

North Yorkshire Council

EXECUTIVE

17 October 2023

**Proposed Changes to the Constitution
for recommendation to full Council**

Report of the Assistant Chief Executive Legal and Democratic Services

1.0 PURPOSE OF REPORT

1.1 To present to Members, for their consideration for recommendation to full Council for approval, proposed changes to the Constitution.

2.0 BACKGROUND

2.1 The Constitution is maintained by the Assistant Chief Executive Legal and Democratic Services and kept under review on an ongoing basis.

2.2 Under Article 15.02(c) of the Constitution, the Assistant Chief Executive Legal and Democratic Services has delegated power to amend the Constitution:

- (i) to correct administrative issues such as cross-references, title changes, typographical errors and formatting;
- (ii) to ensure that the Constitution and the Council's procedures meet all legal requirements;
- (iii) to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by the person(s) or body with authority to take such action; and
- (iv) consequentially, to give effect to changes explicitly approved by the full Council;

and any such amendments as set out in sub-paragraph (c)(ii) above shall be reported to the next meeting of the full Council.

2.3 A full review of the Constitution will take place after one years' operation post Vesting Day.

3.0 AMENDMENTS TO THE CONSTITUTION

3.1 The more substantive items for consideration are the subject of separate sections of this report below.

3.2 Part B of the amendments chart at **Appendix 1** sets out amendments for information which have been undertaken by the Assistant Chief Executive Legal and Democratic Services under his delegated powers in Article 15.02(c) of the Constitution. The Assistant Chief Executive Legal and Democratic Services has recently used his delegated powers to amend the Constitution to correct

typographical/administrative errors and to update the Constitution regarding post title changes.

4.0 **COUNCIL PROCEDURE RULES**

Provisions re substitutes

4.1 In adopting a new Constitution for North Yorkshire Council, the opportunity was taken to simplify the provisions of the Council Procedure Rules regarding substitution arrangements, by removing reference to a substitute being from the same political group.

4.2 It is recommended that, for clarification purposes, the proposed clarifying amendments below are recommended to be made to Council Procedure Rule 4.1, to avoid any ambiguity; and a new paragraph 4.4 be inserted as set out below to clarify that a substitute cannot be appointed to attend for just part of a meeting:

4. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES

4.1 Save as provided elsewhere in the Constitution, political groups may nominate any Members to be substitutes for appointed Members of committees, joint committees, sub-committees, working groups and panels. The Assistant Chief Executive Legal and Democratic Services shall have authority to give effect to those nominations in accordance with this Procedure Rule, provided that in the case of the:

(a) Regulatory committees and sub-committees, substitutes must have received the required training; and

(b) Overview and Scrutiny Committees, Audit and Standards and Governance Committee, all Members except Executive Members are permitted to be substitutes.

4.2 Arrangements for any substitute Member shall be made by the Member for whom the substitution is being sought or if that Member is unavailable or it is not practical for them to do so then by their political group leader by giving notice to the Assistant Chief Executive Legal and Democratic Services as soon as practicable before the meeting to which the substitution relates. In the event of notification not being provided/received before the start of the meeting then the substitute shall not be treated as a member of the committee or sub-committee for the purposes of being able to speak or vote.

4.3 Substitute members will have all the powers and duties of any ordinary member of the committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting.

4.4 A substitute member may only be appointed to attend for the whole duration of a meeting, not part, in place of the appointed Member.

- 4.3 Subject to any comments Members may have, it is recommended that the proposed amendments to Council Procedure Rule 4 are recommended to full Council for approval.

Questions and Statements by the public

- 4.4 Full Council previously agreed certain amendments to Council Procedure Rule 9 (Questions and Statements by the Public) to dis-apply Rule 9 (which at the time applied to all committees) to the Council's planning and licensing committees, as it conflicted with other provisions in the Constitution regarding public speaking at those committees, specifically the rules set out in the Code of Practice for Councillors and Officers dealing with planning matters in Part 5 of the Constitution.
- 4.5 It is recommended that the following further proposed amendments are made to Rule 9.1.1 for clarification purposes:

9. QUESTIONS AND STATEMENTS BY THE PUBLIC

9.1 General

Members of the public may ask questions or make statements at ordinary meetings of the Council, and meetings of the Executive and of committees.

