



Chelmsford City Council Cabinet

6 July 2023

Proposed Amendments to the Constitution

Report by:
Leader of the Council

Officer Contact:

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Purpose

To consider the recommendations of the Constitutional Working Group arising from its reviews of the City Council's Constitution.

Options

To either accept or reject the recommendations being made by the Constitutional Working Group and the Governance Committee to the Council.

Preferred option and reasons

To recommend the proposed changes to the constitution for the reasons set out in the report and appendices.

Recommendations

That the Council be recommended to approve:

1. the amendments to the Constitution detailed in Appendices 1 & 2 to this report;

1. Introduction

- 1.1. The Council's Constitution is reviewed annually to ensure that it remains complete, up to date and reflects current practice and legislation. Some Parts of the Constitution, such as the rules relating to meetings and officer delegations, are likely to need detailed review as they are more likely to be affected by changes to organisational practices and legislation. Other Parts only need periodic detailed examination as they tend not to change significantly over time.
- 1.2. The annual reviews are initiated by officers and their recommendations are submitted in the first instance to the Constitution Working Group. Its recommendations are then passed to the Governance Committee, the Cabinet (where appropriate) and finally Full Council.
- 1.3. The proposed changes to the constitution arising from the annual review were considered by the Governance Committee on 8th March and are set out briefly below and in detail in Appendix 1. Cabinet is asked to consider these in advance of July Council:
 - A minor change to working groups to clarify that attendance of non-working group councillors require permission from the Chair in the same way as any additional cabinet members.
 - Sealing arrangements – to streamline the administrative process by removing an additional requirement for members to witness the seal. This will mean that in future only officers will do so.
 - Minor changes to the Community Funding Scheme to add the Rural England Shared Prosperity Fund. This particular change simply enables decisions to be made in relation to this new fund.
- 1.4. The Mayoral Working Group was also consulted in relation to proposed changes to sealing further details of which are set out below.
- 1.5. Two further changes were also considered by the Constitutional working group on 7th June 2023 and Governance Committee on 21st June 2023. These are set out in Appendix 2 together with background context. The Governance Committee recommends that both changes are made.

2. Changes proposed – working group attendance

- 2.1. Working groups provide a less formal space for a small group of members to be consulted, explore and shape solutions with officers at an early stage

before they are formally considered at relevant council meetings. There is no requirement for working groups to be politically balanced, but the Council has cross party membership in any event. Working group members often develop knowledge/expertise over the course of attendance. Reports and meetings are often prepared and conducted on an assumed level of knowledge. Working Groups do not take formal decisions and matters that arise are formally approved via other mechanisms, including where necessary at public meetings. Non-working group members do not have any automatic right to speak or to see working group reports in any event.

- 2.2. Custom and practice in the past has been to seek permission from the Chair when a non-working group member requests attendance. Such requests do not happen frequently. Whilst on most occasions permission may amount to no more than a courtesy to the chair, it is nonetheless helpful for exceptional cases that arise in practice. The proposal would also rectify an inconsistency in that an additional Cabinet Member needs permission from the chair in any event.

- 2.3. Most members of the Constitution working group were supportive of this change. One councillor expressed concern that the change would be undemocratic, overreaching and controlling in seeking to prevent representatives attending meetings. Other members of the working group highlighted the fact that working groups were supposed to be an informal meeting to discuss ideas with a small group of members before being agreed upon at formal meetings. It was noted that working groups were not a decision-making body and they had proved to be beneficial in developing ideas before considering them at formal meetings.

3. Sealing

- 3.1. There are a large number of property/contractual transactions, orders and other documents that must be made under seal. Legally, only one person is required to witness the seal. There are currently 4 senior officers that can do so and one of them is on site most working days.

