

## COUNCIL

25 MARCH 2025

### JOINT REPORT OF THE MONITORING OFFICER AND THE CABINET

#### A.4 ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION

##### PART 1 – KEY INFORMATION

###### **PURPOSE OF THE REPORT**

This report asks Council to approve the Cabinet's recommended changes to the Constitution which followed a review undertaken by the Portfolio Holder for Corporate Finance and Governance through a Working Party constituted for that purpose.

The main proposals cover several miscellaneous amendments to the Articles of the Constitution, Council Procedure Rules and the Overview and Scrutiny Procedure Rules, in order to ensure the Council's Constitution remains effective, efficient and consistent at an operational level. The key changes to each of these documents are highlighted within the body of this Report.

###### **EXECUTIVE SUMMARY**

The Review of the Constitution Portfolio Holder Working Party (CRWP) met on 19 February 2025 and the meeting was attended by its Chairman, the Corporate Finance & Governance Portfolio Holder (Councillor M E Stephenson) as well as Councillors Guglielmi, Kotz, Talbot and Wiggins.

The recommendations arising from that meeting of the CRWP were then submitted to the meeting of the Cabinet held on 17 March 2025, together with some additional minor amendments that were required for clarity highlighted by the Section 151 Officer and the Monitoring Officer and the Leader of the Council who is proposing to amend the responsibilities for Cabinet and an individual Portfolio Holder, in one area.

A summary of the Cabinet's proposed changes compared to the existing Parts of the Constitution is provided under each heading in the background section of this report and in each case, the content has been revised to provide greater clarity, ensure effectiveness and efficient up to date working practices for both Members and Officers and also to ensure it is in accordance with legislation, where necessary.

###### **RECOMMENDATION**

1. That Council approves that:

- (a) the Council's Constitution be amended to reflect the proposed changes as set out in Appendices A to J attached hereto this report; and
- (b) the membership of the Audit Committee be increased to seven (from five) with effect from the Annual Meeting of the Council on 29 April 2025.

2. That Council endorses the intention to introduce from April 2025 a new box within the standard template for Cabinet and Committee reports and that the new box will be headed "Devolution and Local Government Reorganisation Implications".

**3. That Council notes the Leader of the Council's intention to amend the Scheme of Delegation to Portfolio Holders, especially in relation to the process regarding Traffic Regulation Orders, as set out in Appendix K.**

**REASON(S) FOR THE RECOMMENDATION(S)**

Having considered the outcome of the annual review of the Constitution carried out by the Review of the Constitution Portfolio Holder Working Party, together with the additional items put forward by the Section 151 Officer, the Monitoring Officer and the Leader of the Council and the Cabinet's recommendations arising from its consideration of the aforementioned matters, and to enable those recommendations to be approved and adopted.

**ALTERNATIVE OPTIONS CONSIDERED**

- (1) Not to approve some or all the Cabinet's recommendations; or
- (2) To amend or substitute some or all the Cabinet's recommendations.

**PART 2 – IMPLICATIONS OF THE DECISION**

**DELIVERING PRIORITIES**

Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities.

**OUTCOME OF CONSULTATION AND ENGAGEMENT**

The outcome of the annual review of the Constitution by the Review of the Constitution Portfolio Holder Working Party and reported to Cabinet is set out elsewhere within this report.

**LEGAL REQUIREMENTS (including legislation & constitutional powers)**

Is the recommendation a Key Decision (see the criteria stated here)	YES/NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	Not Applicable in this instance

**X The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:**

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance. Article 15 also provides authority to the Monitoring Officer to make minor changes to the Constitution arising from changes to the organisational structure of the Council.

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and best practice.

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority, operating executive arrangements, must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

All comments within the Monitoring Officer's responsibility are picked up throughout the content of the report, where the principles around Officers exercising delegated powers is being emphasised. This is also to reflect the requirements of the revised Best Value Statutory Guidance issued in May 2024.

## **FINANCE AND OTHER RESOURCE IMPLICATIONS**

### **Risk**

Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Council's overall governance arrangements.

