

Committee: Tamar Bridge and Torpoint Ferry Joint Committee  
Date: 18 June 2010  
Title: Governance Arrangements  
Cabinet Member(s) Graeme Hicks (CC) Kevin Wigans (PCC)

Divisions Affected

Relevant Overview And Scrutiny Committee:

Key Decision: N Checklist Compliant: Y

Urgent Decision: N Implementation Date:

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## Recommendations

**That the terms of reference appended to this report are recommended to the respective Councils for adoption for the operation of the Tamar Bridge and Torpoint Ferry Joint Committee**

## Summary

1. This report presents for members consideration terms of reference for the joint committee and asks that they recommend them either as drafted or with proposed amendments to the Joint Authorities' respective councils for adoption.

## Background

2. A number of background issues inform the proposals in this report.

3. Due to the establishment of this joint committee being founded in the Tamar Bridge Act 1957, historically there seemed little impetus for the Joint Committee to have formal terms of reference.
4. However, as noted in the past, Audit inspections have raised concerns about the absence of terms of reference for the joint committee and have commented that these should be put in place.
5. Terms of reference enable the committee to clearly identify its parent body i.e. the councils of Plymouth and Cornwall and give clarity to members of the joint committee on the scope of its powers and responsibilities.
6. At its meeting in December, this joint committee determined to adopt a business planning approach, which is reflected in the draft terms of reference.

### **Issues and Proposals**

7. Following consideration of a number of governance issues in December, some further work has been undertaken not only in relation to this joint committee, but also the other joint committee of these two authorities, the Mount Edgcumbe Joint Committee.
8. In order to provide consistency of approach and to provide clarity for members, the terms of reference for the Mount Edgcumbe Joint Committee have been reviewed at the same time as considering the terms of reference for this Joint Committee.
9. Attached at appendix one are the proposed terms of reference for this Joint Committee. This is very similar in nature and content to the terms of reference for the Mount Edgcumbe Joint Committee that will be put forward for members' consultation at the end of this month.
10. The terms of reference set out in very straightforward terms who has what responsibilities, as between the Joint Committee, the Council, the Cabinet and the responsible Directors.
11. The Terms of Reference do not single out any other posts below Director level, such as the General Manager's post, because as with all other operational activities of the Councils, the tasks and responsibilities for officers are cascaded down through the appropriate Director delegations.

12. In addition, it is suggested that for this Joint Committee's terms of reference, a 'Summary of Powers' document is appended to the terms of reference in order to assist officers and members in understanding the Joint Committee's powers under the Tamar Bridge Acts. A draft of this document is at appendix two. It is nearly finalised in terms of content and clarity, and just needs to be checked through. If members have any observations on that document then those would be welcomed.
13. **Members of the Joint Committee are therefore asked to recommend to Council that it adopts the terms of reference as appended to this report,** subject of course to any proposals that this Joint Committee wishes to put forward.

### **Supporting Documentation:**

#### **Appendices:**

- 1. Draft - Terms of Reference**
- 2. Draft – Powers of the Joint Committee**

#### **Background Papers**

[under provisions of the Local Government Act 1972]  
Tamar Bridge Acts 1957, 1979, 1998  
Governance Report - December 2009

#### **Division Member(s) comments**

Not Applicable

#### **Implications and Impacts**

a) Respective Council Priorities:

b) Resource Implications:

There are no financial implications arising from this report OR  
There are financial implications arising from this report as set out below:

(ii) Staffing

None.

(iii) Risk(s)

Risk Register Reference:	Ref or N/A	N/A
Overall Risk Register Rating:	Green	1-8 Low/Moderate (Green); 9-15 High Risk (Amber); 16-25 Extreme (Red)

(iv) Opportunity / Opportunities

To improve governance and support arrangements for the Joint Undertaking

(v) Legal

Terms of Reference will ensure governance arrangements are formalised.

This report has been cleared by Richard Williams

(vi) Property

None [OR set out implications].

c) Equality and Diversity:

None [OR set out implications/mitigating proposals].

d) Children and Young People:

None [OR set out implications/mitigating proposals].

e) Crime and Disorder:

None [OR set out implications/mitigating proposals].

f) Partnerships:

None [OR set out which and how].

**TERMS OF REFERENCE  
CORNWALL COUNCIL AND PLYMOUTH CITY COUNCIL  
TAMAR BRIDGE AND TORPOINT FERRY JOINT COMMITTEE**

**A Background**

Cornwall Council and Plymouth City Council (the "Constituent Councils") being have agreed that the following arrangements will apply in relation to the Bridge and Ferry. They have also agreed to form a Joint Committee (within the meaning of Section 102 Local Government Act 1972) in accordance with the requirement of the Tamar Bridge Act 1957, whose role is to make sure that the Bridge and Ferry are managed appropriately and in accordance with the Tamar Bridge Acts 1957, 1979 and 1998 (the Tamar Bridge Acts).