9.1.1 This Council Procedure Rule 9 does not apply to the Council's Planning Committees, Statutory Licensing Sub-Committees and General Licensing and Registration Sub-Committees or any other committee of a quasi-judicial nature, where there are other procedures in place to permit public questions/statements. Public questions/statements at planning committees are governed by the Code of Practice for Councillors and Officers dealing with planning matters in Part 5 of the Constitution.

- 4.6 Subject to any comments Members may have, it is recommended that the proposed amendments to Council Procedure Rule 9.1.1 are recommended to full Council for approval.
- 4.7 Council Procedure Rule 9.7 covers the asking of the public question or statement at a meeting. It allows for members of the public to have their question or statement read out on their behalf, if they are unable to attend the meeting to which their question or statement has been submitted. This is at the discretion of the committee Chair.
- 4.8 At meetings of the Council's committees since 1 April 2023, a significant proportion of the public who have submitted questions and statements have stated that they have been unable to attend the committee meeting and so the Chair has allowed them to be read out on their behalf. Often, these public questions have related to controversial matters and decisions.
- 4.9 The Members' Working Group on the Constitution, at its meeting on 4 October 2023, considered whether the Constitution should be amended to remove the Chair's discretion to allow the question/statement to be read out in the questioner's absence and make it a requirement for a member of the public to attend the meeting in-person to read out their question or statement. The Group's view was

that unless there is some exceptional reason for non-attendance, such as disability, a member of the public wishing to ask a question or make a statement should attend the meeting or send a representative to do so; failure to attend or send a representative means the question or statement will not be read out at the meeting and a written response will be provided.

- 4.10 The Group also felt that the Chair should be able to handle the thirty minute public question/statement time in their absolute discretion. It is therefore proposed that Council Procedure Rule 9.2 be amended as follows and a further amendment is suggested to Council Procedure Rule 9.7 (see below) in support of Council Procedure Rule 9.2.:

9.2 Order of Questions/Statements

Questions will be asked (or statements made) in the order notice of them was received, except that the Chair may group together similar questions or statements. The Chair has discretion when grouping together similar questions to limit the time for asking such questions and may also, in his discretion, accept one question or statement only per theme or topic and has discretion as to the handling and management of multiple questions/statements on one topic.

- 4.11 The Members' Working Group on the Constitution therefore considered it would be appropriate to propose the following amendments to Council Procedure Rule 9.7 to Executive and full Council:

9.7 Asking the Question or Making the Statement at the Meeting

- (a) The Chair will invite the questioner to put the question to the relevant portfolio holder or committee Chair. If a questioner who has submitted a written question is unable to be present, they may ask a representative to attend to put the question/make the statement on their behalf. Except in exceptional circumstances (as the Assistant Chief Executive Legal and Democratic Services may agree), the questioner must attend the meeting or send a representative to read out the question or statement, otherwise the question/statement will not be dealt with at the meeting and a written response will be provided.
- (b) The Chair will invite the person to ask their question/make their statement. If they are unable to be present they may ask a representative to ask the question or make the statement on their behalf.
- (c) No person asking a question or making a statement may speak for more than three minutes, and the total time allowed at any meeting for questions and statements by the public shall be half an hour. In accordance with Council Procedure Rule 9.2, the Chair has discretion as to the handling of questions/statements to be taken during that thirty minute time period..

- 4.12 The Members' Working Group on the Constitution also considered whether there should be a requirement within the Constitution for a member of the public submitting a question or statement to demonstrate a local connection to North Yorkshire. Currently, the Constitution does not have any restrictions on who can ask

a question or statement, other than to limit the number that can be submitted to one per organisation or the content in certain circumstances.