<b>X</b>	<b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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Any additional amendments required to the Constitution arising through operational matters, have been raised with the Monitoring Officer and captured within the body of the report.

## **USE OF RESOURCES AND VALUE FOR MONEY**

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Best value authorities must demonstrate good governance, including a positive organisational culture, across all their functions and effective risk management.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The Constitution sets out the Council's standing orders and associated scheme of delegation, policies and procedures for decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Governance is a theme of the Best Value Duty and is described (amongst other things) as ensuring decision-making processes, within clear schemes of delegation, should be transparent, regularly reviewed, clearly followed and understood, enabling decision-makers to be held to account effectively. There should also be evidence of the decisions following good public law decision making principles (reasonableness, rationality, proportionality,

	legality, fairness etc).
<b>MILESTONES AND DELIVERY</b>	
Annual review of the Constitution carried out by the Review of the Constitution Portfolio Holder Working Party – February 2025.	
Submission of Corporate Finance & Governance Portfolio Holder’s recommendations to formal Cabinet meeting – 17 March 2025.	
Submission of Cabinet’s recommendations to Full Council for approval and adoption – 25 March 2025.	
Implementation of approved changes to the Constitution (where they do not have an immediate effect) – from commencement of the 2025/2026 Municipal Year.	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
Not implementing the amendments to the Constitution will negatively impact the Council’s governance arrangements.	
<b>EQUALITY IMPLICATIONS</b>	
The purpose of the Constitution is to:	
<ol style="list-style-type: none"> <li>1 Provide key elements of the Council’s overall governance arrangements;</li> <li>2 Enable decisions to be taken efficiently and effectively;</li> <li>3 Create an effective means of holding decision-makers to public account;</li> <li>4 Enable the Council to provide clear leadership to the community, working in partnership with the local community, businesses and other organisations for the long term well-being of the District;</li> <li>5 Support the involvement of the local community in the process of local authority decision making;</li> <li>6 Ensure that no one will review, or scrutinise, a decision in which they were directly involved;</li> <li>7 Help Councillors represent their residents more effectively;</li> <li>8 Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for their decisions; and</li> <li>9 Provide the framework and structure in which cost effective quality services to the community are delivered.</li> </ol>	
<b>SOCIAL VALUE CONSIDERATIONS</b>	
There are none associated with this report however, the Council’s Procurement Procedure Rules make reference to the Public Services Social Value requirements.	
<b>IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030</b>	
There are no direct implications.	
<b>OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS</b>	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
<b>Crime and Disorder</b>	None
<b>Health Inequalities</b>	None
<b>Area or Ward affected</b>	None directly.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

The CRWP reviewed various areas of the Constitution, and the following changes are now recommended by Cabinet (please note that any references to Part numbers relate to the Constitution prior to any amendments now submitted):

#### 1. **Article 2 – Members of the Council (Part 2): (Part 2.3 to 2.4)**

##### Article 2.03(b) (Roles and Functions of all Councillors – Rights and Duties)

To include that it is a duty of Councillors to undertake all relevant training and to keep themselves up to date on such training.

##### New Article 2.06 (Training/Development Records of Members)

To set out that the training/development records of Members will be centrally held by the Monitoring Officer through the Leadership Support Team and that Members' training/development would be organised/facilitated through that Team.

*The proposed changes to Article 2 are shown in **RED** in **Appendix A**.*

#### 2. **Article 3 – Citizens and the Council**

##### Article 3.01(c) (Participation)

To include a reference to the public's right to submit a petition under the Council's Scheme for Dealing with Petitions. This would correct an omission.

*The proposed changes to Article 3 are shown in **RED** in **Appendix B**.*

#### 3. **Section 4.2.2 (Role of Leader and individual Portfolio Holders) – Schedule 3 (Responsibility for Executive Functions) – Part 3 of the Constitution**

To make reference to training and development for Cabinet Members.

*The proposed changes to Section 4.2.2 of Schedule 3 of Part 3 of the Constitution are shown in **RED** in **Appendix C**.*

#### 4. **Council Procedure Rule 11 – Questions by Members**

Minor correction to Rule 11.5(e) (Reasons for rejection of Questions). Change reference to "Members' Code of Conduct~~or~~" to read "Members' Code of Conduct".

