

Broxtowe Borough Council Constitution

Document No. 3 – Scheme of Delegation

INTRODUCTION

As a Council operating committee system governance arrangements, Broxtowe has an extensive scheme for the delegation of functions to committees and to individual officers. It should be noted that under this governance system, delegation of functions to individual councillors is not available. The Scheme proceeds as follows:

1. General and Interpretation

- a) Under this Scheme, functions are fully delegated with the delegate having full powers as set out herein to act or authorise as appropriate.
- b) The delegation of a function by the Council or a committee shall not prevent the subsequent carrying out of the function by that delegating body. Similarly, an officer who authorises an officer may nevertheless carry out the function themselves. Any authorisation made by an officer shall be in writing, a copy signed and sent to the Monitoring Officer.
- c) Unless expressly limited, any delegation shall include full powers to deal with any matters consequential to the delegation (such as handling appeals, recovering costs and dealing with legal issues arising), subject to the Head of Legal Services' general powers to deal with litigation on behalf of the Council.
- d) Where there is a subsequent change to the officer establishment of the Council or changes to the committee structure, including names and terms of reference, the provisions of this Scheme will continue to have effect with the revised roles of officers and/or committees being deemed to fall within the roles currently delegated by this Scheme.
- e) The Chief Executive, following consultation with the Leader of the Council, shall have the power to allocate any new functions of the Council, or a function which has not been allocated under this Scheme, to the officer (including the Chief Executive), which the Chief Executive considers most appropriate to perform the function. This enhances delegated urgency powers to the Chief Executive in light of any pandemic or other such circumstances.
- f) The Scheme is not definitive on all sources of delegation (for example, powers to manage and deal with land are derived from several statutory sources) and the intention is that all functions are delegated under all enabling powers.
- g) Chief and senior officers are delegated all functions in relation to managing the staff and resources necessary to perform their substantive functions. All such functions must be managed in accordance with Council policies, strategies and procedures and all applicable law. It shall be the responsibility of each chief officer to liaise with their senior officers as to the discharge of their delegated functions to ensure it aligns with corporate policy.

- h) References to legislation in this Scheme shall be deemed to include subsequent legislation to the relevant function.

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1. Scope of Arrangements and Delegations

- a) Pursuant to Section 101 of the Local Government Act 1972 the Council delegates to each officer (as set out below) full powers to act in all matters within their area of responsibility (unless delegated to a committee), including responsibility for all day to day management and operational decisions.
- b) All delegations in this section are subject to other clauses in this Constitution and subsequent orders of full Council (including any procedures, codes of practice and guidance). In particular these delegations should be read in conjunction with the scope of arrangements and delegations set out in the Council's Standing Orders in this Constitution.
- c) This Scheme of Delegation is for the officers of the Council. 'Officers' are defined as all employees and staff employed or engaged by the Council to carry out its functions. It includes those under short-term, agency, or other non-employed situations. It does not apply to any person employed by contractors who are carrying out work or duties for the Council under contracts.
- d) The delegation to officers shall include the power:
 - i. To authorise the exercise of the delegated powers of decision by such other officers as may be deemed appropriate for the proper and efficient performance of the work. A record of any delegations shall be kept by the Monitoring Officer.
 - ii. To designate particular officers as 'appropriate' or 'proper' officers for the purposes of any statutory provisions, including where necessary or convenient having regard to any professional or technical requirements, an officer who is not an employee of the Council. Such "**Proper Officer functions**" as set out in **Appendix 1**.
 - iii. Following consultation with the Chief Executive to authorise particular officers in accordance with Section 223 of the Local Government Act 1972 (conduct of court proceedings by officers who are not solicitors).
 - iv. To make any determination under statutory provisions.
 - v. To instruct the Head of Legal Services to serve any Notice or make any Order prosecute in respect of any offence under any statute, order, regulation or by law, subject to him or her being satisfied as to the evidence.
 - vi. If the officer to whom a functions has been delegated is unable to act due to a conflict of interest, a conflict of opinion with a Chief Officer or any other reason, then it is for the Chief Executive to determine who should exercise that function. If the Chief Executive is unable to act due to a conflict of interest, or any other reason, then it is for the Section 151 Officer to determine who should exercise

that function. If the Chief Executive and Section 151 Officer are unable to act due to a conflict of interest, or any other reason, then the function can be exercised by any Chief Officer.

