

Cheltenham Borough Council
Cabinet – 15 July 2014
Council – 21 July 2014 (if necessary)
Nominations to Outside Bodies

Accountable member	Leader, Councillor Steve Jordan
Accountable officer	Chief Executive, Andrew North
Accountable scrutiny committee	O&S
Ward(s) affected	All
Key Decision	No
Executive summary	Following each Selection Council, and at other times when vacancies arise, the Cabinet takes the opportunity to nominate and, in limited cases, appoint persons to various roles within bodies external to the Council. The current list of outside bodies and nominations is set out in the attached Appendix A.
Recommendations	<p>Cabinet make nominations/appointments to the bodies in Appendix A respectively in accordance with the following principles:</p> <ul style="list-style-type: none"> • all nominations are made on the basis that the nominee/appointee is a representative of Cheltenham Borough Council insofar as that is compatible with any overriding legal duty to the outside body; and • Cabinet reserves the right at any time to withdraw/terminate a nomination/appointment which it has made • Cabinet should refer a nomination/appointment to Council for determination where consensus on that nomination/appointment cannot be achieved between all the political groups on the Council
Financial implications	<p>There are no financial implications associated with this report.</p> <p>Contact officer: Mark Sheldon E-mail: mark.sheldon@cheltenham.gov.uk Tel no: 01242 264123</p>

Legal implications	<p>See body of the report.</p> <p>Two general powers are relevant to nomination/appointment to outside bodies, these being the 'Well Being' power found in the Local Government Act 2000 and the power of an authority to do anything conducive, incidental to or facilitative of the discharge of any of their functions found in the Local Government Act 1972.</p> <p>Guidance for Members appointed to outside bodies can be found at Part 5G of the Council Constitution.</p> <p>Contact officer: Peter Lewis E-mail: peter.lewis@tewkesbury.gov.uk Tel no: 01684 272012</p>
HR implications (including learning and organisational development)	<p>None</p> <p>Contact officer: Julie McCarthy , HR Operations Manager julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</p>
Key risks	<p>Members appointed should be aware of their roles and responsibilities.</p>
Corporate and community plan Implications	<p>Supports all the community priorities and supports community engagement.</p>
Environmental and climate change implications	<p>None</p>

1. Background

- 1.1 The bodies to which nominations/appointments are made comprise a variety of organisations and groups. A traditional distinction can be drawn between incorporated and unincorporated bodies; the former being distinct legal entities such as companies, having a legal personality and a framework imposing obligations upon those who become involved by appointment; the latter being bodies which, albeit without formal legal foundation, play an important role in representing interests within the local community. Involvement in these unincorporated organisations will often carry few or no legal obligations on those appointed.
- 1.2 In the majority of cases Cheltenham Borough Council decides who to nominate to the body concerned and it is then for that body to decide on whether to accept the nomination and make the appointment. There are some limited exceptions to this, such as Cheltenham Borough Homes and Gloucestershire Airport, where the Council has the right (by virtue of its interests in those companies) to make the appointments to the boards of directors.

2. Legal issues

- 2.1 Table 3 of Part 3A of the Constitution refers to local choice functions (i.e. functions which the Council can exercise through Cabinet or Full Council). Paragraph 19 of table 3 refers to 'the appointment of any individual(b) to any body other than – (i) the authority...and the revocation of any such appointment'. Paragraph 19 indicates that the function is to be exercised by the 'The Executive except where any such appointment concerns a council function listed in Table 1 to Part 3A'. i.e. a function which cannot be exercised by the Executive. None of the outside bodies in Appendix A relate to functions listed in Table 1. The power to Cabinet is subject to the proviso that if all political groups on the Council cannot agree a particular nomination/appointment then it will be referred to full Council for determination.
- 2.2 Whilst nominations/appointments are made on the general basis that the nominee/appointee is the Council's representative on the outside body, it is important to note that in many cases the overriding duty is to the outside body. For example, a company director has a primary duty of care towards the company and to act in the best interests of the company as a whole and a trustee must act in accordance with the trust deed and uphold the trust's objectives.
- 2.3 The Council is able to indemnify members (and officers) in the course of their activities on outside bodies provided they are acting within the scope of their authority as Council representatives. Outside bodies, such as companies, that are legal entities in their own right must have their own appropriate insurance arrangements in place. It is important that members (and officers) clarify the position in each particular case.
- 2.4 Under the revised Executive functions set out in Part 3E and Appendix A of the Council's constitution, the Leader has the power to make appointments to outside bodies where they relate to an Executive function provided there is Group Leader agreement to the appointments. The Leader exercised these powers and has already taken decisions on the appointments to Cheltenham Borough Homes, the Cheltenham Development Task Force and other bodies where the nomination is normally the Cabinet Member with the appropriate portfolio. These are included in Appendix A for completeness, shaded in blue (grey on printed copy) but are not the subject of the decision in this report.

3. Nomination/appointment of external persons

- 3.1 Historically Cheltenham Borough Council has nominated/appointed external persons to some outside bodies. On 29th June 2006 Council specifically agreed that 'All nominees are elected Members of Cheltenham Borough Council unless there are exceptional reasons justifying the appointment of a non Member'. Relevant examples of outside bodies to whom external persons have been appointed are; Gloucestershire Airport, Pate's Grammar School Foundation. The

reasons for these appointments have been the specialist knowledge skills and experience that have been brought to the outside body and/or the lack of Member nomination to that body.

- 3.2** External persons are not, of course, subject to the Code of Members' Conduct nor are they under any general obligation to act in the best interests of the Council or the broader public interest. Also, they are not covered by the Council's insurance. Whilst these factors do not prevent the nomination of external persons they should be borne in mind when considering whether to make such nominations/appointments.

4. Reasons for recommendations

- 4.1** It is in the interests of the council to ensure representation on all these outside bodies.

5. Alternative options considered

- 5.1** None

6. Consultation and feedback

- 6.1** Appendix A was circulated to Group Leaders on 6 June 2014 with a request for nominations by Monday 30 June 2014.

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Appendices	1. Risk Assessment 2. List of outside Bodies
Background information	1. Constitution Part 5G

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If elected members are not aware of their roles and responsibilities they may compromise their position		15 July 2014	3	2	6	Control	Ensure members are aware of guidance set out in Constitution Ensure members understand their role on the outside body and have a copy of relevant constitution or terms of reference of the body concerned		Democratic Services Manager	
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											