*The proposed change to Council Procedure Rule 11 is shown in **RED** in **Appendix D**.*

#### 5. **Council Procedure Rule 16.6 (Alteration of Motion)**

For the avoidance of doubt, to make clear that this rule applies to any amendment made at the meeting by another Member.

*The proposed changes to Council Procedure Rule 16.6 is shown in **RED** in **Appendix E**.*

#### 6. **Council Procedure Rules 33.3, 34.2 and 34.3 – Training Members of the Audit,**

**Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees; Eligibility and Effect (Appointment of Substitute Members; and Training Substitute Members of the Audit, Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees**

Following amendments to Rules 33.3 and 34.3 (where relevant):-

- Deletion of the sentence relating to the Monitoring Officer's definition of what is meant by the word "mandatory" and whether the training offered/provided was "sufficient and fit for purpose".
- That this needs to be linked to the following paragraphs in Rule 33.3.
- That a provision for the Monitoring Officer to be able to approve alternative arrangements for training to enable Members to attend and take part in the business of the agenda for a particular meeting should be included.
- References to Licensing and Registration Committee should be amended to include its Sub-Committees.
- An expansion of the section concerning training content for Councillors to determine matters on a range of Committees (and Cabinet).

Following amendment to Rule 34.2 to avoid any uncertainty or doubt:-

*"In those circumstances where the Member who wishes to be substituted has recently left one political group and joined another or if they move to a non-aligned position and, in the absence of a review of the allocation of seats to political groups, the seat remains within the control of the Member's previous Group then it shall be for the Leader of that Group to appoint a substitute."*

*The proposed changes to Council Procedure Rules 33 and 34 are shown in **RED** in **Appendix F**.*

**7. Overview and Scrutiny Procedure Rules (Part 5)**

The Working Party considered and Cabinet endorsed the proposed amendments to Overview & Scrutiny Procedure Rules 16 and 18. The proposed changes relate to:-

- (i) Rule 16 (Attendance by Others) = include within that Rule that Ward Members would be invited to attend before the Committee if there was an item on the agenda that was specific to their Ward and to have the facility to address the Committee and/or answer Members' questions.
- (ii) Rule 18 (Exceptions to Call-In) = to be amended, for the avoidance of doubt, by the addition of a new paragraph (g) as follows:-

*"(g) Appointment by the Leader of the Council of Members to serve on the Cabinet as Portfolio Holders."*

*The proposed changes to the Overview & Scrutiny Procedure Rules are shown in **RED** in **Appendix G**.*

**8. Membership of the Audit Committee**

At its meeting held on 19 February 2024 (Note 13 refers) and at the request of the Monitoring Officer, the Review of the Constitution Portfolio Holder Working Party

considered, inter alia, whether the size of the Audit Committee should be raised back up to seven members to match the size of the Standards Committee. Following that discussion it was:-

**AGREED** that the Working Party requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that the membership of the Audit Committee be increased to seven Members.

Cabinet concurred with that recommendation at its meeting held on 17 March 2025.

#### **OTHER MATTERS CONSIDERED:**

##### **1. Planning Committee: Terms of Reference and Members' Referral Scheme for Planning Applications and Order of Agenda Items – Proposed Amendments by Members**

The CRWP was informed that, at the meeting of the Full Council held on 19 March 2024 (Minute 139 referred), Members had considered in accordance with the provisions of Article 15.02 (a) and (c) of the Council's Constitution, the recommended changes to the Constitution put forward by the Monitoring Officer and the Cabinet following a review undertaken by the Corporate Finance and Governance Portfolio Holder through a Working Party constituted for that purpose.

