including wages and salaries, housing benefit and all other authorised payments.
- 6.3 To authorise and make transfers between the Council's bank accounts, including power to authorise and act as authorised signatory for the purposes of instructing the Council's bankers to make transfers by electronic transfer.
- 6.4 To borrow and raise loans on behalf of the Council provided this is undertaken in accordance with the Financial Procedure Rules and any other relevant policies
- 6.5 To act as signatory for Housing Association Partnership/Homes and Communities Agency documents.
- 6.6 To make the following determinations relating to the statement of accounts under the Local Government and Housing Act 1989:
  - (a) the amount to be set aside from revenue account as provision for credit liabilities (Section 63(1))
  - (b) the amount of capital expenditure to be financed by credit approval (Section 56(1));
  - (c) the amount of credit approval (if any) to be transferred to another local authority (Section 56(2));

- (d) the amount of capital expenditure to be financed by useable capital receipts (Section 60(2)).
- 6.7 To act as authorised signatory, authorise transfer and/or give instructions to the Council's bankers to transfer money from, between and to accounts held by or on behalf of the Council in respect of sums properly payable and/or held by the Council.
- 6.8 To act as Proper Officer for the purposes of the following provisions of the Local Government Act 1972:
  - (a) Section 115(2) (Accountability of Officers);
  - (b) Section 146 (Transfer of Securities on Alteration of Area Etc.)
- 6.9 To make a statutory declaration of local authority mortgage interest.
- 6.10 To respond to notices in relation to any financial sanctions.
- 6.11 To receive and respond to expressions of interest under Community Right to Challenge, under Part 5, Chapter 2 of the Localism Act 2011.
- 6.12 To consider and determine whether the Council should opt to tax any property to preserve the interest of the Council
- 6.13 To act as Stage 1 Internal Dispute Resolution in respect of pensions

### **Treasury Management**

- 6.14 To plan and manage the Council's cash flow requirements within approved borrowing limits and in accordance with the Council's investment strategy.
- 6.15 To sign or endorse cheques drawn on the council's accounts.
- 6.16 To authorise writing-off customer invoices. Subject to the amount to be written off in respect of one customer not exceeding £1,500 and a list of all debts written off being placed in the Members' Room.
- 6.17 To take any applicable recovery action in respect of outstanding sums due to the Council, including appearing in Court

### **Loans Administration**

- 6.18 In accordance with Council policy, to advance loans to third parties and to take action to recover loan repayments due to the Council.
- 6.19 To commence repossession action proceedings.

6.20 To declare Interest rates under the Housing Act 1985 and other interest rates appropriate to a class of loan.

### **Revenues and Benefits**

6.21 To administer and implement the Benefit Scheme, including the exercise of all discretions on behalf of the Council

6.22 To represent the Council in bankruptcy and liquidation proceedings.

6.23 To represent the Council in the Magistrates Court on applications for Liability Orders in respect of Council Tax and Non Domestic Rates.

6.24 To approve applications for mandatory rate relief

6.25 To determine applications for discretionary rate relief in accordance with Council policy or any statutory provision

6.26 To approve claims for a reduction in Council Tax due as a consequence of the statutory provisions of the Local Government Finance Act 1992.

6.27 To administer the Discretionary Housing Payment Scheme and to make decisions in respect of applications.

6.28 To offer administrative penalties as an alternative to prosecution for housing benefit and council tax fraud cases.

6.29 To instigate, defend, attend at, represent and take further action as deemed appropriate in respect of housing benefit, council tax benefit, or council tax support appeals.

6.30 To administer the Council Tax Support Scheme.

### **Value Added Tax**

6.31 To maintain complete and accurate accounting records of all the Council's VAT transactions

6.32 To submit the Council's VAT return to HMRC by statutory deadlines

6.33 To prepare the Council's partial exemption calculation at the end of each financial year and monitor the Council's partial exemption position

6.34 To prepare and submit Error Corrections as necessary to HMRC

6.35 To conduct all negotiations with HMRC in respect of VAT matters affecting the Council, and make appropriate decisions resulting from these negotiations

6.36 To provide guidance, advice, and training to Council staff on all aspects of VAT as they affect the Council and to publish and regularly update appropriate VAT guidance notes as required.

### **Miscellaneous**

6.37 To attest the Council seal and sign any document necessary to give effect to:

- (a) a resolution of the Council ; and/or
- (b) the exercise of a power or function delegated by the Council, provided that any such attestation or signing accords with Article 12 of the Constitution.