- 4.13 As such, a member of the public from anywhere in the UK or abroad can submit a question or statement to a committee of the Council. This lack of a local connection has raised concerns amongst some members, particularly when linked to submissions from national campaigns and lobby groups.
- 4.14 The Council's Petitions Scheme states that for a petition to be accepted those who have signed the petition must be able to demonstrate that they live, work or study in North Yorkshire. The Group considered that similar criteria for the acceptance of public questions and statements should be included in the Constitution.
- 4.15 Subject to any comments Members may have, it is therefore recommended that the following amendments to Council Procedure Rule 9.5 be recommended to full Council for approval:

9.5 Scope of Questions/Statements

The Assistant Chief Executive Legal and Democratic Services may reject a question or statement if it:

- ♦ is not submitted by a person who can demonstrate a connection to North Yorkshire through living, working or studying in the county;
- ♦ is not about a matter for which the local authority has a responsibility or which affects the county;
- ♦ is defamatory, frivolous or offensive;
- ♦ is essentially a complaint about and/or appeal against a committee decision;
- ♦ is not within the purview of that particular committee;
- ♦ is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- ♦ requires the disclosure of confidential or exempt information.

5.0 **AMENDMENTS RE DISMISSAL OF VOLUNTEER MEMBERS ON PANELS AND FORA – PROPOSED DELEGATION TO ACELDS**

- 5.1 Members are recommended to consider the inclusion in the Constitution of a provision delegating to the Assistant Chief Executive Legal and Democratic Services, the power to dismiss volunteer members of panels and fora where there are demonstrable concerns regarding standards of conduct and behaviour.
- 5.2 There are a number of members of the community appointed to panels, fora and committees who are recruited through an open recruitment process, similar to the process for the recruitment of staff. Such members are not paid and are not formally co-opted on to the bodies on which they serve. They are therefore not subject to the Council's Code of Conduct for Members or standards policy (other than an expectation that they would align with those standards and the General Principles of Public Life).
- 5.3 Examples of such panels and fora are:
- the Local Access Forum
 - the Independent Remuneration Panel re Members' Allowances

- the Standing Advisory Council on Religious Education
- the School Admissions Appeals Service

5.4 Should Members be minded to recommend the inclusion of such a delegation to the Assistant Chief Executive Legal and Democratic Services, it is proposed that a new paragraph (t) be added to his specific delegations in paragraph 11 of the Officers' Delegation Scheme in the Constitution as set out below:

11 Delegation to the Assistant Chief Executive Legal and Democratic Services

...

11.3 Specific Delegations

...

- (t) In consultation with the Chief Executive Officer, to dismiss a volunteer or community member of a Council committee, panel or forum, in appropriate circumstances as determined by the Assistant Chief Executive Legal and Democratic Services in consultation with the Chief Executive Officer.

6.0 PROCUREMENT AND CONTRACT PROCEDURE RULES

6.1 Proposed amendments to the Procurement and Contract Procedure Rules are set out by way of tracked changes on the extract attached at **Appendix 2** to this report.

6.2 The proposed amendments are intended to provide some simplification of the Rules and relate to the following:

- Amendments to Rule 1.3 (c): rectifies some numbering errors and enables the S151 Officer to delegate Directors' Recommendations;
- Rule 2.14 Tables 1-3: consolidates the award and transparency elements for the different processes while also adding additional clarity for these requirements. Other amendments highlighted below have also been included in the Tables;
- Rule 8 (Quotes): added a single quotation process for contracts less than or equal to £5000, to simplify the process for low value spend;
- Added into Rule 8.5 where three quotes are being obtained, at least one quote should be from a local supplier based within North Yorkshire and at least one SME;
- Rule 22 (Grants): added a direct award process via a best value form for grants up to a value of £100,000. For grants below £100K, they can be signed rather than sealed. We have also introduced a competitive grants form to document this process;
- Included a requirement for the directorate officer to follow the Council's Access to Information Procedure Rules with regards to decision making for procurements for clarity;
- Included an exemption to the Bids process for award to the Council's Teckal companies;
- Some delegations have been added into the Gateway Process at Rule 18 for the Monitoring Officer and the Head of Procurement;
- Novations of contracts and Grants have been added into the Gate 4 process (Rule 18) as this was not previously covered.

General consequential amendments have also been proposed to references resulting from the proposed changes above.

