

## Harborough District Council

### Report to Constitution Review Committee Meeting of 25 January 2023

<b>Report Number:</b>	<b>1</b>
<b>Title:</b>	<b>Corporate Health Check – preliminary report</b>
<b>Status:</b>	<b>Public</b>
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<b>Portfolio Holder:</b>	<b>Cllr Philip King, Leader, Portfolio Holder for Strategy</b>
<b>Appendices:</b>	<b>A – 2018 LGA Peer Review</b>

#### Ward(s) affected

- 1 This report relates to all wards within the Council's area.

#### Purpose of Report and Summary

- 2 This report sets out an initial evaluation of corporate governance within Harborough District Council, undertaken between July 2022 and December 2022. The review has been undertaken to identify areas of strength, share good practice across the authority and address apparent areas of weakness. It was commissioned following receipt of an internal audit report by the Audit and Standard Committee in March 2022 which identified, in summary, historic:
  - a. lack of compliance with Council procedure and expected standards of Officer conduct;
  - b. weaknesses in control and decision making frameworks to prevent failings and non-compliance recurring;
  - c. lack of segregation of duties or appropriate challenge and scrutiny;
  - d. assumptions unsupported by evidence or appropriate analysis and testing;
  - e. failure to monitor and review decisions and the control environment, combined with a lack of robust governance and enforcement of compliance;
  - f. failures to address issues of workplace stress and Member expectations of officers;
- 3 Regardless of the Council's position on the strategic partnership, fundamental and timely changes to the governance and culture of the organisation are required as a matter of urgency to provide a solid foundation for the current, and future, challenging local government environment. Comprehensively addressing the issues identified in this report

will require changes throughout the Council to introduce and embed good practice, politically and managerially. The changes will require personal accountability for both members and officers, alongside cultural change. Anything less than wholesale commitment to the required changes will not lead to the desired improvement in governance and accountability and will jeopardise the future success of the Council at a local and regional level.

## Recommendation

- 4 That Committee:
- a. note the issues identified in the report in respect of corporate governance;
  - b. approve the following activities:
    - i. Re-write of the constitution to remove duplication, update it and make it more accessible;
    - ii. Update the scheme of delegations to officers to match the current management structure and appropriate delegations;
    - iii. Review the current executive arrangements and make proposals as to delegations to officers and portfolio holders, and the number and frequency of meetings;
    - iv. Delivery of training for officers and members on governance principles and good decision making;
    - v. Preparation of a comprehensive member induction package to ensure members are all aware of how the council runs;

## Background

- 5 The national operating landscape for local government has changed radically in the last 15 years as a consequence of (in no particular order):
- a. **Austerity** - central government grants to local government shrank by 37% in real terms between 2009/10 and 2019/20, while Councils were required to take on additional services. Councils were able to increase council tax, but since the Localism Act 2011, the maximum increase per annum has fluctuated between 1.99% or £5, whichever is greater, unless approved via a referendum.<sup>1</sup> Further, Councils were encouraged to freeze council tax<sup>2</sup> in return for additional grants between 2010 and 2015. Councils met this funding challenge but have since had to draw down reserves to protect core services. Strategies for coping with austerity included recruitment freezes, paring down

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1. Sandford M, Council tax: local referendums, House of Commons Library, 18 January 2021, <https://commonslibrary.parliament.uk/research-briefings/sn05682>

2. Ministry of Housing, Communities and Local Government, Council Tax freeze scheme, [www.gov.uk/government/collections/council-tax-freeze-scheme](http://www.gov.uk/government/collections/council-tax-freeze-scheme)

management and training and development freezes, all of which impacted upon the normal development of staff through the local government sector;

