

# TONBRIDGE & MALLING BOROUGH COUNCIL

## COUNCIL

15 July 2014

### Report of the Monitoring Officer

#### Part 1- Public

#### Matters For Decision

#### 1 CHANGES TO CONSTITUTION

##### Summary

**This report deals with changes to the Constitution to reflect changes in working practises**

#### 1.1 Contract Procedure Rules

- 1.1.1 The Contract Procedure Rules are contained in part 4 of the Constitution and govern the procedures and working practises which must be followed by officers when letting Council contracts.
- 1.1.2 Contract Procedure Rule 2.3 currently sets out the circumstances in which the Council is not required to follow the rules concerning purchases. The exception in rule 2.3.2 covers “contracts relating solely to the purchase or sale of interest in land”. There is currently a gap in the rules relating to the sale of assets such as old or obsolete items of equipment or commodities which have been collected by the Council under its duties relating to waste which it may be possible to sell for recycling. The Council is required to obtain best value for such items or commodities but there is no requirement to follow any specific procedure.
- 1.1.3 The EU procurement rules do not apply to sales of goods or commodities. Often there is a limited market for such commodities and therefore it is not appropriate to apply all of the detailed purchasing rules for the sale of such items.
- 1.1.4 It is suggested that where the sale will result in income or a capital receipt in excess of the current EU service/supply threshold that before the contract is entered into members should endorse the action taken by officers. This reflects the approach to other contracts within the rules where the EU service/supply threshold is used for the value of works contracts for which members should be involved in the decision making process.
- 1.1.5 This will result in two minor changes to the current rules. The first of these will be a new rule 12.6: “All contracts for the sale of equipment goods or recycled commodities which are valued over their life at in excess of the current EU service/supply tendering threshold set out in rule 7.4 shall be subject to

endorsement by members of the procurement process undertaken and the award decision before the contract is entered into". In addition a new exception from the procurement rules will be set out in rule 2.3.5 making it clear that the purchasing rules do not apply to such contracts other than rule 12.6 provided that best value is obtained on such sales. This exception will read "Subject to rule 12.6 contracts for the sale of equipment goods or recycled commodities provided that best value is obtained."

- 1.1.6 The preferred method for inviting tenders within the Council is in electronic form. To this end, an arrangement has been established with Dartford Borough Council ("DBC") for that authority to administer the tender process using their Pro Contract software solution on TMBC's behalf. DBC charge a negotiable fee for this work to cover their costs. The service has been working well but requires a minor amendment to the procedures for the submission and opening of tenders in rule 11.3 as the tenders are not stored in a secure mailbox but rather on the South East Centre of Excellence ("SECE") business portal which hosts the DBC system which the Council is utilising. This is a secure portal which requires password protected access to be given to open the tenders and provides a full audit trail of who has had access to the authority's contracts.

## **1.2 Delegation to Monitoring Officer to amend constitution**

- 1.2.1 Part 7 of the Constitution sets out the Management Structure for the Borough Council, and details the operational areas of responsibility of the Chief Executive and each of the four Directors.
- 1.2.2 From time to time the Management Team agrees that it is necessary to amend these specific areas of responsibility in order to ensure that services can be delivered efficiently and effectively. By way of example, the Community Safety Unit (CSU) currently falls within the responsibility of the Chief Executive. However, given the clear synergies between the CSU and Licensing (which falls within the responsibility of the Director of Central Services) it was agreed by Management Team that the delivery of this service would be improved by transferring line management responsibility to Anthony Garnett, who now assumes the role of Licensing and Community Safety Manager. As a consequence, responsibility for the CSU will now move to the Director of Central Services.
- 1.2.3 In order to allow for this desired flexibility, it is recommended that delegated authority be granted to the Monitoring Officer to make any necessary amendments to the Constitution consequential upon changes to operational arrangements, without report to Council or Cabinet.

## **1.3 Legal Implications**

- 1.3.1 Article 15 in part 2 of the Constitution sets out the procedure for review and revision of the Constitution. Save where the changes give effect to any decision of the Council, Cabinet or a Committee (in respect of which delegated authority has been granted to the Monitoring Officer), changes to the Constitution may only

be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

#### **1.4 Financial and Value for Money Considerations**

1.4.1 None.

#### **1.5 Risk Assessment**

1.5.1 If the changes are not made to the Constitution then the current practise will be out of line with the rules.

#### **1.6 Equality Impact Assessment**

1.6.1 See 'Screening for equality impacts' table at end of report

#### **1.7 Policy Considerations**

1.7.1 None

#### **1.8 Recommendations**

1.8.1 The Monitoring Officer be authorised to amend the Constitution to give effect to the changes outlined in the above report.

Background papers:

contact: Lynn Francis

Nil

Adrian Stanfield  
Monitoring Officer

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision will enforce the public sector equality duty in relation to purchasing.

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The public sector equality duty will be implemented in purchasing procedures as appropriate.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*