6.3 There are no legal implications arising from the proposed amendments to the Procurement and Contract Procedure Rules.

6.4 Subject to any comments Members may have, it is recommended that the proposed amendments to the Procurement and Contract Procedure Rules set out at **Appendix 2** are recommended to full Council for approval.

7.0 **FINANCIAL PROCEDURE RULES**

7.1 In preparing the approved Financial Procedure Rules for North Yorkshire Council, the opportunity was taken to fully update and strengthen the County Council's existing Financial Procedure Rules to ensure they were suitable for use by the new council and reflected best practice. A section on grants and external funding was included setting out the procedures which must be followed before applications are submitted and grants accepted. This was to reflect the risks attached to grant funding.

7.2 The process followed since Vesting Day has worked well but further clarification would be beneficial to avoid ambiguity and that a distinction is made between the approval process for the different type of grants. The proposed amendments to Financial Procedure Rule 28 (Grants and External Funding) are set out by way of tracked changes on the extract in **Appendix 3**.

7.3 Following comments from the Members' Working Group on the Constitution, further amendments are suggested to the Grants and External Funding provisions in the Rules, to provide for consultation with the Executive Member for Finance as well as relevant other Member(s).

7.4 Subject to any comments Members may have, Members are recommended to propose the amendments to the Financial Procedure Rules to full Council for approval.

8.0 **AMENDMENTS RE PUBLIC RIGHTS OF WAY**

Officers' Delegation Scheme

8.1 Proposed amendments to the specific delegations to the Corporate Director of Environment in the Officers' Delegation Scheme are set out by way of tracked changes on the extracts attached at **Appendix 4** to this report.

8.2 The proposed amendments relate to:

- a) amending paragraph 8.1 of the Specific Delegations to the Corporate Director of Environment, to extend the reference to Footpaths and Bridleways to also include 'Restricted Byways and Byways Open to all Traffic' for clarification purposes;
- b) amending paragraph 8.3(b) of the Specific Delegations to the Corporate Director of Environment re 'Physical Environment including Public Rights of Way and Open Spaces', to update a legislative reference, to reflect that *all* objections regarding Definitive Map Modification Orders must be referred to

the Secretary of State and to amend certain terminology to reflect the Secretary of State's wording;

- c) amending paragraph 8.3(c) of the Specific Delegations to the Corporate Director of Environment re 'Commons Registration' to clarify and update the legislative references;
- d) After paragraph 8.3(f)(vi) of the Specific Delegations to the Corporate Director of Environment, removing the "8.4" numbering from the heading "Matters excluded from the delegation", for consistency in numbering.

Area Constituency Planning Committee Terms of Reference

8.3 Proposed clarifying amendments to the Area Constituency Planning Committee Terms of Reference are set out by way of tracked changes on the extracts attached at **Appendix 4** to this report.

8.4 The proposed amendments relate to:

- a) amending paragraph *(e) to include the word "Creation" in the reference to "Public Path Orders", as the word "Creation" was omitted in error at the time of adopting the Constitution, when it was intended that Public Path Creation Orders (not all Public Path Orders) would be delegated to the Area Constituency Planning Committees;
- e) amending paragraph *(e) to refer to "duly made objection" rather than "valid objection" to reflect the Secretary of State's wording.

8.5 Subject to any comments Members may have, it is recommended that the proposed amendments to the specific delegations to the Corporate Director of Environment in the Officers' Delegation Scheme, and the proposed amendments to the Area Constituency Planning Committee Terms of Reference, as set out at **Appendix 4** be recommended to full Council for approval.

9.0 **OFFICERS' DELEGATION SCHEME – BUSINESS IMPROVEMENT DISTRICT AREAS**

9.1 Proposed amendments to the Specific Delegations to the Corporate Director of Community Development and the Corporate Director of Resources in the Officers' Delegation Scheme are set out by way of tracked changes on the extracts attached at **Appendix 5** to this report.

9.2 The proposed amendments transfer responsibility for Business Improvement Districts from the Corporate Director of Resources to the Corporate Director for Community Development, to reflect current practice.

