

# North Yorkshire Council

## Executive

9 July 2024

### 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 the Executive, for reporting back to full Council for information, amendments to the Constitution made by the Assistant Chief Executive Legal and Democratic Services under his delegated powers.
- 1.2 To present to the Executive, for recommendation to full Council for approval, proposed amendments 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. Proposed changes to the Constitution are considered by the Members' Working Group on the Constitution and the Executive and ultimately approved by full Council.

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.

#### 3.0 AMENDMENTS TO THE CONSTITUTION

3.1 Part A of the amendments chart at **Appendix 1** sets out proposed amendments to the Constitution for Members' consideration, relating to:

- a) the titles of the Area Constituency Committees and the Area Constituency Planning Committees being amended to Area Committees and Area Planning Committees respectively and that the existing geographies remain as they are

until such time as a full review of the geographies can be undertaken, following engagement with Members.

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

3.3 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 and which are being reported back to full Council for information. Such amendments relate to:

- a) correcting typographical/administrative/formatting errors;
- b) picking up further consequential amendments (previously agreed by Council) to change references to the Transition (LGR) Overview and Scrutiny Committee to Housing and Leisure Overview and Scrutiny Committee.

3.4 Subject to any comments Members may have, the Executive is asked to:

- a) agree that the proposed amendments to the Constitution set out in Part A of **Appendix 1** be proposed to full Council for approval;
- b) note the amendments to the Constitution set out in Part B of **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 for information.

#### 4.0 **PROCUREMENT AND CONTRACT PROCEDURE RULES**

4.1 Officers have taken the opportunity to undertake an interim review of the Procurement and Contract Procedure Rules in the Constitution, specifically related to the current three quote and best value process.

4.2 Certain amendments are proposed to the financial limits for seeking a minimum of three quotes or using the best value process to demonstrate value for money, in order to support a more agile and flexible way of working. The proposed amendments relate to the Council's obligation to comply with transparency requirements.

4.3 On 5 June 2024, the Members' Working Group on the Constitution considered the proposed amendments to the Procurement and Contract Procedure Rules in this regard and recommended them to the Executive for consideration and recommendation on to full Council.

4.4 Currently the Procurement and Contract Procedure Rules state:

##### *MINIMUM THREE QUOTES PROCESS/BEST VALUE FORM*

*8.5 Where the estimated value of a Contract is above £5,000 excluding VAT, and less than £50,000 including of VAT (taking into account the whole life cost of the Contract including extensions and/or variations) a minimum of three quotes should be sought.*

8.6 Where possible quotes should be sought from at least one local supplier based within North Yorkshire and at least one Small and Medium Enterprise (SME).

8.7 If three quotes are not sought, the Contract may be directly awarded using the Best Value Form as long as sufficient justification is given for not undertaking a quotes process. It is the Officer's responsibility to complete the Best Value Form.

8.8 A three quote process/best value form cannot be accepted where the value exceeds the upper limit for this process (i.e., £50,000 inclusive of VAT). If the value of the quote exceeds the upper limit for this process the bids process must be followed in accordance with Rule 9.

4.5 It is recommended that the financial limit for the three quote process/ best value form is amended as detailed in the below table:

<b>Spend Area</b>	<b>Upper Threshold Limit (Including VAT)</b>
Goods/ Services contracts (excluding Technology Contracts)	£5,001 up to and including £100,000
Technology Contracts	£5,001 up to and including £150,000
Works contracts	£5,001 up to and including £250,000
Light Touch Contracts (typically social care)	£5,001 up to and including £170,000

4.6 Benchmarking has been undertaken to review what other Local Authorities financial limits are for seeking quotations. This has evidenced that the proposals are in line with similar size councils:

- Cumberland Council - 3 quotes up to £100k
- Somerset Council - 3 quotes up to £100k for goods/ services and £250k works
- Leeds City Council - 3 quotes up to £100k and 4 quotes up to the relevant UK Procurement Threshold
- Barnsley Council - 3 quotes up to £100k for goods/ services and £250k works

4.7 Amending the financial limits will allow the centralised Procurement and Contract Management Service (PCMS) to focus delivery on the key strategic requirements for the council.