During the debate on this matter Councillor Harris had moved and Councillor Alexander had seconded the following amendment:-

*“(d) that the terms of reference of the Planning Committee and the Members' Referral Scheme for Planning Applications be amended to allow the relevant Ward councillor(s) (or in exceptional circumstances, a member of the Planning Committee with the approval of the Chairman of the Planning Committee) to 'call-in' to the Planning Committee any planning application submitted to remove a Tree Preservation Order.”*

Following a debate on Councillor Harris' amendment and pursuant to the provisions of Council Procedure Rule 16.5(e), and following an undertaking given by the Monitoring Officer that the purpose of his amendment would be considered, in due course, by the Review of the Constitution Portfolio Holder Working Party, Councillor Harris had withdrawn his amendment with the consent of his seconder.

Councillor Bray had then referenced a further amendment that he had intended to move in relation to the order of business on Planning Committee Agendas. However, in the light of the above, Councillor Bray had informed Council that he would now pursue that intention via the Review of the Constitution Portfolio Holder Working Party.

The text of Councillor Bray's putative amendment had been as follows:-

*“That Council Procedure Rule 35.1 be amended to include the following sentence:*

*That, (notwithstanding the prerogative of the Chairman of the Planning Committee), for all future meetings of the Planning Committee, any planning application whereby Tendring District Council is the applicant or has a material interest (e.g. it is the landowner/landlord) will normally be heard first ahead of any other planning applications on the Agenda.”*

The CRWP AGREED that:-

“(1) the Working Party, having considered the text of Councillor Harris’ amendment, as set out above, does not wish, at this time, to request the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that Councillor Harris’ proposed changes to the terms of reference of the Planning Committee and the Members’ Referral Scheme for Planning Applications, as contained within the Members’ Planning Code & Protocol, be approved and implemented. This is because of the imminent national review of planning delegations that is due to take place. However, Officers should be reminded of the principles underpinning working relationships as set out within the Protocol on Member and Officer Relations and the application of those principles to delegations to Officers.

(2) the Working Party, having considered the text of Councillor Bray’s amendment, as set out above, does not wish to request the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that Councillor Bray’s proposed changes to the order of business on Planning Committee agendas be approved and implemented. This is because the Chairman of the Committee already has the prerogative to change the order of business on the agenda if it will assist in the efficient conduct of the meeting.”

Cabinet endorsed the CRWP’s decision at its meeting held on 17 March 2025.

## **2. Planning Committee: Terms of Reference and Members’ Referral Scheme for Planning Applications – Further Matters**

The Working Party was informed that, at its meeting held on 21 October 2024 (Minute 65 referred) Cabinet had considered a detailed report of the Housing and Planning Portfolio Holder (A.3), which had sought its agreement to adopt a policy statement on ‘Biodiversity Net Gain’ (BNG) which would serve as the Council’s interim corporate position on the subject, pending detailed consideration as part of the forthcoming Local Plan review. Having an interim policy would enable the Council to respond positively and constructively in its consideration of BNG as part of the planning process; and in the consideration of proposals to set up ‘Habitat Banks’ by Tendring landowners and, potentially, on Council-owned land.

It had RESOLVED that Cabinet –

- 1) *notes the contents of this report which, amongst other things, explains the Council’s obligations around Biodiversity Net Gain (BNG), the role of Habitat Banks and the potential consideration of Council-owned land for BNG purposes;*
- 2) *agrees that proposed ‘Policy on Biodiversity Net Gain (BNG)’ (attached as Appendix 1 to the Portfolio Holder’s report (A.1)) is adopted as the Council’s interim corporate position pending the outcome of the Local Plan review, for the purposes of dealing with matters relating to BNG;*
- 3) *refers the aforementioned policy to the Planning Policy and Local Plan Committee for its consideration for inclusion in the Tendring District Local Plan as part of its current review;*
- 4) *invites the Planning Committee, at its earliest convenience, to consider and determine how it will exercise its power in respect of Council decisions on entering*



*into legal agreements with landowners under Section 106 of the Town and Country Planning for the purposes of setting up Habitat Banks, guided by the aforementioned policy and the advice of Officers – including the extent to which the Committee deems it appropriate for such decision-making powers to be delegated to Officers; and any arrangements for public consultation on specific proposals; and*

- 5) *notes that the Portfolio Holder responsible for Housing and Planning in liaison with Officers will, in due course, consider and publish details of the fees to be charged to developers and landowners to cover the Council's costs in respect of monitoring BNG in line with its statutory obligations."*

It was hoped that the Planning Committee would carry out its considerations (as detailed in 4) above) at a meeting in March 2025.

