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Dear Member

COUNCIL - WEDNESDAY, 3 JULY 2024

I am now able to enclose, for consideration at the Wednesday, 3 July 2024 meeting of the Council, the following reports that were unavailable when the agenda was printed.

Agenda No	Item	Page
3.	Scheme of Delegation for Council Functions Please note that this report contains an exempt appendix which has been circulated separately.	(Pages 2 - 23)

Yours sincerely

Teresa Buckley
Clerk

Meeting: [Extraordinary Meeting of the Council](#)

Date: [3 July 2024](#)

Wards affected: [All](#)

Report Title: [Scheme of Delegation for Council Functions](#)

When does the decision need to be implemented? [Immediately](#)

Cabinet Member Contact Details : [Cllr David Thomas, Leader of the Council](#)
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Director Contact Details: [Anne-Marie Bond, Chief Executive](#) anne-marie.bond@torbay.gov.uk

1. Purpose of Report

1.1 The Council considered, at its Adjourned Annual Meeting held on 20 June 2024, the Scheme of Delegation for Council Functions. A motion to approve the Scheme of Delegation for Council Functions and the Schedule of Responsibility for Local Choice Functions, so far as they related to Council functions, was lost. This report sets out the clear Officer recommendation to approve the same, alongside the implications should it not be approved.

2. Reason for Proposal and its benefits

2.1 The proposals in this report help us to deliver our vision of a healthy, happy and prosperous Torbay by ensuring that authority for the discharge of Council functions continues to be delegated to committees and officers, as appropriate.

2.2 Whilst there was concern as to the immediate operation of the Council following the defeat of a motion to approve the same at the adjourned Annual Council Meeting, King's Counsel has advised that delegations to Officers remains in place given their previous approval. However, King's Counsel recognises that this position is not immune from challenge and therefore advises that the position should be regularised at the earliest opportunity to avoid the risk of significant adverse consequences. A decision is also necessary to address the position in relation to Local Choice Functions as well as confirming the position of delegations to Committees.

2.3 The reasons for the proposal and need for the decision are to ensure the effective and efficient functioning of the Council.

3. Recommendation(s) / Proposed Decision

1. That the Scheme of Delegation for Council Functions as set out in Part 3 of the Constitution, and the Schedule of Responsibility for Local Choice Functions, insofar as they relate to Council functions, be approved.
2. That, if any actions or decisions relating to Council functions have been taken since the Adjourned Annual Meeting of the Council held on 20 June 2024 and were in fact taken without delegated authority, but would have been authorised if the motion considered on 20 June 2024 had been passed, then all such actions and decisions are hereby ratified.
3. That, if any actions or decisions relating to Local Choice Functions have been taken since the Adjourned Annual Meeting of the Council held on 20 June 2024 and were in fact taken by an inappropriate or unauthorised person or body, but would have been duly taken if the motion considered on 20 June 2024 had been passed, then all such actions and decisions are hereby ratified.

Appendices

Appendix 1 (Exempt) – King’s Counsel’s Opinion

Background Documents

None

Supporting Information

1. Introduction

- 1.1 Each year, at the Annual Meeting of the Council, members are asked to approve the scheme of delegation for Council functions. These delegations are set out in Part 3 of the Constitution.
- 1.2 Part 3 of the Constitution is made up of seven Schedules:
- Schedule 1 – Sets out whether Cabinet or Council are responsible for the Local Choice functions (i.e. functions which Torbay Council is able to determine whether they are exercised by the Cabinet or the Council)
 - Schedule 2 – Sets out those functions required by law to be exercised by the Council – the Council Functions
 - Schedule 3 – Describes the circumstances in which, as a matter of law, functions are not to be the responsibility of the Cabinet
 - Schedule 4 – Sets out the terms of reference of the Overview and Scrutiny Board and the regulatory, area and other committees of the Council
 - Schedule 5 – Describes the scheme of delegation of Executive functions to the Cabinet, Cabinet Committees and Officers
 - Schedule 6 – Sets out the Officer Scheme of Delegation for both Cabinet and Council functions
 - Schedule 7 – Lists which officers have been appointed the Proper Officer for the purposes of various pieces of legislation as well as appointments to the Statutory Officer posts across the Council

(The Council's Constitution is available online:

<https://www.torbay.gov.uk/DemocraticServices/ieListDocuments.aspx?CId=458&MId=26272&Ver=4&Info=1>)

- 1.3 The matters in relation to which a decision of the Council is required are:
- The allocation of the Local Choice functions between the Cabinet and the Council
 - Delegating Council powers to the Council's committees
 - Delegating Council powers to officers

There has been no change in these since they were reviewed in 2019 when the Council changed its governance arrangements, moving from a directly elected Mayor to a Leader and Cabinet model.

