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Derry City and Strabane District Council

Dear Member of Ad Hoc Committee

You are hereby summoned to attend a **Special Meeting of the Ad Hoc Committee of Derry City and Strabane District Council** to be held in the Council Chamber, Guildhall, Derry, on Thursday, 21st May, 2015 at 4.00 pm

Yours faithfully,



John Kelpie
Chief Executive

Agenda

Notice and summons for meeting

Apologies

- 1 Election of Chair.**
- 2 To consider Call-In of Decision SC78/15. (Pages 1 - 10)**

13th May, 2015.

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Item/Min Ref: 1	Title of Report: Call-In of Decision SC78/15	Officer presenting: Senior Solicitor Author: Senior Solicitor
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1 Purpose of Report/Recommendations

- 1.1 To advise Members in relation to procedure for dealing with a Call-In under Section 41(1)(a) of the Local Government Act (NI) 2014.

2 Background

- 2.1 Members will recall at a Special meeting of the Shadow Council on 12th March 2015 Members resolved that in relation to representation on internal and external bodies/groups "in the first instance that appointments to outside bodies should be allocated using D'hondt." (SC78/15)
- 2.2 This decision was implemented at meetings of the Governance and Strategic Planning Committee held on 14th April 2015, the Business and Culture Committee held on 21st April 2015, the Environment and Regeneration Committee held on 22nd April 2014 and the Health and Community Committee 23rd April 2015.
- 2.3 A Call-In has been received under Section 41(1)(a) of the Local Government Act (NI) 2015.

3 Key Issues

- 3.1 Council's Standing Orders provide at 21.3 that reconsideration of a decision of a Committee shall be dealt with by a specially appointed Ad hoc Committee of the Council membership of which will be comprised of the Chairpersons of all Committees of the Council and the Deputy Chairpersons of all Committees of the Council.

- 3.2 The Standing Orders provide that the members who submitted the Call-In may attend the meeting of the Ad hoc Committee and address that Committee but shall not have voting rights.
- 3.3 The Ad hoc Committee should then give proper consideration to the matter.
- 3.4 To facilitate the Ad hoc Committee in giving further consideration to the matter a legal briefing note has been prepared in relation to the matter and is at Appendix 1.
- 3.5 Members should note that in relation to a Call-In pursuant to Section 41(1)(a) this legal opinion is provided purely for information and has no statutory standing in the decision making process.
- 3.6 Having considered the matter further the Ad hoc Committee may:-
- (a) refer the decision back to the decision maker which in this case would be the individual Committees; or
 - (b) refer the decision back to the Council for further ratification.
- 3.7 Members should note that the Chairperson and Deputy Chairperson of the Committee which was responsible for a decision which is the subject of Call-In shall not have voting rights at the meeting of the Ad hoc Committee.
- 3.8 As the issues to be considered are the same in respect of each Committee it will not be necessary for the Ad hoc Committee to reconsider the issue in respect of each Committee separately.
- 3.9 It will however be necessary for the Ad hoc Committee to make a separate decision in respect of each of the four Committees as to whether to refer the decision back to the decision maker or refer the decision for ratification by the full Council.

4 Financial and Other Implications

- 4.1 There are no financial implications associated with this paper.

5 Recommendations

- 5.1 That Members:-

- (a) Reconsider the implementation of decision SC78/15 as it was applied at the Governance and Strategic Planning Committee meeting and either;
 - (i) refer the decision back to the Governance and Strategic Planning Committee or;
 - (ii) refer the decision to full Council for ratification.

- (b) Reconsider the implementation of decision SC78/15 as it was applied at the Business and Culture Committee meeting and either;
 - (i) refer the decision back to the Business and Culture Committee or;
 - (ii) refer the decision to full Council for ratification.

- (c) Reconsider the implementation of decision SC78/15 as it was applied at the Environment and Regeneration Committee meeting and either;
 - (i) refer the decision back to the Environment and Regeneration Committee or;
 - (ii) refer the decision to full Council for ratification.

- (d) Reconsider the implementation of decision SC78/15 as it was applied at the Health and Community Committee meeting and either;
 - (i) refer the decision back to the Health and Community Committee or;
 - (ii) refer the decision to the full Council for ratification.

Background Papers

* **SC78/15**

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OPINION

At the meeting of the Special Shadow Council held on 12th March 2015 a paper was presented with recommendations for elected member representation on external and internal bodies/groups. The paper identified that elected members from Derry City Council and Strabane District Council sat on a number of external bodies and internal working groups with details of the current membership being provided together with proposals for representations from the new Council with clarification being sought in relation to membership requirements of a small number of additional bodies. These matters were detailed in the Appendix to the report which contained a number of tables as follows:-

1. Table 1 - Positions of Responsibility.
2. Table 2A - External Bodies.
3. Table 2B - Members Appointed to Internal Bodies.
4. Table 3 - Representations/Approach to be determined.

Table 1 contained four groups namely the Northern Ireland Housing Council, the Police and Community Safety Partnership, the Partnership Panel and the Reserve Forces and Cadets Association for Northern Ireland. Representation on these bodies had been previously identified as positions of responsibility. By virtue of Section 6 of the Local

Government/...

