



## **North Devon Council**

Report Date: Wednesday, 17 January 2024

Topic: Update to Part 4 of the Constitution

Report by: Simon Fuller, Senior Solicitor and Monitoring Officer

### **1. INTRODUCTION**

- 1.1. Following the departure of the Council's Procurement Officer at the end of December 2023, it is proposed that the Council reviews and updates its Contract Procedure Rules to streamline procurement and bring these rules up to date.
- 1.2. It has been noted that there is an apparent error in delegated powers for the Head of Planning Housing and Health as regards which applications need to be referred to Planning Committee in relation to land owned or occupied by the Council or where the Council is submitting an application.

### **2. RECOMMENDATIONS**

- 2.1. The Council varies the Contract Procedure Rules in Part 4 of the Constitution as at Appendix 1 to this report
- 2.2. The Council varies paragraph 5.25 to Part 3 Annex 2 of the Constitution as at Appendix 3 to this report.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1. Given changes in prices and market rates the financial thresholds for quotes and tenders are out of date and should be updated to be in keeping with other Devon local authorities.
- 3.2. To provide a more efficient means of procuring lower value contracts and provide for potential joint working on procurement in the future.
- 3.3. To correct an apparent error so that simple procedural planning matters relating land owned or occupied by the Council, or where the Council is submitting an application, are no longer excluded from the delegated powers of the Head of Planning Housing and Health.

### **4. REPORT**

- 4.1. The Council's Contract Procedure Rules in the Constitution sets out the rules pursuant to which the Council procures contracts for the goods, works and services that it enters into.
- 4.2. The departure of the Council's Procurement Officer at the end of December 2023 has demanded that the Council reconsider the methods by which it procures such contracts. The Council is currently considering joint working with another local authority for procurement and so rationalising its procurement rules at this point is an appropriate move.

- 4.3. Included with this report is Appendix 1 which shows the Contract Procedure Rules with all changes incorporated for the Council to adopt in line with the recommendation at 2.1 above and Appendix 2 which shows a tracked changes version of the Contract Procedure Rules to allow councillors to see the proposed changes from the version of the Constitution as currently published.
- 4.4. The changes proposed are as follows:
- 4.4.1. Procurement thresholds are increased so that officers must:
- 4.4.1.1. seek at least three quotes before awarding a contract where the value of the contract is estimated to be equal to or more than £12,000 (inc VAT) (this was formerly £5,000 (ex VAT));
- 4.4.1.2. run an open tendering process before awarding a contract where the value of the contract is estimated to be equal to or more than £120,000 (inc VAT) (this was formerly £75,000 (ex VAT));
- Councillors will note that values are now inclusive of VAT, this is in line with how the Cabinet Office values contracts at a national level and sets financial thresholds in procurement law since leaving the European Union.
- 4.4.2. A general requirement to ensure compliance with the Best Value duty has been added in to acknowledge that this is taken into account given the higher value needed before quotes are sought.
- 4.4.3. The requirement to run quotes via the Council's online procurement portal has been removed. This is to reduce workload on staff involved with procurement and enable officers to receive quotes via correspondence (e.g. email or letter) albeit with the requirement remaining that an appropriate contract is still entered into and the reports continue to be made to Legal Services to ensure that details of contracts are uploaded onto the Council's Contract Register in line with the Local Government Transparency Code 2015.
- 4.4.4. The contract awarded pursuant to quotes no longer needs to be awarded to the lowest value supplier and other quality aspects can be considered provided quotes are considered on a like for like basis on an evaluation criteria set before quotes are requested.
- 4.4.5. Typographical errors corrected and new defined terms added to improve how the document is drafted.
- 4.5. Included with this report is Appendix 3 which shows paragraph 5.25 of Annexe 2 to Part 3 of the Constitution with all changes incorporated for the Council to adopt in line with the recommendation at 2.2 above and Appendix 4 which shows a tracked changes version of paragraph 5.25 to allow councillors to see the proposed changes from the wording in the Constitution as currently published.
- 4.6. In paragraph 5.25 of Annexe 2 to Part 3 of the Constitution the Head of Planning Housing and Health has general powers to consider and determine

applications submitted pursuant to planning legislation. This is subject to certain exclusions as provided in paragraph 5.25(a), (b) and (c) of Annex 2 to Part 3 of the Constitution.

- 4.7. As a result of the increase in planning applications being made by the Council through major projects such as the Future High Street Fund or the Seven Brethren redevelopment, it has been noted that the restrictions on the delegated power of the Head of Planning Housing and Health has been preventing progress due to the most minor adjustments necessitating an application having to await consideration by the Planning Committee. This includes applications such as non-material amendments under section 96A or discharge of conditions under section 74A Town and Country Planning Act 1990. While it is entirely appropriate for an application for planning permission by the Council or on Council owned or occupied land to be excluded from an officer's delegated power and go via Planning Committee it is considered excessive for these minor procedural/administrative tasks to have to take this route.
- 4.8. Accordingly it is proposed in recommendation 2.2 that the exclusions on the delegated power to the Head of Planning Housing and Health be limited, in relation to Council owned or occupied land and applications made by the Council only, to applications for outline permission, reserved permission, full permission or is for the development of land without compliance with conditions under section 73 of the Town and County Planning Act 1990. This will allow decisions on minor matters such as those identified in paragraph 4.7 above, to be processed at delegated officer level.
- 4.9. It is worth Members being aware that officers will be required to consider these minor applications in line with the Planning Code of Conduct which provides that "proposals for the Council's own development should be treated with the same transparency and impartiality as those of private developers". It is considered that this change is in line with this, namely that the Council's own applications are not being treated differently to those of private developers and not making this change will overly encumber the Council's own developments on minor issues.

## 5. RESOURCE IMPLICATIONS

5.1. None

## 6. EQUALITIES ASSESSMENT

6.1. There are no equalities implications anticipated as a result of this report.



## 7. ENVIRONMENTAL ASSESSMENT

7.1. There are no environmental implications arising from the proposals in this report.

## 8. CORPORATE PRIORITIES

8.1. What impact, positive or negative, does the subject of this report have on:

8.1.1. The commercialisation agenda: None

8.1.2. Improving customer focus: Updates to the Contract Procedure Rules should allow efficiencies in procurement and provide for an improved process for officers and prospective suppliers while still maintaining compliance.

8.1.3. Regeneration or economic development: None

## 9. CONSTITUTIONAL CONTEXT

9.1. The decision in respect of the recommendations in this report can be made pursuant to Article 4.5.1 of the Constitution.

## 10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

## 11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report:  
The Constitution and Contract Procedure Rules of neighbouring local authorities

(The background papers are available for inspection and kept by the author of the report).

## 12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Simon Fuller, Senior Solicitor and Monitoring Officer