9.3 Subject to any comments Members may have, it is recommended that the proposed amendments to the Specific Delegations to the Corporate Director of Community Development and the Corporate Director of Resources in the Officers' Delegation Scheme set out at **Appendix 5** be recommended to full Council for approval.

10.0 **MEMBER ENGAGEMENT AND DECISION-MAKING – DEVELOPMENT PLAN DOCUMENTS**

Development Plan Documents

- 10.1 At its meeting on 4 October 2023, the Members' Working Group on the Constitution considered a report of the Corporate Director of Community Development regarding Member engagement and decision-making throughout the preparation of Development Plan Documents. A copy of the report considered is attached at **Appendix 6**.
- 10.2 The report presents to Members, for their consideration for recommendation to full Council for approval, proposed changes to the Constitution to support more effective and streamlined decision making during the preparation of Development Plan Documents (DPDs), such as the new Local Plan for North Yorkshire
- 10.3 The recommended approach in the report:
- retains a role of the Area Constituency Committees at the formal stages and proposes the use of a single Development Plan Committee throughout the plan making process. The concept of a single Development Plan Committee across a plan area is widely used by other local planning authorities and is considered best practice. Feedback from the LGR Planning Members Task and Finish Group (set up in 2022 to oversee work on LGR transition) showed support for a single cross-party Development Plan Committee;
 - recommends the following changes to the Constitution:
 - amend the Terms of Reference of the Area Constituency Planning Committees by removing the reference to 'To support and be consulted in respect of any development plan documents';
 - amend the Terms of Reference of the Area Constituency Committees by adding:
 - ❖ 'To support and be consulted on development plan documents at formal decision making stages of the plan making process'
 - ❖ 'To support and be consulted in respect of Neighbourhood Plans within the constituency area'
 - amend the Terms of Reference of the Strategic Planning Committee by removing reference to 'To support and be consulted in respect of any development plan documents'.
- 10.4 The Members' Working Group on the Constitution agreed, in the main, with the proposed recommended option A, but suggested some amendments to, and views upon, the proposals:
- a) a membership of 24 to 30 Members for the Development Plan Committee would be too large: the Group felt that a membership of 3 Members per Area Constituency Committee, with a 'top up' of Members to ensure that all groups are represented would be appropriate. The Group agreed that the Assistant Chief Executive Legal and Democratic Services should look at the political proportionality calculation figures on that basis and bring information to the Executive. A copy of the calculations are attached at **Appendix 7** to this report.

Neighbourhood Planning

10.5 The report of the Corporate Director of Community Development regarding Member engagement and decision-making attached at **Appendix 6** sets out the recommendations that, regarding the Neighbourhood Planning process:

- Area Constituency Committees (ACCs) are the main committee for considering Neighbourhood Plans and that it is not necessary to consult with the Development Plan Committee in addition to the relevant ACC/ACCs. The process would usually involve the input of a single ACC, unless the boundary of the Neighbourhood Area intersects with more than one constituency area;
- The CDCD report Appendix 4 sets out the detail of how the relevant ACC would interact with the Neighbourhood Planning Process.

10.6 The Members' Working Group on the Constitution agreed, in the main, with the proposed recommendation in the CDCD report, but also wished to recommend that where there was a reference to liaison with the relevant Executive Member, this should also include liaison with the relevant division Member.

10.7 Members are requested to recommend to full Council for approval the approach to Member engagement and decision-making throughout the preparation of Development Plan Documents and Neighbourhood Plans as set out in this section 10 of this report, including the establishment of a Development Plan Committee, and the consequential amendments to the Constitution as set out in paragraph 10.3 of this report.

11.0 **PROPOSED REVIEW OF OUTSIDE BODIES**

11.1 At its meeting on 4 October 2023, the Members' Working Group on the Constitution considered a report presenting an outline of options to review the outside bodies that the Council appoints to, which now number over 170, following the creation of the new unitary North Yorkshire Council and the amalgamation of outside bodies from all 8 former local authorities. A copy of the report considered is attached at **Appendix 8**.