**B Responsibilities**

The joint responsibilities for the Tamar Bridge and Torpoint Ferry as set out in the Tamar Bridge Acts. .

**Who carries out the responsibilities**

**B1 Each Council will:**

- agree the annual budget for the Tamar Bridge and Torpoint Ferry;
- agree any extra spending outside the budget.
- take decisions to stop demanding tolls or to reinstate the demand for tolls should they have been previously ceased.

**B2 Each Cabinet will:**

- recommend the annual business plan and budget to council as part of the budget process;
- take decisions that would result in each of the councils spending or saving more than £100,000 [*limits to be confirmed*];
- recommend extra spending outside the agreed budget to Council;
- appoint a cabinet member with responsibility, amongst other things, for the Tamar Bridge and Torpoint Ferry
- take any decisions about the acquisition/disposal of land for the undertaking,
- Approve major items of capital expenditure (as defined by the authorities from time to time) as part of the capital programme in Plymouth and [tbc] in Cornwall
- make any recommendations to Council on the issue of any proposal to stop demanding tolls or to reinstate the demand for tolls should they have been previously ceased.

**B3 The Joint Committee will:**

- Propose an annual business plan to cabinet;
- Monitor performance of the undertaking against the business plan and recommend variations to the business plan to the Cabinet Members;
- Monitor performance of the undertaking to ensure value for money is achieved;
- Ensure the management of the Bridge and Ferry accords with proper financial and legal practice appropriate to local authorities;
- Ensure proper audit and risk management procedures are in place;
- Make sure an appropriate inspection of the Bridge and Ferry takes place on an annual basis;
- Undertake appropriate consultation with key stakeholders.

**B4** The Director for Development and Regeneration in Plymouth and the Director for Environment Planning and Economy in Cornwall have responsibility for ensuring that all other functions are undertaken.

**C Committee Procedures**

**C1 Membership**

1.1 The Joint Committee shall consist of ten members. Each Constituent Council shall appoint five of their respective Members to act as Members of the Joint Committee and shall also have the power to appoint substitutes with full powers of their principals, (including the power to vote) to sit in place of the Members when any of those Members are unable to attend a meeting of the Joint Committee.

**Support**

1.2 The Chief Executives of the Constituent Councils have agreed that Democratic support shall be provided by Cornwall Council.

**Appointment of Chair**

1.3 In the first meeting of the year (as referred to in Clause 3(a)) the Members of the Joint Committee shall appoint two Joint Chairs, one from each Council, and the first meeting will be chaired by the Joint Chair from Plymouth City Council following which at every subsequent meeting the Joint Chairs will alternate.

1.4 If either Joint Chair is not present at a meeting he or she should be chairing, his or her place will be taken by the other Joint Chair. If neither Joint Chair is present the members of the Joint Committee who are present shall appoint one of their number to chair the meeting.

1.5 The Joint Committee shall have the power to appoint co-opted Members to the Joint Committee provided that such persons shall be

treated as non-voting members of the Joint Committee in accordance with Section 13 of the Local Government and Housing Act 1989.

## **C2 Meetings of the Joint Committee**

- 2.1 The Joint Committee shall not meet less than twice in each year commencing May of one year and ending in April of the next.
- 2.2 Members, including co-opted Members of the Joint Committee, shall be given not less than five clear working days notice of a meeting of the Joint Committee and the venue for that meeting. It shall be the responsibility of Members wishing to appoint substitutes for a meeting to notify those substitutes of the date and venue of the meeting and for the purpose it shall not be an invalid notice if the substitute is given less than five clear working days notice.
- 2.3 The venue for meetings of the Joint Committee shall normally alternate between a venue in Cornwall (Liskeard) and Plymouth but the Chair may at his/her discretion fix alternative venues provided that in exercising this discretion the Chair shall have regard to the need to ensure that the venue is convenient to all Members.

### **Quorum**

- 2.4 The quorum for any meeting of the Joint Committee shall be two Members from each Council or their substitutes.
- 2.5 The minutes of the business transacted at each meeting of the Joint Committee and the names of the Members present shall be entered in a book and signed by the Chair of the Committee and each page of the minutes shall be initialled by the Chair at the next meeting.
- 2.6 Any motion moved by the Chair or any Member or substitute of a Member of the Joint Committee shall require to be seconded by another Member of the Joint Committee before such a motion is put to the vote.
- 2.6 Any procedural requirements not specified in these standing orders shall be undertaken in accordance with Cornwall Council's procedural rules.

## **C3 Voting at the Meeting**

- 3.1 Voting shall be upon a show of hands unless a majority of the Members of the Joint Committee who are present and entitled to vote request that a recorded vote be taken.
- 3.2 In the case of an equality of votes the Chair of the Committee shall have a second or casting vote.

