

TORBAY COUNCIL

Report No: **28/2005**

Title: **Mayoral Referendum**

To: Council on 3rd March 2005

1. Purpose

- 1.1 The purpose of the report is to advise Members of the outcome of the verification process in relation to the elected Mayor petition and to request that consideration be given to the options available to the Council.

2. Relationship to Corporate Priorities

- 2.1 The Council has the ability to call a referendum irrespective of the result of the verification process. The holding of a referendum would be in line with the Council's democratic philosophy.

3. Recommendation(s)

- 3.1 To consider the options set out in paragraph 8 of this report.

4. Reason for Recommendation(s)

- 4.1 To consider a way forward in the light of the outcome of the verification process.

5. Key Risks associated with the Recommendation(s)

- 5.1 An authority receiving an elected Mayor petition that in aggregate includes the names of 5% or more of the electorate calling for a referendum on the mayoral form of governance, is obliged to proceed with the referendum within 6 months of receipt of the petition. As the petition received by the Council was declared invalid, the Council is not required to hold a referendum. However, Members will need to judge whether the petition represents a significant level of interest in the Mayoral style of governance. Members will also need to consider the impact on the Council's reputation of a decision taken not to hold a referendum, particularly in the light of the recent decision of the Isle of Wight Council to call a referendum even though a valid petition had not been received.

Likelihood	6	6	12	18	24
	5	5	10	15	20
	4	4	8	12	16
	3	3	6	9	12
	2	2	4	6	8
	1	1	2X	3	4
		1	2	3	4
		Impact			

Low risk
 Intermediate risk
 High risk

The "x" in the above matrix denotes where the author has assessed the level of final risk to fall

6. Alternative Options (if any)

6.1 All the options are detailed in paragraph 8 of this report.

7. Background

7.1 A petition was presented to Council on 24th November 2004 calling for a referendum to determine whether there was support in Torbay to have a directly elected Mayor. The petition states:

"We, the undersigned, being electors for the area of Torbay seek a referendum on whether the electors for the area should elect a Mayor who, with a Cabinet, will be in charge of our local services and lead Torbay Unitary Council."

7.2 At the meeting of the Council held on 16th December 2004, Members received a report requesting that consideration be given to the process for determining matters arising from the receipt of the elected Mayor and Town Council petitions. Council resolved to appoint the Strategic Director for Community the Proper Officer for all matters in connection with the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000, such appointment included the authority to determine the validity of any petitions for an elected Mayor submitted under those regulations. It was also resolved to request the Director to submit a report to a future meeting of Council setting out any decisions he had taken in respect of the elected Mayor petition (together with his reasons for any decisions taken) and any related matters (Minute 426/12/04 refers).

7.3 The petition was declared invalid as the number of valid signatures did not exceed the verification number (5,012) published by the Council in February 2004. The petition contained 5,246 signatures in total. The breakdown of the reasons for the invalidity of the signatures was as follows:

- 621 entries had been excluded because either the persons signing the petition were not on the register or the entry did not match the register.
- 161 entries had been excluded as no date accompanied them.
- 154 entries had been excluded because they were duplicated elsewhere on the petition.
- 121 entries had been excluded because either they were not legible, or there was no address shown or the address could not be identified on the register.
- 66 entries had been excluded as no signature, first name or surname were shown.

Members will note that when added together the above categories of entries total 1123. The petition is clearly flawed as the number of signatures that can be counted as valid entries falls below the required figure of 5,012. The number of valid signatures is further reduced by taking into account the under-mentioned category of entries (1278).

- 1278 entries had been excluded as the first name had not been used by those signing the petition, which was contrary to Regulations 9(3) and 10(3)(a) of the Petitions and Directions Regulations 2000.

7.4 The result was that there were 2,845 entries, which qualified for the purposes of the petition. This meant that there was insufficient numbers of valid signatures to satisfy the statutory requirements and to automatically trigger a referendum.

7.5 Members will note that the petition was declared invalid for a range of reasons. In reaching his decision on the petition, the Proper Officer had regard to the regulations in relation to Mayoral petitions together with advice that had been obtained from leading counsel on the matter.

8. Options

8.1 There are generally two circumstances in which a referendum for an elected Mayor can be required:-

- (a) if the Council receives a valid petition; or
- (b) if the Council decides to hold a referendum if it is satisfied that there is sufficient support for it.

The Secretary of State can require an authority to hold a referendum in certain circumstances.