- 3.2. The witnessing of the seal is an administrative task as legal staff undertake the necessary checking of the content of documents as well as ensure appropriate authority is in place prior to final agreed documents being prepared for sealing. Sealing usually occurs once or twice a week throughout the year. Some sealing can be predicted and planned in advance but this is not always the case in commercial transactions where negotiations are ongoing and greater agility in completing the transaction once this has occurred is expected.

- 3.3. Chelmsford added the Mayor (and in their absence Deputy Mayor) to the process some years ago. Over time, other authorities have tended to drop this practice and it is now unusual for this to remain. Where a constitution requires duplicate signatories (by having documents signed by both a member and also an officer) this becomes a constitutional requirement which must be fully complied with regardless of urgency or logistical issues that arise. Officer time is taken to co-ordinate routine sealing on a regular basis. Whilst the current and former Mayoralty members have always been gracious accommodating attendance at the civic centre to witness the seal, sometimes through no fault of those members there are logistical issues/delays to signing documents which delays the sealing process and impacts completion of a transaction.
- 3.4. It is proposed to streamline the process so that only one officer is required to witness the seal, thus alleviating the need to coordinate an additional signatory and increasing agility.
- 3.5. The Mayoral Working Group was consulted in relation to this and had divided views about this change. Some were happy with the change on the basis it is an administrative task that could conveniently be undertaken by officers only and which would reduce staff time taken and increase the Council's operational agility. Others felt that the tradition of the Mayor or Deputy Mayor should be retained. It was acknowledged this is a ceremonial role rather than providing any added governance or assurance to the sealing of documents.

4. Conclusion

- 4.1. Cabinet is asked to consider the amendments to the Constitution set out in Appendix 1 & 2 before consideration by Full Council.

List of Appendices

Appendix 1 – Proposed amendments arising from Annual review relating to working group membership, sealing and community funding panels.

Appendix 2 – proposed changes to add a new delegation in relation to neighbourhood planning referenda and modification in relation to fees and charges.

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees: None

Relevant Policies and Strategies:
None

Appendix 1 – proposed changes to the constitution 2023

Item proposed for change	Current version (deletions in blue)	Proposed version (with additions highlighted)
<p>1. Working Groups</p> <p>Minor change to clarify that any non-working group member can only attend a working group meeting with permission with the Chair. This also better aligns the position with that of an “other Cabinet Member” referred to in paragraph 4.2.8A.2.</p>	<p>4.2.8A - WORKING GROUPS</p> <p>4.1.8A.1 - deals with creation of working groups (not reproduced in full)</p> <p>4.2.8A.2 The Cabinet Member whose portfolio is most closely associated with the general work of a Working Group shall be entitled to attend its meetings and speak at them. Other Cabinet Members may, with the permission of the Chair of the Working Group, attend and speak at its meetings if it is considering a matter relating to their portfolios.</p> <p>4.2.8A.3 Other members of the Council may attend working group meetings but are not entitled to speak.</p>	<p>4.2.8A.3 Other members of the Council may, with permission of the Chair of the Working Group attend working group meetings but are not entitled to speak.</p>