6.38 To exercise all powers referred or delegated to the Chief Executive or the Head of Place, Property and Regeneration when that officer is either absent or otherwise unavailable.

6.39 In common with the Chief Executive, to apply and act as a personal licence holder for the North Devon Community Lottery and to manage and oversee that Lottery and to approve appropriate policies and procedures associated with it, in consultation with the Leader and Lead Member for Commercialisation and Resources.

## **7 HEAD OF PLACE, PROPERTY AND REGENERATION Planning Policy**

7.1 To make any drafting amendment to any emerging development plan document and supplemental planning document which is in the course of preparation and is produced for the purposes of the Town and Country Planning Act 1990 that in the opinion of the Head of Place, Property and Regeneration is of a minor nature and to consider and respond to requests and questions from an appointed Inspector during a Development Plan examination.

7.2 To consider and determine any matter arising in respect of the Council's planning policy function.

### **Miscellaneous**

7.3 To carry out the Council's functions as Land Drainage Authority in accordance with the Land Drainage Act 1991.

7.4 To carry out the Council's functions as Maritime District Council in accordance with the Coast Protection Act 1949.

## **Car parking**

7.5 To arrange for vehicles parked illegally on car parks controlled by the Off-Street Parking Places Order to be removed.

7.6 To manage car parks in accordance with the Off Street Parking Order including the issuing of penalty notices and permits.

## **Property Management**

7.7 To manage the Council's leased property assets in line with the relevant corporate guidance and commercialisation strategy, including:

- (a) Lettings and lease renewals (except where the term created exceeds 21 years);
- (b) Variation to or rectification of lease terms;
- (c) Change of use (as would not require planning permission for change of use);
- (d) Alienation;
- (e) Break options;
- (f) Surrenders;
- (g) Rent reviews;
- (h) Alterations;
- (i) Dilapidations;
- (j) Rent free periods, rent abatement and rent holidays; and (k) Service charges.

7.8 To determine freehold and, in accordance with paragraph 7.7 above, long leasehold land (up to a term of 21 years) and other property transactions, in consultation with Senior Management Team, the Leader, the Deputy Leader and the Lead Member, including acquisitions and disposals, up to a financial level of £250,000.00.

7.9 To determine all applications for the consent of the Council in its capacity as landlord or landowner pursuant to any requirement for such consent contained in any lease, transfer or other instrument pertaining to interests in land to which the Council is a party save to the extent that such power is otherwise specifically delegated by the Scheme of Delegations.

7.10 To determine applications (including all fees and charges) from statutory undertakers, parties providing essential utilities and other public sector bodies, for:

- (a) Licences;
- (b) Wayleaves;
- (c) Easements; and
- (d) Sales or leases of land for sub-stations or similar installations

7.11 To determine applications and renewals (including all fees and charges) for  
(a) temporary licences for land use (including advertising) and access (b)  
annual licences relating to property management.

7.12 To manage the Council's property portfolio, including making planning and building  
regulation applications on Council property assets as required for their effective  
use and management.

7.13 The power to:

- (a) Consider and decide the merits of any claim to ownership of or rights over  
land owned by the Council, and as appears at her discretion to be appropriate  
either:
  - (i) Lodge and pursue objection with the Land Registry; or
  - (ii) Accept and agree the claim; or
  - (iii) Negotiate and carry through settlement of the claim.
- (b) Determine whether or not to:
  - (i) seek rectification of the Land Registers in respect of Council land already  
registered to third parties; and/or
  - (ii) pursue registration of any land to which the Council holds disputed title.

### **Pannier Market**

7.14 To enforce any bye-laws relating to Barnstaple Pannier Market.

7.15 To determine whether to grant or refuse (with or without modification) Barnstaple  
Pannier Market licenses

7.16 To undertake minor amendments to the charges structure to facilitate good  
management of the Pannier Market.

7.17 To reduce or waive the pitch fees applicable to the Pannier Market in Barnstaple.

## **8 HEAD OF ENVIRONMENTAL ENHANCEMENT**

8.1 The power to manage, administer and operate waste and litter collection services.

This power includes:

- (a) determination of whether a place at which fly-tipped waste is situated is so isolated as to make the cost of collection unreasonably high,
- (b) setting of charges for the collection of waste
- (c) determination of whether to collect industrial waste or other waste where the Council has the discretion to decide
- (d) disposal of the collected waste
- (e) determination of the specific receptacles for storage and collection of waste
- (f) serving litter clearance and other notices relating to waste and litter
- (g) in consultation with the Chief Financial Officer, disposal of plant and equipment used within the service

### **Burial grounds**

8.2 To approve the erection of memorials in cemeteries administered by the Council.

8.3 To manage and administer burial grounds.

8.4 To agree and sign exclusive rights of burial

8.5 The power to execute exclusive Rights of Burial on behalf of the Council

## **9 HARBOUR MASTER**

9.1 To exercise within all harbours administered by the Council all statutory and regulatory powers given to a Harbourmaster under the provisions of the Harbours Docks and Piers Clauses Act 1847, the Harbours Act 1964 and all relevant byelaws.