- b. **Brexit** - the referendum on Brexit was divisive and destabilising for communities, and councils had to deal with the aftermath; many migrant workers, who traditionally occupy the lowest paid jobs, left the UK as a result, impacting the labour market; the consequences of trade agreements with the EU are now a reality, impacting businesses and their supply chains;
- c. **Increased terrorism** – the public safety landscape has changed considerably with the consequent impact that Councils now have a statutory duty to prevent terrorism, as well as leading community responses to the threat through emergency response planning, event planning, education, community relations etc;
- d. **Covid-19** – government turned to local authorities to deliver support during the pandemic, from organising food parcels to the most vulnerable to delivering the furlough scheme at a time when its income stream was enormously compromised. It would appear however that as the country moves from a pandemic footing towards dealing with it as an endemic issue, the huge mobilisation undertaken by local authorities has been forgotten in preference to returning to the relationships between central and local government that existed before the pandemic;
- e. **Weather** – the country has regularly seen devastating storms causing damage through flooding and high winds, and this year fires have proved particularly challenging. Councils are at the forefront of responding to such events, in particular the services required to support emergency planning and response teams already pushed to capacity by the pandemic;
- f. **War in Ukraine** – this has disrupted supply chains, including energy sources, that were starting to recover post Brexit and Covid 19;
- g. **Cost of living** – all of the above, plus the instability in the financial markets caused by political events have resulted in all council costs and uncertainty increasing rapidly and at a rate that could not possibly have been predicted when budgets were set.

## Best Value

6 The Best Value legislation<sup>3</sup> applicable to local authorities states:

**“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.**

7 No matter how well an authority performs, or how robust its governance arrangements are, it is inevitable that failures of policy or practice will occur despite good intentions. However, control mechanisms should exist to catch such failures early, and ensure they are not repeated. How an authority reacts to such instances is indicative of the culture of the organisation. The best authorities actively promote 360 degree evaluation, learn from past performance, rectify defects, and are confident enough to pause or reverse a

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<sup>3</sup> Local Government Act 1999 Part 1 section 3(1)

course of action which is failing. They recognise that the drive for continuous improvement will usually involve a level of uncertainty due to innovation, and that it is inevitable that innovation may not always succeed as intended. This is a fundamental shift from historic local government thinking, which is famed for being risk averse.

- 8 What a “good” authority looks like has long been a matter for debate, with councils having a degree of flexibility in how they choose to delivery statutory services, and whether they deliver discretionary services.
- 9 The Council sought a corporate peer review, organised by the Local Government Association (“LGA”), in March 2018 , which assessed the Council against the following core components of council performance and improvement:
  - a. **Understanding of the local place and priority setting:** Does the council understand its local context and place and use that to inform a clear vision and set of priorities?
  - b. **Leadership of Place:** Does the council provide effective leadership of place through its elected members, officers and constructive relationships and partnerships with external stakeholders?
  - c. **Organisational leadership and governance:** Is there effective political and managerial leadership supported by good governance and decision-making arrangements that respond to key challenges and enable change and transformation to be implemented?
  - d. **Financial planning and viability:** Does the council have a financial plan in place to ensure long term viability and is there evidence that it is being implemented successfully?
  - e. **Capacity to deliver:** Is organisational capacity aligned with priorities and does the council influence, enable and leverage external capacity to focus on agreed outcomes?
- 10 The peer review provides a welcome and impartial baseline for the corporate health of the organisation, and it would be irresponsible for this to be ignored. While the peer review praised much about the Council and its activity, it concluded that:
  - a. Members need to be strongly and more overtly involved in strategic decisions;
  - b. Members should provide the longer term ambition and strategy for economic growth aspirations;
  - c. The interests of the whole district needed to be considered in strategic decisions rather than ward interests;
  - d. Staff capacity is adversely impacted by member requests for detailed information, which diverts limited resources from strategic priorities;
  - e. Members need to be open to appropriate and robust challenge from officers;
  - f. Officers need to be empowered to pushback where necessary, support members’ strategic role, and resist the temptation to share day-to-day operational details with councillors.
  - g. Business and project planning, delivery and decision-making processes should be more efficient as the high administration burden impinges on staff capacity;

- h. Officers and Members need to challenge partners, such as the Leicester and Leicestershire Enterprise Partnership (“LLEP”), on efficiency and value for money issues;
  - i. The political leadership should build a strategic relationship with partners, including Leicestershire County Council and explore areas of common interest and benefit to articulate and achieve the benefits of a long-term strategy.
- 11 It is considered helpful for the corporate health check to review the Council’s progress against the above criteria to chart progress over time.