4.8 The process for seeking quotations or completing the best value process is more streamlined and will save Officer time and speed up and simplify the procurement process for suppliers. As part of the proposed changes, we would mandate that one quote must be from an SME<sup>1</sup>/ VCSE<sup>2</sup> or local supplier, unless this is not possible due to the nature of the market. This will help the council drive its ambitions around supporting SMEs/ VCSE and businesses within North Yorkshire to do business with the council and reduce the resource burden which is often perceived. It is anticipated that by mandating the requirement to seek at least one quote from an

<sup>1</sup> Small & Medium Enterprise (SME)

<sup>2</sup> Voluntary, Community or Social Enterprise (VCSE)

SME, VCSE or local supplier that this could help reduce the environmental impact of contract delivery.

4.9 To ensure transparency related to lower value contracting activity the council will continue to:

- Publish the forward procurement plan which provides a pipeline of contract opportunities.
- Comply with requirements to publish on the government Find a Tender site.
- Publish the council's contract register.
- Publish decision records, where applicable.
- Ensure entries are made on the council's forward plan of key decisions, and publish reports, where applicable.

4.10 To minimise any risks associated with increasing the financial limits the following will be implemented:

- The Procurement Manual will be updated with supplementary advice and guidance on how to approach seeking quotes.
- Online quote training will be promoted to all staff.
- Advice will continue to be available from the centralised procurement team.
- The PCMS will review all quotation and best value forms to monitor compliance with the process and ensure transparency requirements are adhered to.
- The Budget Manager will have to approve the quotation / best value form.
- Audit will conduct an annual audit of the quotes/ best value process to provide assurance.

4.11 Certain minor clarifying amendments have been included in the proposed amendments to the Rules since they were considered by the Members' Working Group on the Constitution, by the inclusion of the words "and including" before the threshold figures, to make it clear that the threshold includes that figure. Tracked change amendments to the Procurement and Contract Procedure Rules, reflecting the above proposals, are attached at **Appendix 2**. This tracked change document has been produced since the above proposals were considered by the Members' Working Group on the Constitution but are consistent with the proposals considered by and the views of the Working Group.

4.12 There are no significant financial implications arising from these proposed amendments. It should be noted that under the Council's Finance Procedure Rules, Budget Managers have delegated authority up to £500k. As such the proposed amendments to the Procurement and Contract Procedure Rules are within this limit. As part of the governance Budget Managers will be required to approve the quotation form / best value form. This information will be routinely reported to the Finance Assistant Directors.

4.13 The proposed changes to the financial limits are in accordance with the Public Contracts Regulations 2015 and comply with the new Procurement Act 2023 regulations which come into effect from 28 October 2024. The processes outlined (quotes / best value) relate only to below UK Procurement Threshold values.

4.14 Subject to any comments Members may have, it is recommended that the Executive recommend the proposed amendments to the Procurement and Contract Procedure Rules to full Council for approval.

5.0 **KEY DECISIONS IN RELATION TO GRANT APPLICATIONS AND ACCEPTANCE**

- 5.1 Officers have undertaken an interim review of the application and implication of the Key Decision definition, as detailed in Article 13 of the Constitution, in the context of applications for grants/external funding and the acceptance of any such funding offered, as detailed in the Financial Procedure Rules (FPRs).
- 5.2 Certain amendments are proposed to the following parts of the Constitution, to support a more agile and flexible way of working:
- the financial limits for applying for and accepting grants and external funding in Rule 28 of the FPRs;
  - consequential amendments to paragraph 6 of the Executive Members' Delegation Scheme to reflect the proposed amendments to the financial limits for applying for and accepting grants and external funding in Rule 28 of the FPRs set out above; and
  - amending the definition of a Key Decision in Article 13.