## **10 SENIOR SOLICITOR AND MONITORING OFFICER**

10.1 To instruct and use Counsel and other external experts in respect of any legal issues relating to the Council.

10.2 To institute, prosecute, defend, and appear in any legal proceedings (including tribunals, hearings and inquiries) on behalf of the Council and to take such decisions affecting such matters as are necessary.

10.3 To prepare, issue and serve any Notices, Orders, Requisitions or other documents arising from or relating to any functions of the Council.



- 10.4 To take such further action as the Monitoring Officer at his absolute discretion deems necessary for the purposes of implementing, enforcing in respect of breaches of, or regulating any decisions, Notices, Orders, Requisitions or other documents (including any conditions relating thereto) issued by or on behalf of the Council.
- 10.5 To consider applications for, any representations received in respect of, and determine whether to grant or refuse (with or without modification) a road closure pursuant to the Town Police Clauses Act 1847.
- 10.6 To consider and determine applications for late night opening in accordance with the Shops Act 1950.
- 10.7 After consultation with the Head of Planning, Housing and Health and having considered any representations, to determine whether or not to confirm (with or without modification) a Tree Preservation Order pursuant to the Town and Country Planning Act 1990.
- 10.8 To consider and determine whether to vary and / or revoke a Tree Preservation Order pursuant to the Town and Country Planning Act 1990.
- 10.9 Where no objections have been received, to determine whether or not to confirm any bylaw which the Council has the statutory power to issue. Provided that where an objection has been received determination can still be made if in the opinion of the Monitoring Officer there is an urgent need for a decision.
- 10.10 In consultation with the Head of Planning Housing and Health, to consider and determine applications for certificates of lawfulness of existing use or development and certificates of lawfulness of proposed use or development pursuant to the Town and Country Planning Act 1990.
- 10.11 To attest the Council seal and sign any document necessary to give effect to:
- (a) a resolution of the Council ; and/or
  - (b) the exercise of a power or function delegated by the Council, provided that any such attestation or signing accords with Article 11 of the Constitution
- 10.12 To hear and determine the appropriate action / responses to any offers and representations on behalf of the Council at a meeting, which, pursuant to any statutory authority, a person is entitled to make to the Council.
- 10.13 In the absence of the Chief Financial Officer, in respect of any proceedings, to consider and determine whether the Council should lodge a formal offer with the Court.

- 10.14 To act as the Proper Officer to receive complaints of breach of the Members' Code of Conduct.
- 10.15 To grant or refuse dispensation for a Member to participate in a meeting on a matter that would otherwise be barred by the Code of Conduct, but only on the grounds that without the dispensation the meeting would be inquorate. A Member who is dissatisfied with the decision of the Monitoring Officer shall have a right of appeal to the Governance Committee.
- 10.16 Power to deal with, consider and determine complaints regarding the conduct of District and Parish Councillors, including
- (a) the power to make recommendations to Group Leaders, Committees and Full Council,
  - (b) the power to consult with an Independent Person, and
  - (c) the power to refer a complaint to the Governance Committee.
- 10.17 Power to take decisions on whether to list an asset as an Asset of Community Value
- 10.18 Power to make changes to the Constitution in order to give effect to legislation changes and to make minor amendments, in consultation with the Leader.
- 10.19 Power to make any changes to the Policy on the use of covert surveillance to ensure that it is in compliance with the relevant legislation and Code of Practice

## **11. HEAD OF GOVERNANCE**

- 11.1 Power to award Councillor and Community Grants, the “Keeping North Devon Together Fund” and for determining applications for “good causes” to the North Devon Community Lottery in accordance with Council policies
- 11.2 Power to agree compensation payments recommended as a result of a complaint up to a value of £1,000.00
- 11.3 Power to agree to advertisement or sponsorship arrangements and the power, in consultation with the Chief Financial Officer and the relevant Portfolio Holder, to set appropriate fees for such arrangements.