<p>2. Witnesses the affixing of the Council's seal</p> <p>Article 15 – to remove the requirement for the witnessing of the Council's seal to be undertaken by both an officer and a member (see background information included in report)</p>	<p>2.15.6 The Common Seal of the Council shall be kept secure by the Legal and Democratic Services Manager and shall be fixed as necessary to any official document of the Council. The Mayor or Deputy Mayor, Chair of the Governance Committee and the Chief Executive, the Director of Connected Chelmsford and the Legal and Democratic Services Manager, or such other person authorised by the Legal and Democratic Services Manager, shall witness the fixing of the seal to a document. The use of the seal shall be recorded in the Seal Register.</p>	<p>2.15.6 The Common Seal of the Council shall be kept secure by the Legal and Democratic Services Manager and shall be fixed as necessary to any official document of the Council. The Chief Executive, the Director of Connected Chelmsford and the Legal and Democratic Services Manager, or such other person authorised by the Legal and Democratic Services Manager, shall witness the fixing of the seal to a document. The use of the seal shall be recorded in the Seal Register.</p>
<p>3. Minor change to Chelmsford Community Funding Scheme terms of reference in paragraph 3.2.4 of the constitution</p> <p>The purpose of the change is to add the Rural England Prosperity Fund Grant Scheme. For ease of reference current paragraphs 1 and 4 have been combined. The key addition proposed is highlighted.</p>	<p>3.2.4. 1. To oversee the governance of Chelmsford's Community Funding Scheme, which includes the Neighbourhood Allocation of the Community Infrastructure Levy (CIL) in the nine unparished wards and the Council's Discretionary Corporate Grant Aid fund.</p> <p>2. no change</p> <p>3. no change</p> <p>4. To oversee the governance of the Greener Chelmsford Grant scheme and to make recommendations on spend to Cabinet and Council as appropriate</p>	<p>1. To oversee the governance of Chelmsford's Community Funding Scheme, which includes the Neighbourhood Allocation of the Community Infrastructure Levy in the nine unparished wards, the Greener Chelmsford Grant Scheme, the Discretionary Corporate Grant Aid scheme and the Rural England Prosperity Fund Grant Scheme. Appropriate recommendations on spend to Cabinet and Council are made as appropriate.</p>

APPENDIX 2 - TWO FURTHER PROPOSED CHANGES TO CONSTITUTION

Item proposed for change	Current version in constitution	Changes proposed (tracked in red)
<p>1. Neighbourhood Planning Statutory Functions</p> <p>Proposal</p> <p>To add an officer delegation to enable the timely progress of statutory functions related to Neighbourhood Plans to take place.</p> <p>Background</p> <p>On 14 March 2023 Cabinet resolved that the statutory functions of considering examiner’s reports and recommendations for the six Neighbourhood Plans under preparation, including (where applicable) the decision to proceed to referendum be delegated to the Director of Sustainable Communities in consultation with the Cabinet Member for Sustainable Development.</p> <p>This has enabled the Council to be able to make decisions on whether Neighbourhood Plans should</p>	<p>Nothing currently in constitution</p>	<p>To add a new delegation to the Director of Sustainable Communities under paragraph 3.4.7</p> <p>All matters (including statutory functions) relating to the development and making of Neighbourhood Development Plans.</p>

proceed to referendum within the statutory 5 weeks of receiving an examiner's report.

Once a referendum has been held, the Council is required to 'make' (adopt) the plan if more than half of those voting in a referendum have voted in favour of the plan. For the two 'made' Neighbourhood Plans (South Woodham Ferrers and Writtle) this final decision was made by Full Council.

The Council must make the plans as soon as reasonably practicable after the referendum is held (The Planning and Compulsory Purchase Act 2004, Section 38A).

This is further clarified in The Neighbourhood Planning (General) Regulations 2012, which sets out at Regulation 18A the prescribed date for making a neighbourhood development plan as 'the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held'.

Whilst the regulations state that a plan must be 'made' in these circumstances, it does not prescribe at what level the decision must be made.

It was fortunate that the timing of the referendums for the South Woodham Ferrers and Writtle

Neighbourhood Plans fell conveniently within the committee cycle so that the decision to make the plans could be taken by Full Council within the prescribed timeframe.

However, for forthcoming Neighbourhood Plans this may not be the case. For example, at Little Baddow the examiner's report has been received recommending that the plan be subject to a referendum. It would be natural to arrange this as soon as possible, to continue the momentum for the local community. However, due to the required timeframe to arrange a referendum there could be a gap of 4-5 months between the referendum and the following meeting of the Council in December.