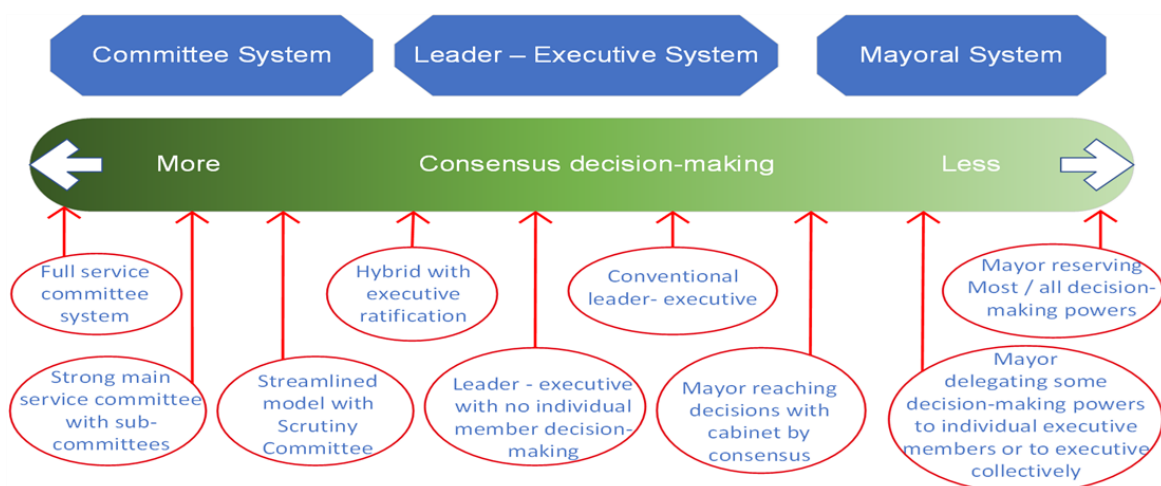
## **Corporate Governance**

- 12 Continuous improvement through innovation and efficiency is facilitated by transparent and robust corporate governance. This does not mean a “tick box” approach to control mechanisms. Rather, it requires an appreciation of the purpose of the controls and a willingness to allow the controls to perform the function they are designed for – to evidence appropriate challenge and secure, and test, alternative perspectives in the decision making process.
- 13 Authorities can get into a myriad of difficulties if their corporate governance fails. Recent examples include Northamptonshire County Council and Liverpool City Council. Both were subject to best value inspections by a government inspector who identified the following areas of common concern:
- a. Lack of evidence of decisions, or updating of decisions to reflect changes in circumstance;
  - b. Refusal to enforce terms and conditions of agreements;
  - c. Failure to comply with contract and procurement standing orders;
  - d. A culture of rule avoidance;
  - e. Failure to appoint a shareholder representative and have a shareholder agreement with council companies;
  - f. Infrequent company board meetings which do not discuss key reports which would enable the Directors to understand how the company is performing in both physical and financial terms;
  - g. Failing to appraise the roles and skill sets required for specific companies and ensure the board and shareholders appoint the best match, even if this means the individual appointed is not a councillor.
  - h. Ignoring legal, financial and other professional advice, particularly in setting and managing budgets and the necessary control mechanisms to ensure compliance with the law and good practice ;
  - i. Lack of appropriate training for members;
  - j. Lack of clarity between the roles of officers and members;
  - k. Non-compliance with the rules relating to Key Decisions, Scrutiny, Exempt reports and probity;
  - l. Failure to maximise the benefits of two tier areas of government (County / District or City / Combined Authority);