The delegation of the Cabinet's powers relating to executive functions does not require any decision by the Council. The current executive delegations were presented to the Council by the Leader of the Council under Item 8 on the agenda for the Adjourned Annual Meeting of the Council held on the 20 June 2024.

- 1.4 At the Adjourned Annual Meeting, on being put to the vote, the motion to approve the Scheme of Delegation for Council Functions and the Schedule of Responsibility for Local Choice Functions, so far as they related to Council functions, was lost. No alternative motion was put.
- 1.5 Following the Adjourned Annual Meeting of the Council, urgent advice was sought from King's Counsel, to fully understand the implications of the motion not being approved. There was concern that, without a Scheme of Delegation in place, no officer or committee decisions, across the operation of the entire Council so far as they related to non-executive (Council) functions, could legally be made.
- 1.6 The advice from Counsel is that the motion falling did not have this consequence. His written opinion is provided for members information at Exempt Appendix 1.
- 1.7 His view is that the existing Council delegations to officers continued beyond the Annual Meeting unless they were revoked, and that when the Adjourned Annual Meeting established committees and their terms of reference, that amounted to a delegation of the functions within those terms of reference.
- 1.8 However, Counsel's advice is that there is sufficient room for argument about these points and that a further meeting of the Council should be called as soon as possible to which a new resolution can be put, with a view to achieving certainty. He advises that the consequences of decisions later being held to have been taken without authority are potentially serious, and that it is clearly sensible for the Council to avoid such risks.
- 1.9 Additionally, he advises that, under the Council's Standing Orders, the allocation of Local Choice Functions as described in the Constitution reverts after the Annual Meeting to a default position. That is that all such functions are exercisable by the Cabinet (not the Council) if no resolution approving a different allocation is passed. This position therefore also needs certainty.
- 1.10 Should no delegation of Council functions be in place, the Council would need to meet (as a meeting of Full Council) to determine every decision, insofar as they relate to Council functions, that would otherwise be made by officers and/or committees. This would fundamentally undermine the delivery of Council services to our residents and businesses. In order to function, a Council needs delegations to be in place, and they exist in every single Council in the country.

2. Options under consideration

- 2.1 The alternative option would be to continue with the delegations which were put in place at the Annual Meeting of the Council in May 2023. Given King's Counsel's advice, this option has been discounted.

3. Financial Opportunities and Implications

- 3.1 Should the recommendation not be accepted, there is the potential for legal challenge to the legitimacy of decision making throughout the Council, from the 20 May 2024.
- 3.2 Should decisions need to be made at meetings of the Council, there will be a significant increased administrative burden on officers which could have resource implications, alongside a fundamentally reduced level of productivity, given the time absorbed in presenting matters to Full Council.

4. Legal Implications

- 4.1 The legal implications are described within Section 1 of this report.

5. Engagement and Consultation

- 5.1 Not applicable

6. Procurement Implications

- 6.1 Not applicable

7. Protecting our naturally inspiring Bay and tackling Climate Change

- 7.1 Not applicable

8. Associated Risks

- 8.1 There is a risk that should the recommendations not be approved; the Council could be subject to legal challenge over the legitimacy of its decisions across the Council from the 20 June 2024.

9. Equality Impact Assessment

- 9.1 If the matter is left uncertain or if decisions prove to have been taken without authority, this is likely to delay or invalidate decisions. In turn this may have an adverse impact upon groups with protected characteristics.

10. Cumulative Council Impact

- 10.1 It is considered essential that there should be certainty going forward. It is assumed that members will wish there to be some scheme in place for the delegation of Council functions to committees and officers. Otherwise, all decisions in relation to Council functions would need to be taken at meetings of the Council. This would not lead to effective and efficient service delivery.
- 10.2 The recommendations in this report are designed to achieve that certainty, by explicitly approving the arrangements for such delegation, and for the allocation of Local Choice Functions, as they stood prior to the Adjourned Annual Meeting, and by ratifying any steps which have been taken on that basis meanwhile, should it ever prove that those steps were not in fact properly authorised. It is of course open to members to adopt alternative measures by way of what is delegated, or in relation to the allocation of Local Choice Functions. However, the view of the Chief Executive as the Head of Paid Service is that the current arrangements are appropriate ones, and she is not aware of any specific concerns about them. If there is a desire to review the arrangements in any respect, that can be done, but it is not recommended that the situation should be permitted to remain uncertain meanwhile.
- 10.3 If the Council did not adopt either the recommendations in this report, or any specific alternative which would clarify the position, it would be necessary for decision-making to proceed in accordance with Counsel's view as to how matters currently stand (which creates risk because of the uncertainty as to the correct legal analysis), or alternatively for all decisions in relation to Council functions would need to be taken at meetings of the Council (which is considered to be impractical as already indicated, and would not in any event resolve the issue concerning Local Choice Functions).

11. Cumulative Community Impacts

- 11.1 Not applicable.

Document is Restricted