There are some options potentially available:

- Delay a referendum to a date 8 weeks or less before the next planned Full Council meeting. However, this could be considered to be an unwarranted delay, and disrupt the momentum for the local community and the interest in voting in the referendum.
- Arrange one or more additional meetings of the Full Council to meet the required timeframe for making a plan as they arise. This may be considered to be an additional burden on Members and officers if meetings

<p>needed to be arranged to consider a single item of business.</p> <ul style="list-style-type: none"> Amend the Council's constitution to allow the statutory functions of Neighbourhood Plan decision-making to be delegated to the Director of Sustainable Communities (in consultation with the appropriate Cabinet Member if appropriate). <p>This final option of changing the constitution is the preferred option recommended to the working group.</p>		
<p>2. Change to fees and charges</p> <p>The following changes are being put forward by officers to re-align delegation levels with current financial limits (eg supplementary estimates). The changes also reflect current working practice and provide clarification. The separate identification of any increases over £200k for existing charges are designed to provide transparency to members within the formal budget approval process.</p>	<p>Existing Charges (<i>the budget guidelines approved annually by Council include a standard average rate of increase for fees and charges</i>)</p> <p>Work with Directors to set the average charges across a Directorate (as measured by price change or increase in yield) at that standard rate. If this is not possible then Council approval should be sought via Accountancy.</p> <p>There are specific delegations for fees and charges for major events</p>	<p>Fees and Charges amendments within the annual budget process. <i>The budget guidelines approved annually by Council include a standard assumption for the average increase (for financial planning), this is not intended to be the outcome increase for any charge. Increases in charges should be determined in the manner below:</i></p> <ul style="list-style-type: none"> <i>The proposals for fees and charges will be determined by the Director in consultation with the responsible Cabinet member.</i>

	<p>in parks and regulatory Licences elsewhere in the constitution.</p>	<ul style="list-style-type: none">ii. The fees and charges proposals will have determined after making any appropriate comparisons including other local authorities and private sector providers of similar services in the appropriate geographical area. This will include consideration of equalities.iii. The charges do not have to match the assumed percentage increase in the financial planning.iv. Annually by the end of October Directors will provide for budget planning draft proposals for increases in fees and charges for their service areas. <p>The Budget report made each January will identify separately the increase in total monetary value of fees and charges by service area (a service as set out in the annual budget report), where they generate any increase over £200k compared to the previous year's budget.</p>
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	<p>New Fees and Charges: Chief Executive and Directors, in consultation with the relevant Cabinet Member, can establish any new fees and charges for any service for which they are responsible, provided it is expected to generate no more than £50,000 in a full year; and where the annual income generated by the new charge is estimated to above £50,000 then approval will be required from Councillors as follows:</p> <ul style="list-style-type: none"> · £50K to £250K – Cabinet · Over £250K - Full Council 	<p>New Fees and Charges: Chief Executive and Directors, in consultation with the relevant Cabinet Member, can establish any new fees and charges for any service (as set out in the annual budget report) for which they are responsible, provided it is expected to generate no more than £50k£200k in a full year; and where the annual income generated by the new charge is estimated to above £50k£200k then approval will be required from Councillors as follows:</p> <ul style="list-style-type: none"> · £50k£200K to £250k1m – Cabinet · Over £250k£1m - Full Council
	<p>Amendments to Fees and Charges: Chief Executive and Directors, in consultation with the relevant Cabinet Member, can amend fees and charges for which they responsible, provided that across the Council any (all) amendments generate no more than £50,000 in a full year. Changes to Fees and Charges that would be above £50,000 in a full year, require approval as follows :</p> <ol style="list-style-type: none"> 1. £50K to £250K – Cabinet 	<p>Amendments to Fees and Charges: Chief Executive and Directors, in consultation with the relevant Cabinet Member, can amend fees and charges for which they responsible, provided that any service area (as set out in the annual budget report) amendments generate no more than £50k£200k in a full year. Changes to Fees and Charges that would be above in a full year, require approval as follows :</p> <ul style="list-style-type: none"> · £50k£200K to £250k1m – Cabinet

	2. Over £250K - Full Council	1. Over £250k £1m - Full Council
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