

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S  
REPORT TO COUNCIL**

**Date 24 July 2019**

1. **REPORT TITLE**                      **Constitution - Review of the Council's Contract Procedure Rules & Member/Officer Planning Enforcement Protocol**
- Submitted by:**                      **Interim Head of Legal / Monitoring Officer**
- Portfolios:**                              **Leader, Finance and Efficiency, Leisure, Culture & Heritage, Planning & Growth**
- Ward(s) affected:**                      **All**

**Purpose of the Report**

The report summarises the proposed changes to the Council's Contract Procedure Rules and the Member/Officer Planning Enforcement Protocol following consideration by the Constitution & Member Support Working Group. The report also recommends the deletion of two appendices currently part of the Council's Constitution.

**Recommendations**

**That:**

- a) **The proposed changes to the Contract Procedure Rules as set out in Appendix A to the report are agreed and adopted.**
- b) **The Member/Officer Planning Enforcement Protocol at Appendix B is agreed and adopted.**
- c) **The Appendices 15 (ICT Strategy) and 26 (Communications Strategy) are removed from the Council's Constitution.**

**Reasons**

The Contract Procedure Rules form part of the council's constitution (at Appendix 12) and a review of the current rules is required to include updates in legislation, options to improve efficiency and best practice guidance. It should also be noted that further changes are likely to be required following BREXIT as the current Contract Procedure Rules include a number of references to EU procurement/directives.

The Member/Officer Planning Enforcement Protocol is a new protocol and has been considered and approved by the Planning Committee at its meeting on 26 March 2019.

The deletion of Appendices 15 and 26 of the Constitution is also recommended on the basis that it is not standard practice to include such strategies within the Constitution and both documents are out of date in any event.

1. **Background - Contract Procedure Rules**

- 1.1 The Contract Procedure Rules form part of the Council's Constitution (at Appendix 12) and provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with

openness, probity and accountability and that the Council obtains value for money as well as the required level of quality and performance in all contracts that are let.

- 1.2 The Contract Procedure Rules are subject to review and a number of amendments, updates and additions have been identified which the Constitution and Members Support Working Group reviewed at their meeting on 3<sup>rd</sup> July 2019 and are now recommending that Council approve.

## 2. **Issues**

- 2.1 The provisions contained in the Rules are subject to the statutory requirements of both the European Union and the United Kingdom Government. The rules contain various references to European legislation which are likely to be needed to be amended following BREXIT.
- 2.2 A need to include further details on alternate procurement routes to market have been identified and included as part of this review and update.
- 2.3 With the introduction of a council supplier contract management website (My Tenders) this has resulted in a change in the receipt and custody section for tenders and quotations which negates the need for manual recording of their receipt since the My Tenders portal delivers an e-recording solution as part of the process. The Rules have been amended accordingly.
- 2.4 The Rules contain a number of links to external pages that are either no longer relevant or are no longer in use/available and as such will need to be removed from the Rules.
- 2.5 The current Rules say little about the considerations and implications of GDPR, Safeguarding, Modern Slavery on the Council's Procurement Processes.

## 3. **Options Considered**

- 3.1 There is an option to do nothing and to update Contract Procedure Rules post BREXIT when there will be further changes required; however unfortunately the continued delay in delivering BREXIT would delay the provision of up to date information on a number of changes that impact on the delivery of compliant procurement across the authority.

## 4. **Proposal**

- 4.1 A summary of the changes proposed includes;
  - A document control page which aids tracking of changes has been introduced;
  - There are a number of tracked comments linked to references to EU Procurement, within the document that will need to be updated post BREXIT;
  - The receipt and custody section for tenders and quotations has been updated to reflect the e-recording process delivered by the council supplier contract management website (My Tenders);
  - A reference to the council's 'Retention & Disposal' and the requirements placed on the lead officer regarding the retention of information has been added;
  - A reference to the General Data Protection Regulations (GDPR) has been included;

- A reference to setting up a council run 'Framework Agreement' has been added;
- A reference to setting up a council run 'Dynamic Purchasing System' has been added;
- Guidance to establishing a 'Framework Agreement' / 'Dynamic Purchasing System' have been included to support officers in this work;
- A reference to Modern Slavery and procurement considerations has been included;
- A reference to Safeguarding and procurement considerations has been included;

(a copy of the Contract Procedure Rules with all tracked changes is attached to this report at Appendix A).