- m. Use of one off resources or a reported service overspend where planned savings have not been achieved;
  - n. Lack of corporate leadership and accountability;
  - o. Setting targets and goals for its Chief Executive and senior officers, and holding them to account;
  - p. Challenge and criticism was discouraged;
  - q. Failure to minute management considerations and decisions;
  - r. Imposing savings targets without understanding of demand, need or deliverability combined with a lack of accountability for delivery of the savings;
  - s. Processes need to be streamlined to enable the Council to recognise what decisions it needs to take, in what order and at what time with a grip on implementation. This will require consideration of what information is required to take a decision rather than what it would be useful or nice to know but will not change the decision itself
- 14 The inspections invariably identify that failing organisations require simpler structures which allow clear accountability. Further, strong personal and collective performance management, starting from Councillors and focused through the Chief Executive right down the organisation, reflected in the Constitution, is required, together with support for members and officers as the change journey is neither quick or easy.

## The Council

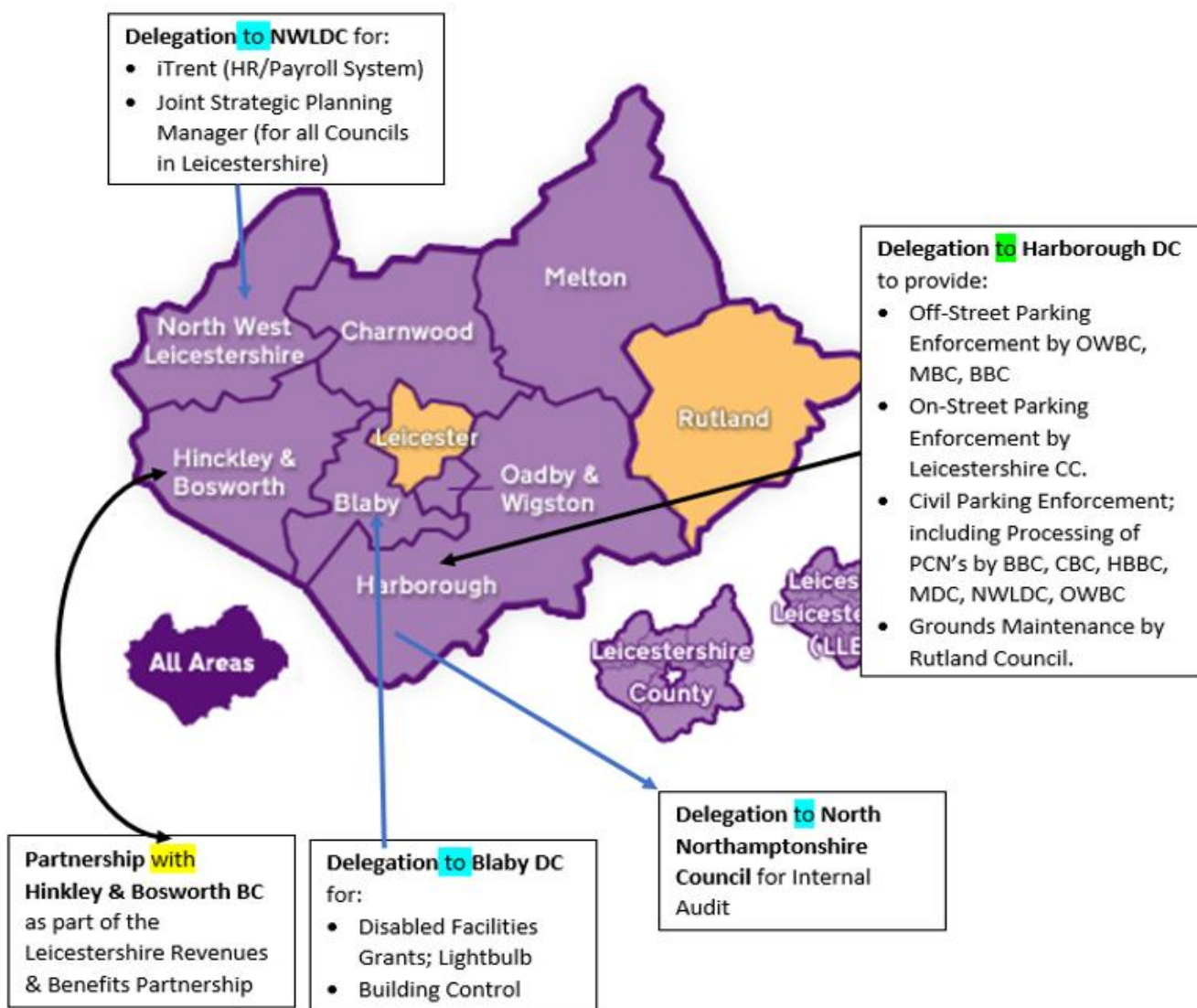
- 15 Harborough District Council operates a Leader and executive (Cabinet) model of governance, which sits in the middle of the continuum of local authority decision making models<sup>4</sup>:



- 16 The Leader of the Council is chosen by the full Council of 34 members. The Leader can then determine:
- a. how many members will form the Cabinet of executive members;

<sup>4</sup> The Centre for Governance and Scrutiny (CfGS)

- b. what responsibilities each member of the Cabinet will be responsible for; and
- c. the extent of any authority delegated to the Cabinet members.
- 17 The full Council is responsible for determining the number and remit of committees to discharge the functions it is responsible for.
- 18 Decisions are presumed to be executive in nature unless:
- The function is designated a Council function under the Functions and Responsibilities Regulations<sup>5</sup>; or
  - The functions are assigned through local choice to the Council;
- 19 Either Council or the Leader (directly or through the Cabinet) can delegate authority to officers, either on a case by case basis (recorded either through the minutes of a meeting or in a written delegation) or through the Officer Scheme of Delegation set out within the constitution.
- 20 The Council has also entered into a number of arrangements with neighbouring authorities in terms of the delivery of some functions, which are listed on the diagram below:



<sup>5</sup> Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853

- 21 In addition, the council has a local authority trading company (“LATCo”) – Harborough District Commercial Services Limited<sup>6</sup> - which was created to undertake activities for commercial purposes. No records have been found in respect of any charitable organisation or community interest company. The one charity registered to the Symington Building appears to be connected with Leicestershire County Council.
- 22 In May 2021 the Council's internal auditor identified, through gaps in assurance, potential areas of non-compliance with Council policy in respect of some asset related projects. A more detailed investigation was instigated, led by the Head of Internal Audit. The outcome of this investigation was the report considered by the Audit and Standards Committee on 2 March 2022 in part 2 of the agenda. Given the complexity of the concerns identified during the audit investigation, counsel's advice was obtained on a range of issues, including future disclosure of the content of the report. Both the audit report and counsel's opinion identified areas of potential weakness in the Council's corporate governance arrangements. Since then, a further area of asset based failure has potentially been identified, and this is being actively investigated by the Head of Internal Audit.

## Methodology

- 23 The corporate healthcheck that has been undertaken is not an audit of corporate governance. It is not an assessment of the accuracy of the statement of internal control. Rather, it is a light touch assessment of the status quo of the organisation, akin to a corporate peer review. There has been a focus on constitutional issues, processes and procedures to identify areas of potential organisational vulnerability or strength with a view to securing and embedding sustainable improvement across the Council.
- 24 The methodology of the review has involved perusing:
- a. the constitution;
  - b. schemes of sub-delegation;
  - c. minutes of meetings;
  - d. reports to all active committees and the Corporate Management Team (CMT);
  - e. intranet;
  - f. website;
  - g. published records of delegation;
  - h. corporate work plan;
- 25 In addition, gatherings of CMT, Senior Leadership Team (SLT) and committees have been attended to observe the dynamics and verify practice. Further, a number of reports have been followed through the report process to aid understanding of internal processes. Throughout, regard has been had as to the extent to which the Council and individuals:
- a. Understand their roles in identifying and delivering the organisational purpose for the district;

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<sup>6</sup> Registered company number 11747237



- b. Work together effectively and efficiently – members, officers, partners, residents and other external stakeholders;
- c. Observe good governance through robust decision making, exercising appropriate autonomy and managing risk;
- d. Act with demonstrable integrity to maintain organisational viability;
- e. Are open and accountable, using organisational capacity to focus on agreed outcomes.