Government Act (NI) 2014 appointment to positions of responsibility is required to be carried out in accordance with the procedure stipulated in Schedule 1 of the 2014 Act. The four bodies stipulated in Table 1 were identified as public bodies as defined in Section 126(1) of the 2014 Act and consequently the mechanism of appointment to these bodies was as laid out in Schedule 1 of the 2014 Act. The remaining bodies identified in Table 2A, Table 2B and Table 3, did not fall within the definition of a public body contained within the 2014 Act and consequently Section 6 of the 2014 Act and Schedule 1 of the 2014 Act did not apply. There was therefore no statutory procedure that Council was obligated to follow in terms of determining how Councillors were to be appointed to these external bodies.

At the meeting on 12th March 2015 it was noted that external/internal group appointments would be assigned to the relevant Committee for consideration by members details of which would be circulated. It was then agreed that "in the first instance that appointments to outside bodies should be allocated using D'Hondt" (SC78/15). In making this proposal Cllr McGinley was clear that D'Hondt would be applied individually to each body and this is the manner in which the matter was applied by the officers.

There is no doubt that it is open to Council to appoint representatives to outside bodies using D'Hondt and applying it individually to each outside body. As indicated above, in

the/...

the absence of any stipulation to the contrary, it is for Council to make this determination. In this regard it is worth noting that certain external bodies have specific guidance as to how nominations are to be made e.g., NILGA in its Constitution states that "in selecting its representatives each Council should ensure that its representation on the association broadly reflects the political pattern of the Council. This may be achieved by the use of D'Hondt, proportionality or by using any other corporately agreed, fair and equitable system."

The Local Government Act (NI) 2014 provides power to require decisions to be reconsidered. This power is contained within Section 41 of the Act and provides two grounds upon which decisions may be reconsidered. Either:-

- a) that the decision was not arrived at after a proper consideration of the relevant facts and issues; or
- b) that the decision would disproportionately affect adversely any section of the inhabitants of the district.

This power to reconsider decisions is dealt with under Council's Call-In procedure which is contained within Standing Order 21 of Council's Standing Orders. This provides that a Call-In should be submitted in writing to the Clerk by 10:00 a.m. on the fifth working day

following/...

following the issue of the draft minute of the decision to which the Call-In relates. In this instance the draft minute of the meeting held on 12th March 2015 was issued on the XXXX day of XXXXX 2015. The specified deadline for submitting a Call-In to the Clerk has therefore passed. In this instance however the decision was implemented at the Committee meetings held in April 2015. Therefore I believe it would be reasonable for any issue in relation to the implementation of the decision by those Committees to be challenged. The draft minute in respect of these Committees was issued as follows:-

- Governance and Strategic Planning 29th April 2015.
- Business and Culture 29th April 2015.
- Environment and Regeneration 30th April 2015.
- Health and Community 29th April 2015.

There were no appointments to external bodies undertaken by either the Assurance Audit and Risk Committee or by the Planning Committee.

By virtue of Council's Standing Orders, and allowing for a Bank Holiday on Monday 4th May 2015 the deadline for submission of the Call-In request was 10:00 a.m. on Thursday 7th May 2015 in respect of all Committees save the Environment and Regeneration

Committee/...

Committee in respect of which the deadline passed at 10:00 a.m. on Friday 8th May 2015. A Call-in was received on the 6th. May, 2015 and a copy is at appendix A to this report. At the time of submission of the Call-in it was clarified that the request was being submitted under section 41(1)(a) of the 2014 Act. The issue is therefore not about the effect of the substantive decision but, rather, about the process by which it was reached. The question is whether the decision was not arrived at after a proper consideration of the relevant facts and issues. It does not relate to the merits of the decision but the quality of the decision making process. Was it deficient in some way?

The requisition indicates that the vote in relation to Cllr McGinley's motion was taken "on the understanding that the process as agreed through party leaders' meetings as to the positions of responsibilities would follow through to the allocation of external bodies".

Three questions are posed:-

- A) Who decided to implement this method as opposed to the one with regards to the position of responsibilities?
- B) Who introduced the word "independently" to the D'Hondt system used as no mention of this is in the motion passed on the 12th. March?
- C) What discussions were held prior to this and with whom?

Council/...

Council should be aware that for the purposes of a Call-in under section 41(1)(a) it is not necessary to answer these questions specifically. Rather the questions are indicative of a concern that there was not "proper consideration" of the facts and issues in that there was clear confusion as to the subject of the vote. Note that "proper consideration" appears to be a broader term than lawful consideration.

Conclusion

Conclusion:-

1. Council acted within its powers in the manner in which appointments were made to external bodies.
2. Where it is believed that a decision of Council requires to be reconsidered provision exists for this to be done under Section 41 of the 2014 Act.
3. The requisition meets the requirements for Call-in under section 41(1)(a).
4. The manner by which appointments were made to external bodies should be reconsidered specifically to be sure there is clarity in relation to the process to be implemented by Council Officers.