- vii. To issue fixed penalty notices where appropriate.
- viii. Notwithstanding the powers delegated to committees or officers, the Council retains the right to exercise such powers.

2. **Management Structure**

The Council will engage such '**Officers**' as it considers necessary to carry out its functions.

- (a) The Council's **General Management Team** comprises the following officers who shall be regarded as the 'Chief Officers' of the Council:

Chief Executive – Head of Paid Service

Deputy Chief Executive – S151 Officer

Monitoring Officer

Strategic Director

- (b) The Council's **Senior Management Team** comprises the following officers who shall be regarded as 'Senior Officers' of the Council:

Head of Legal Services

Head of Housing

Head of Planning and Economic Development

Head of Governance

Head of Human Resources and Public Protection

Head of Property Services

Head of Revenues, Benefits and Customer Services

Head of Environment

Head of Administrative Services

Head of Finance

3. Functions of the 'Officers' of the Council

a) Chief Executive (Head of Paid Service)

To leads manage and direct all officers of the Council in providing a corporate, co-ordinated, cross-functional approach towards Strategy and Policy Development and the delivery of services for the Council.

Functions of the Chief Executive as Head of Paid Service

- i) Acting through the Head of Human Resources and Public Protection to deal with all matters relating to the recruitment, appointment, remuneration, conditions of service, discipline, dismissal, superannuation, qualifications, training, job evaluation, promotion, safety and provision of welfare facilities of all employees of the Council (including settlement of claims up to £25,000 after consultation with the Monitoring and Section 151 Officers, if within existing budgets) which have not been delegated to a Committee, except that the following shall be reserved to Council:
 - (a) the appointment and dismissal of the roles of:
 1. the Head of Paid Service (the Chief Executive)
 2. the Monitoring Officer as appointed pursuant to Section 5 of the Local Government and Housing Act 1989; and
 3. the officer having responsibility for the Council's financial affairs pursuant to Section 151 of the Local Government Act 1982 and any other Chief Officer
- ii) To act as the Council's Head of Paid Service and to undertake the associated duties as set out in Section 4 of the Local Government and Housing Act 1989.
- iii) To deal with the grant and supervision of exemptions from political restrictions in respect of the relevant Council's posts.
- iv) To review the Whistleblowing Procedure for Employees.
- v) To review the Employee Code of Conduct.
- vi) To act as the Council's Returning Officer for the elections of councillors of the Borough, Electoral Registration Officer for the Borough and Proper Officer for parish polls under the Local Government Act 1972.

- vii) To act as the Council's Emergency Planning Officer in both wartime and peacetime emergencies and to liaise as necessary with neighbouring authorities, government departments, agencies and other bodies.
- viii) To perform the functions of the Council in respect of crime reduction including the payment of grants within the policy and budget of the Crime and Disorder Reduction Partnership.
- ix) In consultation with the Leader of the Council, and other recognised group leaders, to nominate or recommend any appointment to Liberty Leisure Ltd on behalf of the Council as shareholder.
- x) To perform the functions of the Council in respect of crime reduction including the payment of grants within the policy and budget of the Crime and Disorder Reduction Partnership.
- xi) In consultation with the Leader of the Council to authorise the taking or carrying out of action, notwithstanding anything on the Council's Standing Orders or Financial Regulations, where he/she considers that circumstances exist that make it expedient or necessary for action to be taken prior to the time when such action could be approved through the normal Council procedures. A report on such action, and the circumstances justifying the exercise of the delegated powers, shall be made to the next meeting of the Council as appropriate.

b) **Deputy Chief Executive (S151 Officer)**

The Deputy Chief Executive shall deputise for the Chief Executive if he/she is absent or unable to act unless they are prohibited from doing so by any legal or constitutional reason.

Functions of Deputy Chief Executive as Section 151 Officer

i) **Ensuring lawfulness and financial prudence of decision making**

After consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the full Council or to the appropriate Committee in relation to these functions, and the Council's external auditor, if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

ii) **Administration of financial affairs**

Have responsibility for the administration of the financial affairs of the Council without prejudice to the generality of the above.