### **Key Decisions**

- 5.3 It is proposed that minor amendments be made to the definition of a Key Decision as set out in Article 13 of the Constitution to add clarity and for consistency of terminology across the Constitution. The amendments are set out by way of tracked changes to Article 13 in **Appendix 3** to this report and include:
- expanding the wording around the community effect limb to clarify how this is defined (see Article 13.03 (b) (i) (bb)); there is no change in application of the provision, just clarity that 'more than one community' means more than one electoral division.
  - amending the exclusions to the Key Decision financial limb (see Article 13.03 (b) (ii)).as follows:
    - to include an exemption for direct award grants, as these are offered to the Council without a bid or application process; and
    - to exempt any decisions which are identified on the Procurement Pipeline.
- 5.4 The inclusion of procurements and contracts identified on the Procurement Pipeline as an exclusion would align to the approach taken for any decisions specifically identified in the budget approved by Council.
- 5.5 The Procurement Act 2023 is coming into force in Autumn this year and has a significant increase in transparency requirements for the Council. Given the increase in transparency for procurements, pre, during and post contract award the view of Officers is the Council will end up duplicating decisions and information within the public domain (please see **Appendix 4** for the Transparency Requirements/ Notifications for procurements). The proposed exemption of the Procurement Pipeline is intended to streamline and simplify access to information.
- 5.6 Amending the wording will simplify the application of Key Decisions and aid the cultural and behavioural changes around ensuring sufficient notice of contracting requirements to safeguard entry onto the Council's Procurement Pipeline which is published quarterly. It will also support a more agile and response led organisation to service delivery.

5.7 The proposed changes are in accordance with the Local Government Act 1972; the Local Government Act 2000; The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Public Contracts Regulations 2015. The flowchart at **Appendix 4** outlines the additional transparency obligations under the new Procurement Act 2023 which come into effect from 28 October 2024.

### **Grant applications and acceptance**

5.8 The Council's consolidated budget has increased significantly since local government reorganisation in comparison to the budgets of the former District, Borough, and County Council. The Council budget is circa. £1.2bn (2024/25), with grant funding accounting for £210m (2024/25).

5.9 Due to the way in which grant monies are often allocated from central government Officers generally have to operate within extremely short timescales around:

- notification of ability to bid for grant monies.
- accepting and spending grant monies, due to prescribed dates by when funding must be spent.
- there is often a specific date by which the Council must accept the grant. This can be difficult to comply with due to the above reasons.

5.10 The above can make it difficult to meet obligations to bid for grant monies and /or ensure the optimum outcome is delivered within the prescribed timescales for spending and delivery.

5.11 Grants often require a procurement exercise and this compounds the timescales within which the Council is operating.

5.12 On review of the direct award grant process, Officers recommend this process applies to both statutory and discretionary direct award grants.

5.13 Proposed amendments to Rule 28 of the Financial Procedure Rules are set out by way of tracked changes in **Appendix 5** to this report. The proposed amendments to increase the financial limits within Rule 28 should assist with the issues identified above.

5.14 Consequential amendments will also be required to the Executive Members' Delegation Scheme and these are set out in **Appendix 6** to this report. Since the Constitution Working Group considered the proposed amendments, paragraph 6 of the Scheme has been amended in the Constitution (following the May Council meeting) so the amendments are now tracked on an updated extract.

### **Benchmarking**

5.15 Benchmarking has been undertaken to review what other Local Authorities financial limits are for Key Decisions and Grants.

5.16 In relation to Key Decision financial thresholds it is proposed that the values remain "as is" and this is broadly in line with other Authorities reviewed:

- Leeds City Council – expenditure/savings over £500k or significant effect on communities living or working in an area comprising one or more wards.
- Cumberland Council – savings/expenditure equal to or greater than £500k or if the decision will have significant effect on the communities living or working in one or more wards.



- Manchester City Council – expenditure/savings in excess of the lesser of £500k or 10% of the gross operating expenditure for any budget heading in the revenue budget approved by the Council.
- Cheshire West and Chester Council – expenditure/savings of £1m or more or significant effect on communities living or working in an area comprising two or more wards.

5.17 As a result of the review, the proposals detailed in **Appendix 3** recommend clarifying the wording around communities (see Article 13.03 (b) (i) (bb)).

5.18 In relation to Grant financial thresholds the information varies across the Local Authorities reviewed:

- Leeds City Council – the grant provisions are general within the Financial Regulations in that figures are not stated.
- Cumberland Council – for grants going out Executive approval is needed where over £150k to be provided to a body where it is outside approved budget. For grants coming in, there is a reference to the funding needing to be reported in the annual budget report or budget monitoring reports.
- Manchester City Council – For grants going out the Chief Executive can make grants up to £100k and up to £500k in consultation with the Leader. The Director of Population Health can provide grants for specific duties to be discharged. There is provision for grant bid proposals – Chief Officers and Heads of Service to consult with the Deputy Chief Executive and City Treasurer to seek Executive approval where the grant supports expenditure not in the capital programme.
- Cheshire West and Chester Council – have specific reference to grants in and grants out. Table 1 below details the limits:

