

COUNCIL

6 JUNE 2018

REPORT OF THE LEADER AND SOLICITOR TO THE COUNCIL & MONITORING OFFICER

REVIEW OF THE CONSTITUTION AND SCHEME OF DELEGATION

EXEMPT INFORMATION

None

PURPOSE

To ensure lawfulness and operational functionality of the Governance process of the Council as required by the endorsement and approval of the Constitution and Scheme of Delegation as required by Local Government legislation.

RECOMMENDATIONS

That the Council:

- 1) endorse the amended Constitution and Scheme of Delegation as presented in Appendix 1**
- 2) adopt and approve the amended Constitution and Scheme of Delegation and**
- 3) agree to the Constitution Review Group arranging a review of the business items for Council and report to Audit and Governance Committee to consider and review the proposals prior to a report back to Council with any additional recommendations.**

EXECUTIVE SUMMARY

At the annual Council meeting on 22 May 2018 the Constitution and Scheme of Delegation (16TH Edition) was approved subject to a continuation to this meeting to allow required operational changes and amendments to be made to align the Constitution and Scheme of Delegation with the Senior Management Review.

The Constitution and Scheme of Delegation as reviewed are adopted by Council at the first business meeting each year to ensure probity and legal compliance. Each year new legislation requires to be taken into account as well as any political arrangements and changes that have arisen from practical considerations.

This year has seen a comprehensive review of senior management. As a result there have been substantive entries made to address the duties of officers and to incorporate the appropriate wording for officers' delegations into the Constitution and Scheme of Delegation. The other changes worthy of note relate to Development Management Functions at Annex 2 of the Constitution and mainly relate to changes required by law which will keep the services therein operating legally and *intra vires*. Any other changes are of a minor nature but all changes are tracked for transparency and ease of reference for members. The draft 17th Edition of the Constitution and Scheme of Delegation is attached at Appendix 1 for consideration.

Articles 13 and 15 of the Constitution require the Solicitor to the Council to maintain, monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. It also requires formal approval and adoption by the Council at the beginning of each municipal year. Year on year a raft of new legislation requires to be taken into account when updating and reviewing the Constitution and Scheme of Delegation prior to adoption at full Council.

The Scheme of Delegation forms part 3 of the Constitution and also requires approval and adoption by the Council at the beginning of each municipal year in relation to those functions arising from the Local Government Act 1972 and subsequent legislation as well as those functions approved by the Leader in accordance with Section 14 of the Local Government Act 2000.

RESOURCE IMPLICATIONS

There is no extra financial resource required. No external advice was required for the review this municipal year.

LEGAL/RISK IMPLICATIONS BACKGROUND

Without a Constitution and Scheme of Delegation the Council could not operate effectively. The Council would run the risk of failure to comply with statutory requirements which in turn would expose the organisation to further vulnerability in relation to legal challenge and ultra vires operation. Such challenges could lead to serious financial and reputational damage.

SUSTAINABILITY IMPLICATIONS

It is essential that the Constitution and Scheme of Delegation are lawful, fit for purpose and utilised with a pragmatic approach to improve and enhance the democratic process of the Council and operation of its associated services. In addition there is no provision to cover the cost of legal challenge within any envisaged contingency.

BACKGROUND INFORMATION

The Local Government Act 1972 (as amended) provides *inter alia* for a Constitution and Scheme of Delegation.

The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose. Accordingly the Constitution governs the Council's business. A link to the Constitution is contained in Appendix 1.

The Scheme of Delegation is a document whereby the Council delegates to certain officers powers to undertake functions and duties on behalf of the Authority. Tamworth Borough Council has operated a Scheme of Delegation for officers for several years. The proposed Scheme of Delegation does not purport to grant officers any additional authority to which is already provided, it merely seeks to formulate arrangements into a workable document.

REPORT AUTHOR

If members would like any further information or clarification prior to the meeting please contact Jane M Hackett, Solicitor to the Council and Monitoring Officer , Ext 258

LIST OF BACKGROUND PAPERS

The Local Government Act 1972

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000

The Localism Act 2011

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

APPENDICES

Appendix 1 – *Link to the draft Constitution and Scheme of Delegation 2018-19,
17th Edition

<http://democracy.tamworth.gov.uk/ecSDDisplay.aspx?NAME=Constitution%2017th%20Edition%20-%20Draft&ID=387&RPID=2419597>

* The draft does not contained tracked changes as the volume of alterations with regard to officer delegations made the document difficult to read. Should you wish a copy with tracked changes then please get in touch with the Solicitor to the Council and Monitoring Officer

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