

# City Council – 10 July 2023

## Report of the Chair of the Standards and Governance Committee

### Corporate Director/ Director:

Malcolm Townroe, Director of Legal and Governance

### Report Author and Contact Details:

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### Title: Non Executive Amendments to the Constitution

#### Does the report form part of the Budget or Policy Framework?

Yes  No

#### Does this report contain any information that is exempt from publication?

No

#### Relevant Council Plan Key Outcome:

Green, Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Living Well in our Communities	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>

## 1. Summary

- 1.1 Council is asked to approve changes to the following sections of the Council's Constitution: Article 9 – Non Executive Functions and Committees; Article 15 Councillor Code of Conduct; and Article 18 – Contract Procedure Rules.

## 2. Recommendations

- 2.1 To amend Article 9 – Non Executive Functions and Committees of the Constitution to add the Terms of Reference for the Communities and Environment Scrutiny Committee, as set out in Appendix A to the report.
- 2.2 To amend Article 15 – Councillor Code of Conduct of the Constitution to replace the Corporate Director of People with the Chief Executive as the individual who can designate training as mandatory.
- 2.3 To approve a revised Article 18 – Contract Procedure Rules of the Constitution, as set out in Appendix B.

## 3. Reasons for recommendations

3.1 The Constitution sets out how the Council conducts its business including how decisions are made, who can make them and what rules and procedures must be followed. It is therefore important that it is up-to-date, accurate and reflects legislative and good practice requirements.

#### 4. **Other options considered in making recommendations**

4.1 Not to amend the Constitution. This option was rejected because the Council needs to have a Constitution that is fit for purpose and the proposed amendments support delivery of that objective.

#### 5. **Consideration of Risk**

5.1 The proposed clarification of procedures for procuring and awarding contracts reduces the risk of non-compliance with relevant procurement legislation and potential challenge.

#### 6. **Best Value Considerations**

6.1 The proposed amendments to the Constitution support efficiency of decision making by the Council.

#### 7. **Background (including outcomes of consultation)**

7.1 The Constitution describes how the Council conducts its business including how decisions are made, who can make them and what rules and procedures must be followed. It also outlines the roles and responsibilities of officers and councillors.

7.2 The current Constitution can be viewed online via the following link: [Nottingham City Council's Constitution - Nottingham City Council](#)

7.3 It is the responsibility of Council to adopt and amend the Constitution.

7.4 It is a role of the Standards and Governance Committee to ensure that the Council's governance arrangements, in particular its Constitution, are fit for purpose and support the Council in making effective, well-informed and accountable decisions. It can make recommendations to Council regarding amendments to non-executive aspects of the Constitution. At its meeting on 22 June 2023, the Committee considered the proposed amendments to Article 15 and Article 18 and agreed to recommend these to Council.

#### 7.5 **Article 15 – Councillor Code of Conduct**

It is proposed to amend paragraph 15.42 Local Provisions of Article 15 so that it is the Chief Executive rather than the Corporate Director for People who can designate training as mandatory. This amendment is proposed because mandatory training could relate to any area of Council business and not just those relating to People Services.

#### 7.6 **Article 18 – Contract Procedure Rules**

Following the introduction of the Council's new operating model for Commercial, Procurement and Contract Management, several amendments to Contract Procedure Rules are proposed (set out at Appendix B to this report). These update terminology and responsibilities to reflect the new model, introduce a new oversight process and clarify some existing procedures.