It was also reported that several Members had requested to the Monitoring Officer that the Members' Referral Scheme for Planning Applications be extended to apply to householder applications, in exceptional circumstances, which currently were excluded. A Householder application was defined by TDC as follows:-

*"A 'householder' application is an application to enlarge, expand, improve or alter an existing dwelling, to put up a boundary wall or fence for an existing dwelling or carry out an operation in the curtilage of an existing dwelling that is ancillary to the dwelling-house."*

Examples of certain householder planning applications that the Members concerned would have wished to have been referred to the Planning Committee for its determination were relayed at the meeting.

The Working Party had AGREED:-

"(1) in principle, that the decision making powers in respect of Council decisions on entering into legal agreements with landowners under Section 106 of the Town and Country Planning for the purposes of setting up Habitat Banks under the Council's Biodiversity Net Gain (BNG) Policy should be delegated to Officers and that should any proposals forthcoming from the Planning Committee in due course, as to how it will exercise its powers and delegations et cetera in relation to BNG applications concur with the Working Party's view then the Corporate Finance & Governance Portfolio Holder will be authorised to submit those proposals to Full Council (via the Cabinet) for approval; and

(2) that it does not wish, at this time, to request the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that the Members' Referral Scheme for Planning Applications, as contained within the Members' Planning Code & Protocol, should now also apply to 'householder applications' but instead requests the Director (Planning and Communities) to consider the representations made by Members and to produce and circulate for comment to the Working Party pragmatic wording that would see Officers submitting certain 'householder applications' to the Planning Committee in very exceptional circumstances following representations from Members."

The Cabinet endorsed the decisions of the CRWP at its meeting held on 17 March 2025.

### **3. Planning Committee: Standard Template for Reports**

The Working Party had been informed that the Head of Planning and Building Control had unilaterally proposed that the standard template used for reports to the Planning Committee be reviewed.

The Working Party had completely endorsed the Monitoring Officer's premise that any proposed changes to any Cabinet / Committee report template must go through the proper corporate review process.

To that end the Working Party had NOTED that any such revised Planning Committee report template arising from that review would be submitted to the Working Party for its consideration in due course.

### **4. Procurement Procedure Rules**

The CRWP was made aware that the Cabinet was due to consider, at its meeting to be held on 21 February 2025, a report of the Assets and Community Safety Portfolio Holder which would update Cabinet on the progress of the collaboration procurement service, known as the Essex Procurement Partnership and which would seek approval for the Collaboration Agreement to be entered into, replacing the arrangement directly with Essex County Council and endorsing the proposed Procurement Strategy for the Essex Procurement Partnership, as the interim strategy for the Council.

Once the interim Procurement Strategy had been formally adopted by this Council, work would commence on a full-scale review. As part of that review the Procurement Procedure Rules would be revised. Those revised Procedure Rules would be submitted to the Working Party for its consideration in due course.

It was AGREED that –

- (1) the Working Party notes that, as part of the review of the Council's Procurement Strategy, revised Procurement Procedure Rules will be produced; and
- (2) the Working Party further notes that the above-mentioned revised Procurement Procedure Rules will be submitted to it for its consideration in due course.

Cabinet noted and endorsed the CRWP's stance at its meeting held on 17 March 2025.

### **5. Financial Procedure Rule 18 (State Aid)**

The Working Party had been informed that Financial Procedure Rule 18 (State Aid) would be replaced in its entirety.

It was reported that the heading would be changed to "Subsidy Control" and the wording of that Procedure Rule would reflect the statutory provisions of the Subsidy Control Act 2022. That Act had introduced subsidy control regimes that set rules, procedures and processes that allowed public authorities to award subsidies to achieve public policy objectives, whilst also limiting the negative effects of subsidies on domestic and international competition and investment.

The Working Party had NOTED the foregoing as did Cabinet at its meeting held on 17 March 2025.

