

## Council

11 July 2012

### REPORT OF THE SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

#### Proposed Changes to the Constitution and Code of Conduct and Appointment of Independent Persons

#### EXEMPT INFORMATION

None

#### PURPOSE

To consider (1) the proposals put to Audit and Governance Committee in respect of changes to the Constitution  
(2) the sanctions available when a member fails to comply with the Code of Conduct and  
(3) the transitional arrangements for the Appointment of Independent Person(s)

#### RECOMMENDATIONS

It is recommended that the Council

- (1) approve the amendments to the Constitution**
- (2) refer to the Governance Review Group consideration of the detail required to appoint an Independent Member on to the Nominations Committee**
- (3) approve the wording of the sanctions relating to failure of a member to comply with the Code of Conduct**
- (4) approve the transitional arrangements for the appointment of Independent Person(s) in terms of the Localism Act 2011 and**
- (5) decide the number and term of appointment of the Independent Person(s)**

#### EXECUTIVE SUMMARY

At the Council meeting on 19 June 2012 in terms of Article 15 changes to the Constitution were referred to the Solicitor to the Council and the Audit and Governance Committee for consideration. The said changes have been considered and are now referred back to Council for approval. In addition under the Localism Act transitional power has been granted to assist with the appointment of Independent Persons. The Authority remains under a duty to promote and maintain high standards of conduct for its elected members accordingly the Audit and Governance Committee is recommending to full Council the actions to be taken in relation to amendment of the Constitution and where a member is found to have failed to comply with the Code of Conduct. The transitional arrangements for the appointment of independent persons is also recommended for approval.

#### RESOURCE IMPLICATIONS

The amendments as required to the Constitution will be carried out as part of the duties of the Monitoring Officer and have no additional resource implications for the Authority. The appointment of an Independent Member on to the Nominations Committee could involve significant cost to the authority both fiscal and in officer time depending on the process adopted to appoint the Independent Member. The transitional arrangements for appointing

independent persons to the standards regime will if adopted result in significant savings in time and costs in dealing with this position.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

To have a Constitution that is not fit for purpose could lead to the Council making decisions that would be *ultra vires*. In addition an effective Standards regime will provide the mitigating action necessary to ensure that the Council's obligations under the Localism Act 2011 are met.

## **EQUALITY IMPLICATIONS**

An Equalities Impact Assessment is not required in this instance. In approving the recommendations it is envisaged that the Citizens of Tamworth will benefit from a robust Constitution and an open and transparent Standards regime.

## **BACKGROUND INFORMATION**

At the Council meeting on 17 May 2012 the Portfolio holder for Core Services and Assets put forward for adoption into the Constitution four changes to the following articles of the Constitution namely :

Article 6 Paragraph 6.03 (iv)  
Article 10A,  
The Council Procedure Rules Paragraph 11.2 and  
The Executive Decision Rules paragraph 1.8.

The changes were approved at the said meeting and incorporated into the Constitution. At the Council meeting on 19 June 2012 the Leader of the Opposition objected to the aforesaid changes made at the meeting on 17 May as the correct procedure to make changes to the Constitution had not been followed. It was agreed in terms of Article 15 paragraph 15.02 that the proposed changes had to be first considered by the Solicitor to the Council and the Audit and Governance Committee. Accordingly the proposals after consideration by the Solicitor to the Council and Audit and Governance Committee on 28 June 2012 are attached at **Appendices 1 and 2**. In relation to Appendix 1 the amendments are put forward for approval. In relation to Appendix 2 it is recommended that the Governance Review Group consider the detail required to appoint an Independent Member on to the Nominations Committee.

At the Council meeting on 19 June 2012 the new Code of Conduct and regime to deal with member's failure to adhere to the code were amongst the matters discussed and approved. The wording in relation to the sanctions to be imposed where a member has been found to have failed to comply with the Code of Conduct were also referred to the Solicitor to the Council and the Audit and Governance Committee and are attached at **Appendix 3** and put forward for approval.

Paragraph 7 of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions Order) 2012 provides that a person may be appointed by a relevant authority as the Independent Person... if that person is not a member or co-opted member of the Standards Committee of the relevant authority on 1 July 2012 but has held such a post at any time during the five years ending on 30 June 2012. Clearly as the Standards Committee ceased to exist on 30 June 2012 the co-opted members of the Standards Committee were not members on the relevant date but have been during the previous period ending on 30 June 2012. In order to appoint the former standards committee members as Independent Persons the appointment has to be made before 1 July 2013. There are two former independent members who would be suitable for appointment as Independent Persons. There is no time limit on the appointment accordingly Council can appoint now for a 4-year term, but when that term expires in 2016, the Independent Persons would no longer be eligible for re-election. But appoint now for a 6-year term and in 2018, when they come up for re-election, and provided they are not co-opted to any other

Committees, they will not have been a co-opted member in the previous 5 years and will be eligible for re-appointment.

## **REPORT AUTHOR**

Jane M Hackett Solicitor to the Council and Monitoring Officer Tel 709258 if you would like further information or clarification prior to the meeting

## **LIST OF BACKGROUND PAPERS**

Local Government Act 1972

Localism Act 2011

The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions Order) 2012

## **APPENDICES**

Appendix 1: Amendments to the Constitution for approval

Appendix 2: Amendment for referral to the Governance Review Group

Appendix 3: Amendment to sanctions available in relation to Member's failure to comply with the Code of Conduct for approval

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