## Findings

26 It is not considered an appropriate or constructive use of resource to undertake a forensic examination of areas of concern for the purpose of this report, but rather to focus on headline findings:

### Members

- limited progress has been made in encouraging members to fulfil a more strategic role within the organisation and relinquish their predominantly ward based focus;
- the Council has adopted a corporate plan however reports do not refer back to this or demonstrate how proposed actions will promote and advance the corporate priorities;
- there is apparent resistance from Members to the steps required to refresh the local plan (i.e. the need to demonstrate that the duty to co-operate has been met) even though this will allow the Council to have some influence over where growth of development will take place;
- there is reluctance to progress contentious proposals in advance of local government elections in May 2023, which adversely impacts the Council's ability to implement the same prior to the start of the new financial year, despite members being aware that there is an in year deficit;
- some members communicate relentlessly with officers requesting information they could identify themselves via the website, social media feeds or the members intranet section – such as requests for copies of council policies;
- some members submit requests for information via broad Freedom of Information Act 2000 requests;
- there appears to be limited proactivity from portfolio holders in their portfolio of responsibilities and information pertaining to it – when attending Cabinet meetings the portfolio holders historically had limited updates on activities relevant to their portfolio since the last meeting;
- officers do not appear to have helped Members to make the significant shift from an organisational focus to a strategic focus, as recommended by the 2018 peer review;
- a member enquiry email address has been created but this is not used consistently by members or always responded to in an appropriate timescale by officers, nor has there been any apparent concerted drive to enforce member use of it as the preferred means by which queries should be raised;
- officers have sought to adopt the Microsoft Teams platform to communicate with members, however neither members nor all officers have been trained on the same

so there is no universal level of understanding as to how it works and what it can do. As a result, servicing member expectations continues to require a substantial amount of officer resource at multiple levels of the organisation;

### **Officers**

- officers routinely provide unnecessary information to Members – such as details of contracts that will be signed or sealed that day - which clogs up in-boxes and obscures more substantive communications;
- reports provided upon which decisions are to be made by Members and officers are frequently lacking in the level of detail that should be included to justify the decision and provide all relevant information;
- the process of taking and evidencing decisions is not robustly evidenced in accordance with statutory obligations<sup>7</sup>;
- there is no comprehensive scheme of delegations or sub-delegations, nor any standard format upon which such delegations are expected to be recorded;
- the constitution does not reflect the current officer management structure, compromising the ability to issue lawful delegations;
- the good partnership working undertaken across a variety of service areas is not visible to members or the public and is not overseen in a consistent and proactive manner;
- there is limited autonomy and accountability for officers as a consequence of historic culture and management styles;
- there appears to be no formal induction for managers in the organisation to set out managerial cultures and expected behaviours;

### **Governance**

- the constitution has duplications, omissions, contradictions and generally lacks clarity. It does not reflect the current officer management or committee structure, nor does it provide adequate governance arrangements for alternative delivery vehicles such as shared services, partnerships and the LATCo;
- the 4 x 4 risk matrix is insufficiently sensitive to accommodate the complexity of the organisation;
- the intranet site is out of date and contradicts information on the website – for example, the policies listed on the intranet are not always those currently applicable or accessible from the website;
- there is inconsistent compliance with data protection principles across the organisation, particularly in relation to the retention and deletion of data – the extent and age of information retained on the shared drives is of particular concern;
- there is no central policy register, and many are therefore out of date, hampering the Council's ability to respond proactively to dynamic situations;
- corporate priorities are not rooted at the heart of the Council's activity