8.2 In the light of the outcome of the verification process, the following options are available to the Council:-

8.3 Option 1 – Hold a Mayoral referendum as soon as possible. The Council could determine to hold a referendum as quickly as possible. Given the need to prepare and consult on its proposals for an elected Mayoral system of governance and the need to allow a two month gap following the Council's submission to the Office of the Deputy Prime Minister (ODPM), the earliest the referendum could take place would be around the early/middle period of July 2005.

A mayoral election must take place at least three months after the referendum (if there is a "yes" vote) at the first opportunity either in the first week in May or the third week in October. If a referendum was held in mid-July which resulted in a "yes" vote then mayoral election could be held in October 2005.

8.4 Option 2 – Hold a Mayoral Referendum at some time in the future. This option is similar to option 1, but with the mayoral referendum being held at a later date. If, however, the referendum was held beyond the third week in July 2005 then it would not be possible (if there is a "yes" vote) for the mayoral election to take place until May 2006.

One possibility would be to time the referendum so that a "yes" vote would trigger a Mayoral election at the same time as the all-Council local elections in May 2007.

8.5 Option 3 – To await a valid petition. There is no legal requirement for the Council to hold a referendum unless it is in receipt of a valid petition. A valid petition has yet to be received, however, the petition organiser can add names to those currently submitted provided that the signatures are collected within a 12 month period.

9. Consideration

9.1 Extent of support. In determining whether the Council should hold a Mayoral referendum, Members should consider the outcome of the verification process and assess whether the petition represents a significant expression of public support for a referendum.

9.2 Whilst technically the petition fell short of the legal requirements, it should be noted that 1,278 entries had been rejected as the first name had not been used by those signing the petition – those could be identified as Torbay electors. If those entries were to be added to the valid entries (2,845), it could be deduced that 4,123 electors had expressed support for a referendum.

- 9.3 A similar situation was confronted recently by the Isle of Wight Council who also received an invalid Mayoral petition. A total of 5,288 signatures were needed to force a referendum, but only 1024 entries were declared valid. A second petition was subsequently submitted containing a further 883 valid signatures. The Council felt, however, that the 3,331 entries rejected (on the basis of the full name not having been given) could be identified as Isle of Wight electors who had expressed support for the petition. Despite the shortfall of valid signatures, the Council decided to hold a referendum. In reaching its decision, the Council recognised that over 5,000 voters on the electoral roll had signed a petition calling for a referendum even though the lack of flexibility in the law prevented many of those names from counting towards the validity of the petition.
- 9.4 Members will wish to judge themselves whether the support expressed locally demonstrates a significant demand for the calling of a mayoral referendum.
- 9.5 Timing. If Members are minded to call a referendum, consideration will need to be given to its timing. In order to hold a referendum, the Council must submit its proposals to the ODPM at least two months before the proposed date of the referendum. The proposals should explain the executive arrangements that the local authority would plan to adopt together with its fall-back proposals. By law the fall-back proposals must reflect the executive arrangements that are currently being operated by the Council. The Council also has a statutory duty to consult local people about its proposals for a Mayoral form of governance. This means that the public and other stakeholders will have a say in shaping the proposals. The ODPM has indicated that the Council will only need to undertake a "light touch" consultation exercise as the public have previously been consulted on the systems of governance introduced by the Local Government Act 2000.
- 9.6 To achieve a Mayoral referendum in early/mid-July, the proposals would need to be drafted for consideration by the Constitution Working Party who would make its recommendations to the meeting of Council to be held on 25th March 2005. The proposals would then be put out to consultation and amended, if appropriate, in the light of the consultation responses at the Annual Council Meeting in May. Following that meeting the proposals would be submitted to the Secretary of State in accordance with the statutory requirements.
- 9.7 Date and manner of referendum. There are two other matters that would need to be resolved to enable the referendum to be held at the earliest opportunity. The first is the date of the referendum and the second is the manner of the referendum.
- 9.8 As regards the date of the referendum, the regulations stipulate that if any proposed date falls 28 days either side of the date for an election, then the referendum should be held on the same day as that election. However, if the referendum has already been announced when a General Election is called then this requirement would not apply. Clearly there would be a need to resolve the date of a referendum as soon as possible if option 1 were to be pursued. As previously stated, sufficient time would be required to prepare and consult on the draft proposals and much preparatory work would need to be undertaken for the referendum itself. It would not be procedurally possible to combine the referendum with the General Election if the election was called in May or early June.
- 9.9 The Council would need to make a decision as to whether the referendum should be run on the basis of an all-postal ballot or through the use of polling stations (with a postal vote as an alternative on demand). Of the 31 Mayoral referendums that have been held to date, 20 have been conducted by way of an all-postal ballot. The "normal" polling station approach is the traditional way of voting and is understood by the public. It should be noted, however, that there are advantages associated with an all-postal ballot. Firstly, the cost of an all-postal ballot (£55,000) is less than the cost of a traditional stand-alone poll (£70,000). Secondly, the statutory guidance requires local authorities to take steps to maximise the turnout at referendums. Evidence from the research carried out by the Electoral Commission in relation to recent local and national elections points