## 7.7 There are seven substantial changes:

- a) Inclusion of the Commercial Oversight Board approval route for high risk/value projects (18.11 & 18.53), for improved corporate oversight of commercial activity and management of risk.
- b) Introduction of a rule specifying procedures for below-threshold concession contracts (18.20). This states turnover values above which a quotation or tender process is required. A competitive process improves value for money outcomes from these contracts.
- c) Introduction of a rule covering below-threshold contracts meeting the 'Teckal' criteria (18.31). These are exempted from competitive procedures.
- d) Amended terminology and additional detail on the Delivery Model Assessment (former 'make-or-buy') process (18.21-18.29). This introduces periodic review of services overseen by the Commercial Oversight function, and completion of a Delivery Model Assessment, before developing or extending in-house provision.
- e) Introduction of processes for managing Accreditation Schemes/Any Qualified Provider Frameworks (18.36-40). Specific to the health and care sector, this specifies circumstances under which non-competitive accreditation schemes may be established. ie: where a) the Council has no choice/discretion over service provider, b) an external regulatory body determines qualification of providers and c) all qualified providers are admitted.
- f) Addition of the Negotiated procedure as a recognised procurement route with appropriate authority for above-threshold contracts. Use of this procedure is to be recorded using the Exemptions process (18.65, 18.94, 18.95 and Exemptions form)
- g) Addition of statement that where we are unable to estimate the value of a scheme we must assume that the relevant 'above-threshold' procedure applies (18.65) – reflects recent change to Central Government guidance.

## 7.8 In addition, there are minor amendments which clarify current practice, these include:

- updates to job titles and terminology to align to the new operating model;
- clarity of existing procedures/governance including requirement for formal approval to spend prior to procurement, responsibility for contract management, added references to Dynamic Purchasing Systems and the 'Light Touch' regime;
- removal of reference to 'Use of Consultants' Form which is no longer in use and now part of the delegated decision-making process; and
- addition to the section on extension and variation of contracts to refer to below-threshold arrangements, reflecting current practice.

\*Note: 'above-threshold' and below-threshold' refer to the relevant monetary thresholds above which procedures detailed in the Public Contracts Regulations 2015, Concession Contracts Regulations 2016 and Utilities Regulations 2016 apply.

## 7.9 Article 9 – Non Executive Functions and Committee

Although the Communities and Environment Scrutiny Committee was established by Council at its AGM on 22 May 2023, the Terms of Reference were not approved at that time. The Terms of Reference are attached as Appendix A to this report.

## **8 Finance colleague comments (including implications and value for money)**

- 8.1 There are no direct costs/ savings involved so in that respect no financial implications. This does not apply to decisions made as a result of these changes.

Nishil Rabheru, Strategic Finance Business Partner – 20 June 2023

## **9 Legal colleague comments**

- 9.1 The recommendations contained in this report raise no significant legal issues and are supported. In terms of the proposed amendment to Article 15 it is important that the ability to delegate mandatory training is given a wider remit than currently exists. As far as the amendments to Article 18 are concerned these proposals have been fully reviewed by the Head of Procurement and reflect existing, and proposed, changes in the Council's arrangements as well as up-dating the Contract Procedure Rules to reflect current recommended practice and issued guidance.

Malcolm R. Townroe, Director of Legal and Governance – 30 June 2023

## **10 Other relevant comments**

- 10.1 None – the Head of Procurement led on the revision of Contract Procedure Rules and the recommendation of proposed amendments.

## **11 Crime and Disorder Implications (If Applicable)**

- 11.1 Not applicable

## **12 Social value considerations (If Applicable)**

- 12.1 Not applicable

## **13 Regard to the NHS Constitution (If Applicable)**

- 13.1 Not applicable

## **14 Equality Impact Assessment (EIA)**

- 14.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because the amendment of the Constitution does not involve a new or changing policy or service. Equality, diversity and inclusion considerations have been explicitly built into the decision making processes in the Constitution

## **15 Data Protection Impact Assessment (DPIA)**

- 15.1 Has the data protection impact of the proposals in this report been assessed?

No



A DPIA is not required because the amendment of the Constitution does not involve the collection or transfer of data.

## **16 Carbon Impact Assessment (CIA)**

16.1 Has the carbon impact of the proposals in this report been assessed?

No



A CIA is not required because the amendment of the Constitution does not have any significant carbon impact.

## **17 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

17.1 None

## **18 Published documents referred to in this report**

18.1 Nottingham City Council Constitution

18.2 Minutes of the meeting of the Standards and Governance Committee held on 22 June 2023

**Councillor Kirsty L Jones**  
**Chair of the Standards and Governance Committee**