## **C4 Disorderly Conduct by Members**

If a Member keeps on disrupting the meeting by persistently disregarding the ruling of the Chair or by behaving irregularly, improperly or offensively or by wilfully obstructing the business of the Joint Committee, the Chair may order the Member to leave the meeting room for the remainder of the Joint Committee's business for that day.

## **C5 Disclosure of Interests**

- 5.1 The Code of Conduct for Councillors (as amended from time to time by legislation) shall apply to all meetings of the Joint Committee.
- 5.2 All members of the Joint Committee shall declare any interest they have in any business of the Joint Committee at the start of the item of business or when they realise they have an interest if that is later. They must say they have an interest and what the interest is unless they do not know they have the interest and could not be expected to know about it; or they cannot describe the interest without revealing sensitive information in which case they need to say they have an interest but they do not need to describe it.
- 5.3 Once a member has declared a personal interest they can stay in the meeting and speak and vote unless the personal interest is also a prejudicial interest in which case they must leave the meeting while the item is dealt with.
- 5.4 Disclosures, withdrawals and dispensations shall be recorded in the minutes of the meeting.

## **C6 Referral of Business to Constituent Councils**

- 6.1 Where the Chief Executive of either Council considers any matters arising should be referred to the Cabinet of his/her Constituent Council no action shall be taken on that matter unless and until the same shall have been approved by the Cabinet of each Constituent Council.

## **C7 Disputes**

- 7.1 Where the Constituent Councils do not agree on a matter, once every effort has been made to reconcile any differences between the authorities, the matter may be referred for mediation to a mediator to be agreed by the Constituent Councils, with each party bearing the cost of doing so.

## **C8 Revenue and Capital Expenditure**

- 8.1 Revenue and Capital Budgets for each financial year shall be such as shall be agreed by each Constituent Council through the usual budget setting process. The Joint Committee will propose a business plan and budget to Cabinet. If both Cabinets approve the business plan they will in turn recommend the budget to Council. Any variations to the business plan within the year that would result in extra spending need



to be reported to each of the relevant Cabinet Members, who will decide whether to recommend that Cabinet approve the changes and recommend that each of the Constituent Councils approve the additional spending. The Business Plan shall be available by 31 October in order to feed into the budget setting process.

8.2 Revenue and Capital Expenditure incurred by the Joint Committee shall be defrayed and income shared by the Constituent Councils in equal portions.

**C9. Delegation to Working Groups and officers**

The Joint Committee shall have the power to form working parties or other such groups as it may decide and may delegate to such working parties etc. such of its powers as it chooses. The Joint Committee may also delegate such of its powers as it chooses to an officer of either of the Constituent Councils.

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## Appendix 2

### **Powers to operate the Tamar Bridge and Torpoint Ferry**

The framework for the Joint Committee is set out in the Tamar Bridge Act 1957 (as amended by the 1979 Act and 1998 Acts)– altogether referred to as the Acts. This paper is intended as a guide to the statutory powers only and is not intended to be definitive legal advice.

1. The powers set out in this paper are the principal powers that the Joint Authorities have, as set out in the Acts. These powers are then delegated by the Joint Authorities to the Joint Committee. In any specific case however, reference must be made back to the legislation to ensure proper application of the powers.
2. The formation of a Joint Committee is required by the Acts (section 70 1957 Act) and it is a committee of Plymouth City Council and Cornwall Council (the Joint Authorities). The key role of the Joint Committee is to oversee the operational activities and to undertake a strategic planning role.
3. All matters set out within the Acts are to be referred by the Joint Authorities to the Joint Committee for consideration, except where specifically excluded by the Acts (see below). This means that the Joint Authorities must not determine any matter which is contained in the Act before it has been considered by the Joint Committee.
4. The Act then goes on to delegate the Joint Authorities' powers under the Acts to the Joint Committee. This means that not only are the Joint Committee to be consulted, but they can make decisions on the matters contained within the Acts on behalf of the Joint Authorities. The Joint Committee does not appear to have any additional powers delegated through either parent council's constitution at the date of this paper.
5. The delegation of powers to the Joint Committee is subject to exceptions specified in the Acts.
6. ***The exceptions are those issues that relate to:***
  - 6.1. *the acquisition/disposal of land,*
  - 6.2. *a decision to stop demanding tolls or to reinstate the demand for tolls should they have been previously ceased and finally,*
  - 6.3. *issues relating to the finances of the undertaking.*
7. *In relation to 6.3 above i.e. finances, the Acts covered in the section headed finances includes:*
  - 7.1. *the application of monies in the renewal, extension and improvement of works and conveniences for the purposes of the undertaking,*
  - 7.2. *the provision of funds for working capital or the provision of funds under Schedule 13 of the 1972 Local Government Act (this schedule largely repealed so requires clarification).*

8. 7.1 above would indicate that the Joint Authorities must approve the expenditure of monies for works on the bridge and related structures and 7.2. indicates that monies to be used for working capital must be similarly approved.