to the relative success of postal ballots in increasing voter turnout. Moreover, The ODPM has indicated that generally, a higher turnout has been achieved in respect of those referendums where postal ballots have been used.

- 9.10 The statutory guidance also advises local authorities that they should, whenever possible, ensure that referendums are not held at times when participation in the electoral process is likely to be low (e.g. around public holidays). In particular, they are advised that they will need to ensure that referendums are not to be held when sections of the electorate may be deterred from voting (e.g. during religious festivals).

10. Summary

- 10.1 In summary, Members are asked to consider the options set out in paragraph 8 above. If Members consider that the strength of public support justifies the holding of a referendum in the near future, then they are specifically requested to determine the date of the referendum and the manner of the referendum (either “normal” or all postal form of voting).

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IMPLICATIONS, CONSULTATION AND OTHER INFORMATION

Part 1

These sections may have been completed by the Report author but must have been agreed by the named officers in the Legal, Finance, Human Resources and Property Divisions.

Does the proposal have implications for the following issues? If "Yes" - give details.	<i>delete as appropriate</i>	Name of responsible officer
Legal	The legal implications are addressed in the report.	Bill Norman
Financial – Revenue	<p>The cost of holding a referendum on the same basis as a normal election is in the region of £71,000. If the referendum was conducted on an all-postal ballot basis, the cost would be approximately £55,000.</p> <p>The cost of the Mayoral referendum has been included in the 2005/2006 budget on the assumption of an all-postal ballot.</p> <p>In the event of a “yes” vote in a referendum, the formal election of a Mayor would cost around £100,000. No provision has been identified in the 2005/2006 budget to meet this possible cost.</p> <p>The ongoing potential cost implications of a Mayoral style of governance can only be determined following detailed consideration. However, the research carried out by the Improvement and Development Agency reveals that the allowances paid to elected Mayors range from £32,292 (Doncaster) to £67,925 (Newham). The Council would need to consider some form of restructuring to provide support to the Mayor. Dedicated staff are likely to be needed to assist the Mayor in the running of his/her office.</p>	Richard Thorpe
Financial – Capital Plan	No	Richard Thorpe
Human resources	No	Geoff Williams
Property	No	Sam Partridge

Part 2

The author of the report must complete these sections.

Could this proposal realistically be achieved in a manner that would more effectively:		
		<i>delete as appropriate</i>
(i)	promote environmental sustainability?	No
(ii)	reduce crime and disorder?	No
(iii)	promote good community relations?	No
(iv)	promote equality of opportunity on grounds of race, gender, disability, age, sexual orientation, religion or belief?	No
(v)	reduce (or eliminate) unlawful discrimination (including indirect discrimination)?	No

If the answer to any of the above questions is "Yes" the author must have addressed the relevant issue/s in the main report and have included a full justification and, where appropriate, an impact assessment.

Part 3

The author of the report must complete this section.

	<i>delete as appropriate</i>	If "Yes", give details
Does the proposal have implications for any other Directorates?	No	

Part 4

Is this proposal in accordance with (i.e. not contrary to) the Council's budget or its Policy Framework?		<i>delete as appropriate</i>
		Yes
1.	If "No" - give details of the nature and extent of consultation with stakeholders and the relevant overview and scrutiny body.	
2.	If "Yes" - details and outcome of consultation, if appropriate.	

Part 5

	<i>delete as appropriate</i>	If "Yes" - give Reference Number
Is the proposal a Key Decision in relation to an Executive function?	No	

Part 6

Background Papers:

The following documents/files were used to compile this report:

- (i) Elected Mayor Petition
- (ii) Local Government Act 2000 and supporting Government guidance