

## COUNCIL

16 MAY 2013

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

#### REVIEW OF THE CONSTITUTION AND SCHEME OF DELEGATION

#### EXEMPT INFORMATION

None

#### PURPOSE

To obtain Council comments, endorsement and approval of the reviewed Constitution and Scheme of Delegation as attached at Appendix 1 to the Report.

#### RECOMMENDATIONS

That the Council:

- 1) **Endorse the changes to the reviewed Constitution and Scheme of Delegation**
- 2) **Adopt and approve the changes as presented in Appendix 1 and**
- 3) **Report the reviewed Constitution and Scheme of Delegation to Audit and Governance Committee for consideration and overview.**

#### EXECUTIVE SUMMARY

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.

Following Council approval on 13 December 2012 a project team was set up to take the review forward. The group consisted of the Leader and Deputy Leader of the controlling and opposition groups, Councillor Cooke, the Solicitor to the Council and was led by the external adviser. The review has been completed within the proposed timescale and allowed time for the governance arrangements of the Council to be incorporated into the project plan.

This year the project team have put some pragmatic alterations into the Constitution designed to improve and enhance the democratic process of the Council.

In addition there was a raft of new legislation to take into account when conducting the review. As well as the Localism Act 2011 there have been significant developments in financial regulations including benefits and Council tax. Thus the Constitution has undergone the most radical modification it has seen for a considerable period.

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.

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**

External advice was procured for this project given the scope of the review that members wished to be undertaken at the time. This brought focus to the project team and ensured that probity and transparency was maintained. The most cost effective quote from Bevan Brittan, Solicitors in the sum of £2,700 was accepted. The cost was met within the 2012/13 budget resource held by the Solicitor to the Council.

## **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 the law, while others are a matter for the Council to choose. Accordingly the Constitution governs the Council's business.

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 1072

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

The Localism Act 2011

## **APPENDICES**

[Link to Constitution and Scheme of Delegation](#)