**Table 1:** Approvals for the submission and acceptance of all external funding grant bids

Approval route	Authorisations Required	Consultation Required	Total Value where match funding required	Total Value where no match funding required
ODN <sup>3</sup>	Service Director	Departmental Finance Manager	Up to £100k	Up to £100k
ODN	Service Director; Director of Finance	Relevant Cabinet Member	£100,001 - £250,000	£100,001 - £250,000
ODN	Service Director; Director of Finance; Director of Governance	Relevant Cabinet Member Cabinet Member for Legal and Finance	£250,001 - £1,000,000	£250,001 and over
Committee Paper	Cabinet		Over £1,000,000 *This will be a key decision where the match funding is over £1,000,000	

For grants out, there is an annual report to Cabinet and then for those not in the original report;

<sup>3</sup> Officer Decision Notice

- Up to £10k – Director approval
- £10,001 - £50k Directors in consultation with the Director of Finance and Director of Governance and relevant Cabinet Member
- £50,001 - £500k - Cabinet Member Legal and Finance
- Over £500k – Cabinet approval.

5.19 Many of the Local Authorities reviewed do not have clear financial thresholds for grants coming in/ allocated out. For North Yorkshire Council it is important to have clearly defined requirements for Officers to adhere to. Appendix 1 (section 28.4 and 28.5) sets out the proposals which broadly see the limit increase from £200k to £500k as this aligns to the budget manager authorisation level.

5.20 Subject to any comments Members may have, it is recommended that:

- the proposed amendments to the definition of a Key Decision, as set out in **Appendix 3** to this report be recommended to full Council for approval;
- the proposed amendments to the Financial Procedure Rules as set out in **Appendix 5** to this report be recommended to full Council for approval; and
- the proposed consequential amendments to the Executive Members' Delegation Scheme as set out in **Appendix 6** to this report be recommended to full Council for approval.

## 6.0 FINANCIAL IMPLICATIONS

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

## 7.0 LEGAL IMPLICATIONS

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

## 8.0 ENVIRONMENTAL/CLIMATE CHANGE IMPLICATIONS

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

8.2 A Climate Change Impact Assessment Screening Form is attached at **Appendix 7**.

## 9.0 EQUALITIES IMPLICATIONS

9.1 There are no significant equalities implications arising from this report.

9.2 An Equality Impact Assessment Screening Form is attached at **Appendix 8**.

## 10.0 CONSULTATION

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

10.2 This report also incorporates the views of the Members' Working Group on the Constitution as expressed at the Group's meeting on 5 June 2024.



## 11.0 REASONS FOR RECOMMENDATIONS

11.1 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 matters raised in this report be considered and the recommendations and proposed changes to the Constitution set out below be recommended to full Council for information and/or approval as indicated.

## 12.0 RECOMMENDATIONS

12.1 That, subject to any comments Members may have:

- (a) the proposed amendments to the Constitution set out in **Part A of Appendix 1** be recommended to full Council for approval;
- (b) Members note the amendments to the Constitution set out in **Part B of 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 for information;
- (c) the proposed amendments to the Procurement and Contract Procedure Rules as set out in **Appendix 2** to this report be recommended to full Council for approval;
- (d) the proposed amendments to the definition of a Key Decision, as set out in **Appendix 3** to this report be recommended to full Council for approval;
- (e) the proposed amendments to the Financial Procedure Rules as set out in **Appendix 5** to this report be recommended to full Council for approval;
- (f) the proposed consequential amendments to the Executive Members' Delegation Scheme as set out in **Appendix 6** to this report be recommended to full Council for approval.

BARRY KHAN  
Assistant Chief Executive Legal and Democratic Services

County Hall  
NORTHALLERTON

27 June 2024

Background Documents:  
North Yorkshire Council Constitution  
The Local Government 2000 as amended

### Appendices

1. Proposed Amendments Chart
2. Proposed amendments to the Procurement and Contract Procedure Rules
3. Proposed amendments to the definition of a Key Decision
4. Transparency Requirements/ Notifications for procurements

5. Proposed amendments to the Financial Procedure Rules
6. Proposed consequential amendments to the Executive Members' Delegation Scheme
7. Climate Change Impact Assessment Screening Form
8. Equality Impact Assessment Screening Form