

Bath & North East Somerset Council		
MEETING:	Council	
MEETING DATE:	12 <sup>th</sup> July 2017	:
TITLE:	PROPOSED AMENDMENT TO THE CONSTITUTION	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Standards Committee proposed amendments		

## **1 THE ISSUE**

- 1.1 The Standards Committee recommends to Council that the Members' Planning Code of Conduct be amended to allow councillors with disclosable pecuniary interests, the same rights as members of the public.

## **2 RECOMMENDATION**

- 2.1 That the amendments to the Council's Constitution as set out in Appendix 1 to the report be approved.

## **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 There are no direct financial implications relevant to this report, however the rules and regulations under review enable the Council to adopt sound financial management arrangements and establish value for money, so have an indirect impact on all Council Services.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and any other relevant statutory acts or guidance.

## **5 THE REPORT**

- 5.1 The Constitution is a single point of reference which contains the principal operating structures and procedures of the authority. It 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.
- 5.2 The Localism Act 2011 has introduced the concept of disclosable pecuniary interests (DPIs hereafter). These require local authorities to maintain a register of pecuniary interests and failure by councillors to comply with the new regulations in respect of DPIs without reasonable excuse is a criminal offence, with a penalty of a fine of up to £5,000 and disqualification from office for up to five years.
- 5.3 Under s34(1) of the Localism Act, a councillor with a disclosable pecuniary interest is unable to take part in “discussion” at a meeting. This section therefore prevents them from being part of the committee discussion. It has been argued that the term ‘discussion’ in s 34(1) could be taken to mean the discussion by the members of the committee or other body determining the issue. The provision in s 34(1) therefore does not extend to preventing a councillor, who is not engaged in determining the issue, from making representations and providing evidence to the meeting. In this interpretation, the member with a DPI would have the same rights as a member of the general public and can address the committee at the beginning of the meeting.
- 5.4 The Council’s current Code of Conduct and Members’ Planning Code of Conduct take the strict interpretation and do not allow a councillor with a DPI to make representations prior to the debate and vote by the Committee. This means that councillors have less rights than the public. It is therefore recommended that Paragraph 19 of the Members’ Planning Code of Conduct and Guidance for Councillors and officers are amended to allow a member with a DPI to speak at a meeting prior to the discussion of an item, if a member of the public has the right to do so. In this situation, the councillor with a DPI will then have the same rights as a member of the general public.

## **6 RATIONALE**

- 6.1 Council is requested to agree the amendments to ensure that the Constitution is up to date with best practice. The amendments will also ensure transparency and openness of decision making and facilitate the efficient administration of the Council’s functions. An updated Constitution will ensure the Council is less likely to be challenged on its procedures and processes.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 If the Constitution is not amended, it will not be up to date or reflect the correct legal position and therefore open to challenge.

## **8 CONSULTATION**

8.1 Consultation has taken place in relation to Appendix 1 with the Group Leaders, the Monitoring Officer and the Chief Executive.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

## 10 EQUALITIES

10.1 A proportionate equalities impact assessment has been carried out in relation to this report. There are no significant issues to report to the Committee.

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<b>Background papers</b>	Report on Members with Declarable Pecuniary Interests (DPIs) to Standards Committee – 11th May 2017
<b>Please contact the report author if you need to access this report in an alternative format</b>	

## Appendix 1

### **Proposed amendment to Part 6 Codes of Conduct and Working Protocols, Paragraph 19 of the Members' Planning Code of Conduct and Guidance for Councillors and officers.**

~~19 Do take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have acted as an advocate for your views or those of local electors and restricted your discretion so that you no longer have an open mind: but you do not have a disclosable or other personal conflict of interest. Where you wish to do this, you should:~~

- ~~• advise the Chair and officers that you wish to speak in this capacity before commencement of the item; and~~
- ~~• remove yourself from the seating area for Members of the Committee for the duration of that item.~~

19.**Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have acted as an advocate for your views or those of local electors and restricted your discretion so that you no longer have an open mind. If you have a disclosable or other personal conflict of interest you still have the same speaking rights as a member of the public. Where you wish to do this, you should:

- advise the Chair and officers that you wish to speak in this capacity before commencement of the item; and
- remove yourself from the seating area for Members of the Committee for the duration of that item.