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<sup>7</sup> Openness of Local Government Bodies Regulations 2014/2095

- 27 Members have identified conflicts in the constitution which have not assisted the smooth operation of the council, particularly in relation to the extent and intention of provisions of the constitution. Further, the constitution as drafted, does not accurately reflect the current operational committees or the management structure of the Council. It makes limited provision in respect of shared services, and is silent on delegations of functions by the Council or to the Council. No mention is made of the governance of wholly owned Council companies, nor on external bodies such as the Local Enterprise Partnership or East Midlands Councils. The constitution is in need of a fundamental re-write to ensure that it is fit for purpose as well as an accessible and usable document for officers and members.
- 28 It follows that, because the constitution is not up to date, the delegations which flow from it are also out of date.

## **Proposed actions**

- 29 To address all of the above issues, it is recommended that the following activities be undertaken as a matter of priority:
- a. Re-write the constitution;
  - b. Re-write the delegations to officers;
  - c. Explore whether there should be more delegation to cabinet members and fewer formal cabinet meetings;
  - d. Training for officers and members on governance principles and good decision making;
  - e. Preparation of a comprehensive member induction package to ensure members are all aware of how the council runs; self
- 30 The constitution is part of the framework which demonstrates that decision making in local authorities is open, transparent, and undertaken applying proper decision making principles. It is a fundamental building block of good governance and legislation requires it to be reviewed and updated.
- 31 As well as governing the conduct of meetings, the constitution sets out the decision taking structure of the Council and the regulations under which a range of processes take place, together with Codes of Conduct for Members and Officers, working relationships and other detailed matters which together govern the Local Authority. It also provides the framework for scrutiny and challenge of individual decisions.
- 32 Whilst it is apparent that the constitution has been updated in some respects, this does not appear to have been completed comprehensively in respect of all changes which has left confusion.

## **Alternative Options Considered**

- 33 The Council could choose to persevere with its current corporate governance arrangements, however it is unlikely that they will remain unchallenged, particularly if, as is widely expected, spending on public services is further constrained.
- 34 Alternatively, the Council could delay making a decision pending the local government elections in May 2023, however this simply prolongs the above issues. The constitution should be reviewed on an annual basis in any event, and can be reviewed by Council at any time.

## **Implications of Decisions**

### **Corporate Priorities**

- 35 The content of this report fundamentally underpins all of the Council's corporate priorities of place and community, economy, healthy lives and environment and sustainability.

### **Financial**

- 36 The cost of implementing the recommendations in this report will arise from the use of interim professionals to deliver the work – this can therefore be accommodated through existing posts and arrangements until such time as there is clarity on the future of the proposed shared partnership.
- 37 It is unlikely that the proposed changes to process and procedure will adversely impact upon the finances of other departments, however the impact of such changes will be actively monitored.

### **Legal**

- 38 Implementation of the recommendations to this report will help the council to strengthen the robustness of its decision making function, thus making them less susceptible to successful challenge. It will also ensure appropriate transparency and accountability for decisions and decision makers.

### **Policy**

- 39 The recommendations include a review of all council policies. This should include the creation of guidance as to what the council is, or is not, including in its policy framework.

### **Environment and Climate**

- 40 Implementing the recommendations in the report should not impact the Council's pledge to work towards achieving net zero carbon.

### **Risk Management**

- 41 The risk to the authority crystallises at the point a decision is successfully challenged or an opportunity is missed.

### **Equalities Impact**

- 42 The recommendations in this report do not impact upon equalities obligations other than positively – the report urges a more formal and considered approach to equalities impact assessments.

## Consultation

- 43 No formal consultation has been undertaken in relation to this matter as yet. Members and officers have (or will soon) receive briefings in relation to the governance improvement project generally, and have indicated a willingness to try revised ways of working.