## 6. Audit Committee – Independent Person

At the request of the Monitoring Officer, the CRWP had considered, inter alia, whether an Independent Person on the Audit Committee (once appointed) should be appointed as its Chairman.

The CRWP had been informed that CIPFA Guidance stated -

- *“The audit committees of local authorities should include co-opted independent members in accordance with the appropriate legislation. Where there is no legislative direction to include co-opted independent members, CIPFA recommends that each authority audit committee should include at least two co-opted independent members to provide appropriate technical expertise.*
- *When selecting elected representatives to be on the committee or when co-opting independent members, aptitude should be considered alongside relevant knowledge, skills and experience.*
- *The appointment of co-opted independent members on the committee should consider the overall knowledge and expertise of the existing members.”*

It had been reported that the Audit Committee, at its meeting held on 25 July 2024 (Minute 40 referred), had resolved inter alia:-

*“in noting the action set out in Appendix A relating to the appointment of Independent Persons to the Audit Committee, endorses the approach of appointing at least two such people and requests Officers to review the arrangements necessary and presents an associated plan to the next meeting of the Committee;”*

The Working Party was informed that the Audit Committee, at its meeting held on 26 September 2024 (Minute 47 referred), had resolved inter alia:-

- “b) in respect of the appointment of an Independent Person(s) to the Audit Committee, the Committee:-*
- i) notes and agrees the actions set out in this report;*
  - ii) requests Officers to finalise a draft role / person specification and to make the necessary arrangements to consult with members of the Audit Committee as highlighted in the plan; and*
  - iii) that the outcome of the above be presented to the meeting of the Committee due to be held in January 2025.”*

Members had been made aware that the draft role / person specification would now be presented to the Audit Committee in March 2025. Based on the outcome of the actions above, the Audit Committee’s recommendation would then be presented to Full Council in May 2025 (including, if necessary, to include a delegation to the Chief Executive to undertake any associated appointment process in consultation with the Audit Committee’s Chairman).

The Working Party had AGREED, inter alia, that it did not wish to request the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that an Independent Person (once appointed) should be appointed to serve as the Chairman of the Audit Committee and, accordingly, the current position whereby the Chairman of that Committee is a Member of the Council be continued.

The Cabinet endorsed the Working Party's stance at its meeting held on 17 March 2025.

## **7. Article 10 (Area Committees and Forums)**

The Monitoring Officer gave a verbal update to the CRWP on the changes being made to Article 10 in accordance with the outcome of the last review of the Council's Constitution and the delegated power that had been granted to her by Full Council.

The Monitoring Officer had informed the Working Party that she was no longer comfortable with exercising that delegated power in view of the passage of time that had elapsed. The Monitoring Officer would therefore submit the revised Article 10 in due course for the Working Party's consideration.

The Working Party was made aware that Article 10 was being revised to take into account matters such as:-

- (1) changed titles of bodies;
- (2) newly formed bodies e.g. the Clacton Town Board; and
- (3) the rectification of any previous omissions.

The CRWP had also been advised that, when receiving the revised details for Article 10 Forums. Consideration should also be given to the application of the principles from the Council's Community Engagement Strategy and the extent to which the article 10 arrangements met the expectations of that Strategy.

The Working Party had NOTED the foregoing as did Cabinet at its meeting held on 17 March 2025.

## **8. Members' Allowances Scheme – Increase in Amounts Payable**

The Working Party was informed that the amounts payable under the Council's adopted Members' Allowances Scheme would increase in April 2025 by 4.2% [provisional figure] in accordance with the Public Sector Pay Position at December 2024 compared with December 2023, which was the Council's adopted Index for such matters.

The CRWP NOTED the foregoing as did Cabinet at its meeting held on 17 March 2025.

## **9. New Box within the standard template for Cabinet and Committee reports**

The Working Party had been made aware that it was intended to introduce from April 2025 a new box within the standard template for Cabinet and Committee reports. That new box would be headed "Devolution and Local Government Reorganisation Implications".

The Working Party had ENDORSED the foregoing as did Cabinet at its meeting held on 17 March 2025.