- (a) to make arrangements for the provision and operation of any treasury management, banking and insurance services including the authorisation of any transaction; signing of cheques or other financial instrument; provision of indemnities; agreement of terms for the raising, repayment or cancellation of loans, investments and leases
- (b) to take any action to recover debts due to the Council and to write off debts considered to be irrecoverable for any proper reason
- (c) to authorise arrangements for the disposal of surplus or obsolete assets and consequential accounting entries
- (d) to determine all financial matters specified within statutory provisions and not reserved therein to the Council
- (e) to allocate budgetary provision from approved contingencies and earmarked reserves
- (f) to make arrangements for the provision of an Internal Audit service to the Council

iii) **Providing advice**

- (a) to negotiate and settle the Council's insurance claims through insurers up to a financial limit determined by policy
- (b) together with the Chief Executive and the Monitoring Officer provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and support and advise Councillors and officers in their respective roles.

iv) Acting through Head of Finance and Head of Revenues, Benefits and Customer Services:

- a) to give financial information and provide financial information to the media, members of the public and the community.
- b) to write off debts to the limit set in Financial Regulations.
- c) to grant non-domestic rating discretionary relief.
- d) to assess and determine applications regarding the Policy on Discretionary Council Tax discounts.

- e) to carry out functions of the Council with regard to the matters listed below:
- Administration of benefits, including determination of entitlement and the award of discretionary housing benefits.
 - Collection of revenues due to the Council under currently prevailing legislation relating to local government finance.
 - Determination and declaration of the appropriate local average rate in March and September each year in respect of Council mortgages and perform and consequential administration.
 - Appearance at hearings of the Valuation Tribunal.
 - The recovery of rates and Council Tax including the appointment of enforcement agents for this purpose and the pursuit of court proceedings in consultation with the Head of Legal Services, where appropriate.
 - Management of the Council's investments and debts, including the appointments of external investment managers and brokers, in accordance with the Council's adopted Treasury Policy Statement.
 - Appointment of and liaison with insurers.
 - To determine on the Council's behalf tenders in respect of all activities in accordance with relevant legislative requirements and to organise and perform all works in relation thereof.
 - To negotiate and accept quotations from contractors for works classified as part of tenders within limits specified in the Financial Regulations.
 - Reduction or remittance of the charge for non-domestic rates on occupied and unoccupied properties on grounds of hardship, under Section 49 of the Local Government Finance Act.

c) **Monitoring Officer**

In addition to the general delegations at Section 1 of this Scheme, the Monitoring Officer is authorised to exercise the following functions:

- i) To report to Full Council, if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rise to a finding of maladministration, after such consultation with the Chief Executive and the S151 Officer. Such report once issued will have the effect of

stopping the proposal or decision being implemented until the report has been considered.

- ii) To maintain an up-to-date version of the Constitution and ensure that this is widely available to Members, staff and public, to include the recording of any changes ensuring that all administrative changes are made in consultation with the Chief Executive, Leader and Leader of the Opposition, except where if all consultees object proposed changes shall be determined by Full Council.
 - iii) To provide support to the Policy and Performance Committee and Government, Audit and Standards Committee.
 - iv) To provide advice to all Councillors on issues in relation to the scope of powers and authority to take decisions, interests, maladministration, financial impropriety, probity and Budget and Policy and Planning Framework.
 - v) To support the Council's Standards' Complaints Officer and deal with the Information Commissioner, Local Government Commissioner (Ombudsman), the Housing Ombudsman and other similar regulatory bodies.
- d) **Strategic Director**
- i) To determine complaints and to make payments for maladministration and other similar compensation awards by the Council in consultation with the S151 Officer up to a limit of £5,000.
 - ii) To negotiate compensation claims by or against the Council up to the maximum currently set out in Financial Regulations in capital consideration in each case or weekly compensation not exceeding that sum in each case.
- e) **Head of Governance**
- To ensure that all decisions, reasons for those decisions, relevant officer reports and background papers are made publicly available as soon as possible.
- f) **Head of Legal Services**
- i) To determine, authorise and issue any Notice, decision, proceedings (to include criminal and civil proceedings) and appeals on behalf of the Council.
 - ii) To exercise discretion in consultation with the S151 Officer to settle court and tribunal proceedings and other potential proceedings.
 - iii) To authorise, in conjunction with the Chief Executive, officers under Section 223 of the Local Government Act 1972 to appear on behalf of the Council in

proceedings before the Magistrates' Court where those officers would otherwise not have rights of audience before the court.