11.2 The Members' Working Group on the Constitution agreed that Option 3 appeared to be the most appropriate option:

Option 3

Remove all of the Category 3 Outside appointments completely and review the remaining Category 1 and Category 2 appointments against the agreed set of criteria and ascertain which bodies align with the strategic and operational priorities of the Council. This would reduce the number significantly. As there is no requirement for Elected Members to report back to Council for these positions, there is no feedback or understanding of what the Outside Body is achieving or how that fits with the Council's objectives, if at all.

This would allow outside bodies to continue but strictly in line with supporting the Council's strategic and operational priorities, whilst reducing the number significantly and to a more manageable level. It also allows Elected Members to continue on an outside body in their own right, if they feel that are able to do that effectively, allowing them to manage their workload accordingly.

11.3 The Group was of the view that when the Category 1 and 2 outside bodies were reviewed, those who sit on those bodies at the relevant time should be consulted.

11.4 In order to reduce and align the number of outside bodies appointed to, it is recommended that, subject to any comments Members may have, the approach set out in Option 3 of the report at **Appendix 8**, subject to including reference to consulting those who sit on the Category 1 and 2 bodies at the relevant time, be recommended to full Council for approval.

12.0 **FINANCIAL IMPLICATIONS**

12.1 The financial implications are set out in the body of this report.

13.0 **LEGAL IMPLICATIONS**

13.1 The legal implications are set out in the body of this report.

14.0 **ENVIRONMENTAL/CLIMATE CHANGE IMPLICATIONS**

14.1 There are no significant environmental or climate change implications arising from this report.

15.0 **CONSULTATION**

15.1 Relevant Officers and Members have been consulted on the proposed changes set out in this report and its Appendices.

15.2 This report reflects the views of the Members' Working Group on the Constitution at its meeting on 4 October 2023.

16.0 **REASONS FOR RECOMMENDATIONS**

16.1 For the reasons set out in the body of this report and in the Appendices, it is recommended that, subject to any comments Members may have, the recommendations and proposed changes to the Constitution set out below be recommended to full Council for approval.

17.0 **RECOMMENDATIONS**

17.1 That, subject to any comments Members may have:

(a) Members note the amendments to the Constitution set out in **Appendix 1** to this report, made by the Assistant Chief Executive Legal and Democratic Services under his delegated powers, for reporting back to full Council;

(b) the proposed amendments to the Council Procedure Rules as set out in **paragraphs 4.2, 4.5, 4.10, 4.11 and 4.15** of this report be recommended to full Council for approval;

(c) the proposed amendments to the Specific Delegations to the Assistant Chief Executive Legal and Democratic Services in the Officers' Delegation Scheme as set out in **paragraph 5.4** of this report be recommended to full Council for approval;

- (d) the proposed changes to the Procurement and Contract Procedure Rules set out in **Appendix 2** be recommended to full Council for approval;
- (e) the proposed changes to the Financial Procedure Rules set out in **Appendix 3** be recommended to full Council for approval;
- (f) the proposed changes to the Specific Delegations to the Corporate Director of Environment in the Officers' Delegation Scheme as set out by way of tracked changes on the extracts attached at **Appendix 4** be recommended to full Council for approval;
- (g) the proposed changes to the Area Constituency Planning Committee Terms of Reference as set out in **Appendix 4** be recommended to full Council for approval;
- (h) the proposed amendments to the Specific Delegations to the Corporate Director of Community Development and the Corporate Director of Resources in the Officers' Delegation Scheme as set out at **Appendix 5** are recommended to full Council for approval;
- (i) the approach to Member engagement and decision-making throughout the preparation of Development Plan Documents and Neighbourhood Plans as set out in **section 4** of this report, including the establishment of a Development Plan Committee, and the consequential amendments to the Constitution as set out in **paragraph 10.3** of this report, be recommended to full Council for approval;
- (j) the approach to the review of Outside Bodies as set out in **paragraph 11.4** of this report be recommended to full Council for approval.

BARRY KHAN
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County Hall
NORTHALLERTON

6 October 2023

Background Documents:

The Council's Constitution
The Local Government 2000 as amended