## **MATTERS ARISING SINCE THE MEETING OF THE CRWP**

Three separate matters that require amendments to the Constitution have arisen since the meeting of the CRWP namely:-

## 10. Amendments suggested by the Monitoring Officer and the Section 151 Officer

### Financial Procedure Rules 6 and 16

Two technical amendments suggested to the Financial Procedure Rules by the Section 151 Officer:-

- (i) **Part 5.39 – Paragraph 6.14 No specific supplementary estimate approval is required at any time for the following (a)** to include the words “*or associated reserve*” following “*in advance holding account*”.
- (ii) **Part 5.61 – External Funding, include a new paragraph 16.5** with the additional wording “*Should an application for External Funding be successful, a separate recorded decision is required relating to acceptance of the funding, the terms and conditions and how the funding will be used. Such decision will take into consideration all the necessary implications in the required format.*”

*The proposed changes to the Financial Procedure Rules are shown in **GREEN** in Appendix I.*

### Overview and Scrutiny Procedure Rules (Part 5.31)

To ensure the exemption to Call-in (as set out in Rule 18) applies to the executive decisions taken at Cabinet meetings, or by individual Cabinet Members or by Officers (who are making a Key Decision as defined in Article 13.03), as defined in Rule 17.

#### **Rule 18 - EXCEPTIONS TO CALL-IN**

***To be amended as shown below in italics:***

The call-in procedure set out above shall not apply in respect of ~~Cabinet decisions~~ “*executive decisions taken at Cabinet meetings, or by individual Cabinet Members or by Officers (who are making a Key Decision as defined in Article 13.03), as defined in Rule 17*”.

*The proposed changes to the Overview & Scrutiny Procedure Rules are shown in **GREEN** in Appendix G.*

### Scheme of Delegated Powers – Schedule 2 – Responsibility for Council (Non-Executive) Functions – GENERAL MATTERS/PRINCIPLES (Part 3.6)

Consistency on the principles applying to Officers exercising delegated powers for both Executive (Part 3.46) and Non-Executive functions (ensuring the same wording is used and emphasising the discharge of these functions by Officers is subject to criteria); and

Extend the wording in paragraph 7, to include “*in addition, to the legal obligations to record the decision in the required format.*”

*The proposed changes to the Scheme of Delegated Powers – Schedule 2 – Responsibility for Council (Non-Executive) Functions – GENERAL MATTERS/PRINCIPLES (Part 3.6) are shown in **GREEN** in Appendix J.*

**11. Minor clarification required to Officers exercising an discretion on the Members' Referral Scheme under the Planning Committee's Terms of Reference**

(viii) The Director (Planning), or other authorised Officer, following consultation with the Chairman of the Planning Committee and the Planning Solicitor, can may allow a Member's referral request that is received after the 35 day cut-off if they are satisfied that the request could not have reasonably been submitted before the deadline and that in all other respects it meets the requirements for a valid referral.

*(NOTE: an Officer decision will be required in exercising this discretion to allow or refuse with reasons being produced and published to the Council's website.)*

*This change is set out in **Appendix H**.*

**12. Leader of the Council's Proposed changes to the Executive Functions - Scheme of Delegation covering the Traffic Regulation Order process**

Part 3 – Schedule 3 – Executive Functions states:

**4.1 THE CABINET COLLECTIVELY (Part 3.30)**

*The following details the broad principles of issues that are the responsibility of the Cabinet and which shall be considered by the Cabinet collectively at public meetings:*

*Paragraph 9 - Power to consider objections received and then determine proposed Traffic Regulation Orders under the Road Traffic Regulations Act 1984 (as amended). All such objections to be determined at a public meeting of the Cabinet.*

This means that if any objections are received, consideration should go to Cabinet and not be determined by the Portfolio Holder on their own.

**4.3 ADDITIONAL SPECIFIC DELEGATIONS TO INDIVIDUAL PORTFOLIO HOLDERS**

**Leisure and Public Realm**

*2. Proposals for and approve the making of traffic regulation orders where no objections are received.*

This covers the situation where no objections are received. In both circumstances, a Decision would be required with reasons for selecting the Traffic Regulation Orders (TROs) and proceeding, if objections were received, these would be set out in a Cabinet Report.