- iv) To arrange and authorise the signing of a contract under seal such signing to be witnessed by an officer or member of the Council and registered in a book kept for that purpose by the Monitoring Officer.
 - v) To confirm unopposed public path orders and tree preservation orders.
 - vi) To determine applications for the Register of Community Assets and applications for compensation.
 - vii) To approve Wayleave Agreements.
 - viii) To authorise any person or sign any Notice to enable the use of the Council's powers of entry to land or property including applications to the court to enforce or ensure that the power of entry can be exercised.
 - ix) To determine, prepare and serve applications for Certificates of Lawful Use or Development notices and directions subject to prior approval with the Head of Neighbourhoods and Prosperity or his or her nominated officer.
 - x) To enter into an agreement regulating the development or use of land in consultation with the Head of Neighbourhoods and Prosperity (Section 106 Town and Country Planning Act 1990).
 - xi) To determine appeals in relation to compensation for matters relating to the Register of Community Assets.
 - xii) To determine and issue any Notice, decision, proceedings, appeals not otherwise delegated to officers (other than where prohibited by statute) or in circumstances where that officer is unable to exercise his or her delegated authority.
- g) **Head of Housing**
- i) To perform the Council's functions with regard to the Council's housing stock and housing revenue account property in accordance with all legislation relevant to housing and including homelessness, anti-social behaviour, maintenance and repairs and allocations.
 - ii) To carry into effect approved capital and revenue programmes and approved policies with regard to the Council's housing stock.

- iii) To approve conditions of sale and administer, in conjunction with the Head of Legal Services, the right to buy, voluntary sales schemes and property purchases.
- iv) To award compensation under the Secure Tenants of Local Authorities (Compensation for Improvement) Regulations 1994 unless appropriate to exercise a discretion
- v) To recover rent, rates (from the Council's housing stock), including the appointment of agents for this purpose and pursuit of Court proceedings.
- vi) To approve bids and adaptations to Council properties up to a maximum of £30,000.
- vii) To consider and conduct reviews of Council homeless decisions, introductory tenancies and fixed term tenancies.
- viii) To negotiate and accept quotations from contractors for works to the Council housing stock classified as part of tenders within limits specified in the Financial Regulations.

h) **Head of Planning and Economic Development**

- i) To determine applications for planning permission, the need for prior approval, consent for the display of advertisements and listed building consent and the determination of or response to any other application or matter received in respect of the town and country planning function including Article 4 directions subject in each case to the proviso that any member of the Council may bring the application before the Planning Committee for decision, and subject also to the provisos below:
 - a) Any application under i) above that is contrary to policy made by a member of the Council or by an officer involved in the planning process, namely: Directors, Heads of Service and employees of the planning and building control sections shall be referred to Planning Committee for decision.
 - b) In consultation with ward members and the Chair and Vice Chair of the Planning Committee, the decision not to take enforcement action must only be made in consultation with the Head of Legal Services.
- ii) To determine planning enforcement action as may be necessary after prior consultation with ward members and the Chair of Planning Committee and the Head of Legal Services to include the:
 - (a) investigation leading to breach of condition notices