### Operational Functions

The key role of the Joint Committee on behalf of the Councils is ensuring that the operation of the bridge and ferry is in accordance with the powers and to be responsible for the oversight of operations and the strategic planning responsibilities. The Tamar Bridge Acts also set out a number of powers which are essentially operational functions, i.e. they assist in the operation (and construction) of the Bridge and Ferry. These were intended to supplement the powers available to the Joint Authorities at the time. These are in the main undertaken by the General Manager of these operations under delegated authority from the appropriate Directors, rather than the Joint Committee taking on a more operational role.

#### Lands:

9. The Joint Authorities may provide and manage car parks and other facilities for travellers using the bridge or ferry and may make a reasonable charge for using these facilities.
10. The Joint Authorities may use land that is part of the undertaking for schemes of traffic management in relation to the use of the bridge and the ferry.
11. *The Joint Authorities may purchase land (as noted, this is not within the remit of the Joint Committee).*

#### Works:

12. The Joint Authorities may go on to adjoining land to undertake bridge works provided compensation is paid for any damage done to those lands.
13. The Joint Authorities may undertake subsidiary works in the river connected to the use of or maintenance of the bridge subject to certain conditions.
14. The Joint Authorities may lay out the bridge, carriage way and foot ways as they think proper.
15. The Joint Authorities have the power to maintain the undertaking.
16. The Joint Authorities may close the bridge (either fully or partially) and use boats/barges to convey persons and animals!
17. The Joint Authorities may sell materials obtained but not required as a result of construction of the bridge e.g. excavated materials.

18. The Joint Authorities may demand, take and recover tolls in one or both directions and there is flexibility about the toll collection e.g. to not collect tolls at certain times of day. *The flexibility around toll collection must be differentiated from the decision to cease to demand tolls, which only the Joint Authorities may do.* The Acts also make provision for toll booths/houses, and the use of tickets instead of cash tolls. Of note is that should the Joint Authorities decide to cease demanding tolls the bridge becomes a highway maintainable at public expense and would therefore fall to the authorities to fund directly.

#### Ferries

19. The Joint Authorities may make byelaws for regulating the use of vessels, boats, buildings etc particularly in relation to uses behaviour and in order to limit nuisance. There are byelaws in place currently dating back to 1965. It is believed these remain in force. Any other general provisions relating to tolls and the ferries are dealt with in the remainder of the legislation as they apply equally to the ferries as the bridge.

#### Finance

20. As noted above at paragraph 6.3, it is not within the Joint Committee's remit to be responsible for finances as defined in the Acts. The only notable exception is for any function to be exercised in relation to pensions under the Local Government Pension Scheme Regulation. The 1957 Act confirms that Cornwall Council is the administering authority of the pension fund and that for the purposes of the pensions regulations, the employers are deemed to be the Joint Authorities acting through the Joint Committee. This is because there are functions which may need to be undertaken by the Joint Authorities from time to time in relation to employees' pensions. If this should become necessary for the "employees of the undertaking", it is for the Joint Committee to fulfil that role. Further the legislation clarifies that the "employee of the undertaking" reference made at Section 63 is defined as being a person employed for the purposes of the undertaking rather than to imply that the Joint Committee has the ability to be an employer.

#### Protection of Provisions

21. Part 7 of the Tamar Bridge Act 1957 sets out the savings and protections for the Duchy of Cornwall and statutory undertakers (water, electricity, gas, sewage etc). These have been updated by the 1998 legislation but essentially the protective provisions remain in force and deal with the relationship between the operation of the undertaking and the respective rights of those statutory undertakers.

#### Miscellaneous Provisions

22. Part 8 of the Act contains Section 70 and the power to appoint the Joint Committee and sets out its composition i.e. 5 plus 5 from each authority. It also deals with how disagreements between the Joint Authorities are to be dealt with, as well as issues of vacancies and quorum.
23. The 1998 Act effectively sets out the powers to make the alteration to the bridge including acquisition of land the carrying out of works and so on. Additional provisions of note are that the 1998 Act provides that monies received from tolls may be applied for additional purposes. Such a decision would require a separate resolution by each authority. The money may be used for securing passenger transport in the district (Caradon District Council area as was) or the city and may include a contribution to such a scheme being put in place by Cornwall Council, Devon County Council or Plymouth City Council. The reference to Caradon District Council is no longer applicable but it may be that transport initiatives within the old area would be an acceptable interpretation of this.
24. The 1998 Act also substitutes a number of clauses from the 1957 Act relating to works, tides, etc.

Legal Services, Cornwall Council June 2010  
Legal Services, Plymouth City Council June 2010