On the basis that the initial process in the selection of TROs does require local consultation to be carried out, the proposals are sent onto the North Essex Parking Partnership to undertake the formal process, including consultation. Therefore, upon review, the Leader of the Council does not feel that initial objections to a proposal should be considered by the Cabinet, in its strategic responsibility. Whilst the Leader does have the authority to amend the Scheme of Delegation for Cabinet, he wishes to seek full Cabinet's approval to the change of practice to allow the Portfolio Holder to deal with all initial TRO requests, making published decisions with reasons, whether objections are received or not, as these ultimately go onto the NEPP in any event. Any Executive Decision made either by Cabinet or an individual Portfolio Holder is subject to call in, upon certain criteria applying. This delegation would not apply to any TROs within the

relevant Portfolio Holder's ward, and in such cases, these will be referred to the Leader to make the decision.

Leader's Proposal:-

Paragraph 9 (as stated above) would be deleted from the Cabinet's collective responsibility. The delegated power to the Leisure and Public Realm Portfolio Holder would be amended to the following:

*"The selection and rejection of proposals for the making of traffic regulation orders being submitted to the North Essex Parking Partnership will be authorised by the Portfolio Holder, whether objections have been received to initial proposals. Reasons for such selection or rejection will be published following consultation with the relevant ward councillor. Such delegation cannot be exercised for proposed traffic regulation orders within the Portfolio Holder for Leisure and Public Realm's ward and in such cases, would be referred to the Leader for determination."*

**PREVIOUS RELEVANT DECISIONS**

Meeting of the Council – 19 March 2024 - Minute 139 (Joint Report of the Monitoring Officer and the Cabinet - A.3 - Annual Review of the Council's Constitution) – Resolution (c) – “Council notes, welcomes and endorses that the Monitoring Officer, in consultation with the Corporate Finance & Governance Portfolio Holder, intends to exercise her delegated powers and make amendments to the following part of the Council's Constitution:-

Article 10 (Community Consultation and Participation) - Table 2 will be updated.”

**BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

Notes of the meeting of the Review of the Constitution Portfolio Holder Working Party held on 19 February 2025.

Review of the Constitution Report and Appendices of the Corporate Finance & Governance Portfolio Holder submitted to the meeting of the Cabinet held on 17 March 2025.

Published Decisions made by Cabinet on 17 March 2025.

**APPENDICES**

**A.4**

<b>APPENDIX A</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 2 (Members of the Council)</b>
<b>APPENDIX B</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 3 (Citizens and the Council)</b>
<b>APPENDIX C</b>	<b>Part 3</b>	<b>Section 4.2.2 (Role of Leader and individual Portfolio Holders) – Schedule 3 (Responsibility for Executive Functions)</b>
<b>APPENDIX D</b>	<b>Part 4</b>	<b>Council Procedure Rule 11 (Questions by Members)</b>
<b>APPENDIX E</b>	<b>Part 4</b>	<b>Council Procedure Rule 16 (Rules of Debate)</b>
<b>APPENDIX F</b>	<b>Part 4</b>	<b>Council Procedure Rules 33.3, 34.2 and 34.3 – Training Members of the Audit, Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees; Eligibility and Effect (Appointment of Substitute</b>

		Members; and Training Substitute Members of the Audit, Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees
APPENDIX G	Part 5	Overview and Scrutiny Procedure Rules – Amendments to Rules 16 (Attendance by Others) and 18 (Exceptions to Call-In)
APPENDIX H	Part 3	Planning Committee Terms of Reference
APPENDIX I	Part 5	Financial Procedure Rules
APPENDIX J	Part 3	Scheme of Delegated Powers – Schedule 2 – Responsibility for Council (Non-Executive) Functions – General Matters/Principles
APPENDIX K	Part 3	Schedule 3 – Executive Functions - Scheme of Delegation covering the Traffic Regulation Order process

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