- (b) investigation leading to enforcement notices and injunctions
 - (c) investigation leading to stop and temporary stop notices
 - (d) investigations leading to untidy land notices or community protection notices
 - (e) investigation leading to planning contravention notices.
- iii) To approve or reject plans deposited under the Building Regulations and to make a declaration that plans approved under the Building Regulations since 1 April 1974 are of no effect where work has not commenced on site within 3 years of deposit of plans.
 - iv) To perform the Council's functions under the Building Act 1984 to include the issue of Notices under Section 36 of the Building Act 1984 (removal or alterations of work done in breach of Building Regulations) in consultation with the Head of Legal Services.
 - v) To exercise all local authority functions under the currently subsisting Building Act and Building Regulations.
 - vi) To issue Notices requiring advance payment of Private Street Works charges under Section 220 of the Highways Act 1980 and Exemption Notices under Section 219 of the Highways Act 1980.
 - vii) To enforce in respect of complaints Part 8 of the Anti-Social Behaviour Act 2003, including high hedges.
 - viii) To determine street naming and numbering.
 - ix) To authorise grant aid to a limit of £7,500 for shop fronts and industrial improvement.
- i) **Head of Human Resources and Public Protection**
 - i) To perform the Council's functions, with regards to public protection and environmental health under all current and new relevant legislation to include anti-social behaviour, occupational health and safety, control of diseases, control of pollution, air quality, contaminated land, public health, drainage, statutory nuisance, private sector housing, Sunday trading, food and water supplies, environmental protection, health protection unlawful encampments and smoking.
 - ii) To approve and authorise the payment of housing grants.

- iii) To implement property charges on dwellings in respect of aids and adaptations.
- iv) To consider, determine and issue all of the Council's applications for approvals, licences, permits and registration for the Directorate, and if applicable vary, refuse, revoke or suspend such approvals, licences, permits and registration in relation to relevant Council functions and under the relevant current and new legislation.
- v) To perform the role of Hearing Officer on an application to review a decision to issue possession proceedings on the absolute ground.
- vi) To manage, develop, implement and monitor Human Resources, to include the policies, procedures and guidance.
- vii) To authorise relevant and suitably qualified officers to appoint Inspectors and those who accompany them for the purpose of the Health and Safety at Work etc Act 1974, the Sunday Trading Act 1994, the Pesticides Act 1988 and the Environment Act 1995.

j) **Head of Property Services**

- i) To carry into effect approved capital and revenue programmes with regard to the Council's housing stock.
- ii) To manage and maintain buildings and lands held for directorate purposes including public car parks, industrial and commercial property.
- iii) To operate civil parking enforcement on and off street including those vested in the Council via an agreement with the County Council as Traffic Authority; save for the consideration of parking appeals referred back to the Council by the Traffic Penalties Tribunal.
- iv) In common with the Head of Legal Services acquisitions, appropriations and disposals of land or property (except council houses) not exceeding the value currently set out in Financial Regulations;
- v) To consider, negotiate and determine all of the Council's acquisitions, appropriations and disposals of any land or property (except Council houses), lettings, negotiations and settlement of leases and rents for Council owned land or property (except Council houses), easements, licences or other rights or interests affecting the land whether granted or to be granted to or by the Council not exceeding the rental or capital consideration currently set out in Financial Regulations and in accordance with the Council's land disposal policy.
- vi) To negotiate and accept quotations from contractors for such related works classified as part of tenders within limits specified in the Financial Regulations.

- vii) To perform the function of requesting the County Council to apply to the Secretary of State for the closure or diversion of a public right of way on the grounds of crime reduction, following consultation with any ward members and the Crime and Disorder Reduction Partnership, for the purposes of the Countryside and Rights of Way Act 2000.

k) **Head of Environment**

- i) To carry into effect approved capital and revenue programmes with regards to the Council's vehicle fleet and improvements to public parks and green spaces.
- ii) To manage and maintain buildings and land held for Directorate purposes including Public Parks, Cemeteries, Woodlands, Play Areas, Recreational Grounds with associated Sports Facilities including Pavilions, Nature Reserves, The Nottingham Canal, public civil engineering assets and Allotments.
- iii) To manage and operate the licence, in accordance with statutory obligations, on behalf of the Council as Waste Collection Authority.
- iv) To manage and authorise the acquisition and disposal of all of the Council's vehicles and plant not exceeding the value currently set in the Financial Regulations.
- v) To deal with all matters in relation to the provision of vehicles, facilities and equipment within the overall capital programme including power to negotiate and execute all leases for items of plant and equipment within the capital programme.
- vi) To establish and review as necessary internal rates in respect of labour, plant and materials.