## **5. Member / Officer Planning Enforcement Protocol**

- 5.1 The proposed new Member/Officer Planning Enforcement Protocol has been prepared by Planning Officers in consultation with the Planning and Growth Portfolio holder and was approved the Constitution & Member Support Working Group on 20 March 2019 and by members of the Planning Committee at their meeting on the 26 March 2019.
- 5.2 The Protocol is designed to be read in conjunction with the existing Members Protocol on Planning Matters which is set out at Appendix 21 to the Constitution and, if approved by Council, will be added as an additional Appendix to the Constitution.
- 5.3 The Protocol sets out the processes to be followed in relation to enforcement issues and the text highlighted in bold highlights the changes from current practice. Under the Protocol members will be provided with a weekly list of cases received in their ward. Given the number of cases received it is not considered practical to provide members with updates on all cases received but this can be provided on request.
- 5.4 The Protocol also provides for members to be able to request in writing that the Chair of Planning asks the Head of Planning to report to Committee on a particular enforcement Matter and provides that a Ward Member who is not on the Planning Committee may speak on the matter in the same was as a Member of the Public (provided the item is not confidential).

## **6. Appendices 15 (ICT Strategy) and 26 (Communications Strategy)**

- 6.1 The Constitution and Members Support Working Group also reviewed the inclusion of the ICT Strategy and Communications Strategy within the Constitution. Members were advised that it was not standard practice to include these items within the Constitution and in fact both Strategies were out of date and due for review. The documents were fairly lengthy and it was felt that a more streamlined and user friendly Constitution would be beneficial. The Group agreed to recommend the deletion of the Strategies in the circumstances.

## **7 Reasons for Preferred Solution**

- 7.1 Approval of the recommendations and adoption of the proposed changes to the Contract Procedure Rules will aid officers as part of a devolved procurement structure that exists

within the council. It should be noted that there will be a need for further changes post BREXIT.

7.2 The new Member/Officer Planning Enforcement Protocol updates and improves current practice in relation to enforcement matters.

7.3 The two appendices are no longer relevant and would not normally be included with the formal Constitution.

8. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

8.1 The Contract Procedure Rules form part of the Council's Constitution and are designed to ensure that all procurement activity is conducted with openness, probity and accountability.

8.2 The Contract Procedure Rules have both a direct and indirect impact on the council's four corporate priorities:

- Local Services that Work for Local People
- Growing our People and Places
- Healthy, Active and Safe Borough
- A Town Centre for All

9. **Legal and Statutory Implications**

9.1 All local authorities are required by law to have a written Constitution which must be kept under regular review. Any amendments to the Constitution require the approval of full Council.

10. **Equality Impact Assessment**

10.1 Where any equality impact has been identified it has been addressed.

11. **Financial and Resource Implications**

11.1 No significant additional resources will be required in relation to the recommendations.

12. **Major Risks**

12.1 That the Contract Procedure Rules do not reflect up to date legal requirements and/or best practice resulting in challenge to the Council's decisions and/or reputational damage.

12.2 The update to council's 'Contract Procedure Rules' supports in the mitigation of the above major risk.

13. **Sustainability and Climate Change Implications**

13.1 No direct implications

14. **Key Decision Information**

14.1 This is not a key decision which requires inclusion in the forward plan.

15. **Earlier Cabinet/Committee Resolutions**

Report to Planning Committee 26 March 2019 – **Member/Officer Planning Enforcement Protocol**

16 **List of Appendices**

16.1 A copy of the Contract Procedure Rules with all tracked changes is attached at (Appendix A) to this report and the draft **Member/Officer Planning Enforcement Protocol is attached at Appendix B**

17. **Background Papers**

17.1 There are no additional background papers