

# ITEM 4(a)(ii)

MILTON KEYNES COUNCIL

22 NOVEMBER 2017

Report considered by the Constitution Commission – 5 October 2017

## PROPOSED CONSTITUTIONAL CHANGES FOLLOWING CORPORATE PROCUREMENT PEER REVIEW

### 1. Purpose

- 1.1 This paper sets out a number of recommended changes to the Constitution to enable a more strategic focus on procurement within Milton Keynes Council (The Council).

### 2. Background

- 2.1 Members of the Commission will recall a Local Government Association (LGA) Peer review of the Council's procurement function in 2016. This peer review identified a number of key recommendations; the relevant ones are:

<b>Peer Review Recommendations</b>
<b>Commissioning services and defining the purpose of procurement</b>
Develop a more strategic approach to procurement which provides a coherent link between operational procurement practice and corporate aims
Streamline documentation and process so that they are proportionate to the required outcome
Develop a robust approach to intelligence sharing and good practice on procurement both within the organisation and by working better with partners
<b>Taking a Strategic Approach to Procurement</b>
Prioritisation of procurement projects by risk assessment to determine which to scrutinise to maximise value to the Council. This will allow the Council to maximise its capacity to deliver value for money through genuinely strategic procurement that drives forward corporate priorities.
Set up a cross party 'big ticket' approach focussed on procurement and commissioning in order to provide consistency of approach and to secure more systematic savings
Provide training for senior councillors and officers to reinforce the need for good practice and strategic thinking

- 2.2 Following this LGA review and through the integration of the LGSS partnership in April 2016, work was undertaken to determine a best practice approach to enhancing the strategic direction of how procurement is undertaken by the Council. This included an appraisal of the role of the current Procurement and Commissioning (P&C), and proposals were developed.

- 2.3 The proposals were presented to the Cabinet Member for Resources and Innovation, Councillor Middleton who set up a cross party working group consisting of himself and Councillors Geaney (Conservative) and Ferrans

(Liberal Democrat) to review them. The proposals were also presented to Corporate Leadership Team in December 2016 and revised in June 2017.

2.4 The proposed changes have been agreed by the Working Group and the consolidated recommended changes to the Constitution by Councillor Middleton are listed below:

**1. An increase in the key decision limit to over £500k**

The purpose of this change is to direct focus on key areas of strategic spend and the proposed change to increase the key decision limit from £100k to over £500k will only impact circa 3% of contracts annually by value.

This means that over 90% of future tenders by value will still be treated as a 'key decision' and published on the Forward Plan. These decisions will continue to be taken in public and are capable of being called in.

**2. Empower Officers to approve Tenders/Contracts up to a value of £500K.**

To propose an increase in the key decision limit to over £500K would mean that officers will take the decisions for all tenders and contract up to that value. These officers are referred to in the Leader's Scheme of Delegation. Decisions for tenders and contracts with a value above £500k will be taken by Cabinet. The Working Group was clear that the process for making these officer decisions must be transparent, robust and visible.

As decisions up to £500k in value would no longer be Key Decisions, they would not be on the Forward Plan, but what is proposed to ensure ongoing transparency is:

- (a) A report of all tenders between £100K –£500K will be documented at least 5 working days before the tender is issued. It is proposed that the information will be made available via the Democratic Services and Procurement pages on the intranet and will be maintained to be up to date. A copy of the information to be provided is attached at Annex A. A link to the information contained in Annex B will also be included to enable visibility of detailed information relating to tenders.
- (b) A copy of the template that will be used to demonstrate the procurement approach is attached at Annex B. The attached template is intended to ensure that all future tender decisions are based on a robust and thorough process and provide a full audit trail of all decision making. The contents of the template may be amended to make improvements as necessary.

**3. To effect the changes stated at 1 and 2 above, the following parts of the Council's Constitution will need to be amended:**

- 3.1 Part 2, Articles of the Constitution - Article 14 – Decision – Making;
- 3.2 Part 3, Responsibility for Functions – Leader's executive scheme of delegation;
- 3.3 Part 4, Procedure Rules – Contract Procedure Rules

**3.1 Part 2, Articles of the Constitution – Article 14 – Decision Making**

Article 14.3 (b) of the Constitution defines 'Key Decisions.' It includes the related financial threshold which is currently set as any expenditure or savings of £100k which is not identifiable either in the approved Capital Programme or Revenue Budget. The financial threshold stated in this part needs to be amended to read over £500k.

**3.2 Part 3, Responsibility for Functions – Leader's Executive Scheme of Delegation:**

The Leader's Executive Scheme of Delegation sets out how the Leader has decided to arrange for the discharge of executive functions. Under the current scheme of delegation, certain procurement and financial decisions are reserved to Cabinet, P&C and to officers as set out in the Annex to the scheme of delegation.

The Leader's Scheme of Delegation therefore will need to be amended to remove the terms of reference of P&C and to transfer its functions, either to officers or to Cabinet to reflect the changes above. The detailed changes to the Leader's Scheme of Delegation are included in Annex C. In summary they will include the following:

- The terms of reference of P&C are to be removed.
- The value of transactions upon which officers may make a decision with regard to agreeing the specification, inviting tenders and approving the award of contract is to be increased from £100k to £500K.
- The value of transactions upon which the Cabinet or Cabinet member may make decisions with regard to agreeing the specification, invitation of tenders and award of contracts is to be reduced from £20m to over £0.5m.

To complement these changes, the Leader has consulted his Cabinet and will be amending his scheme of delegation to remove P&C. He will inform this change to the Cabinet and Council at an appropriate time.

The removal of the P&C enables:

- Realignment of focus on strategic high value areas; and
- Increased efficiency in tender processes such as where approval to utilise a framework has already been given, no requirement to subsequently go back to P&C for approval to tender within it.

### **3.3 Part 4, Procedure Rules – Contract Procedure Rules**

The Council's Contract Procedure Rules must be followed for every contract entered into or proposed to be entered into by the Council.

The Contract Procedure Rules are to be reflective of the governance process set by the Council for entering into contracts (such as any limits set by the Leader's Executive Scheme of Delegation) and the relevant law.

The changes to financial limits of authority as set out above affect the Council's Contract Procedure Rules which will require consequential amendments to ensure they are reflective of these changes. The detailed changes that will be required to the Contract Procedure Rules are summarised in Annex D.

Additionally, the Contract Procedure Rules have not been amended since the coming into force of the Public Contracts Regulations 2015. Following approval, the amendment exercise will be led by the Corporate Procurement Team working with Legal Services to ensure that the Contract Procedure Rules reflect the current legislation, the changes resulting from increase of officer financial delegation limit as contained in this report and best practice. Relevant service areas such as the Procurement Team in People Services and Finance will be consulted as necessary.

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Background Papers: Procurement Peer Review