

**To: Leader and Members of the Executive Board**

**(Councillors D Wright, Bell, Chambers, Gosling, Hayfield, D Humphreys, Jenns, Morson, H Phillips, Reilly, Simpson and Symonds)**

**For the information of other Members of the Council**

**For general enquiries please contact the Democratic Services Team on 01827 719221 or via e-mail – [democraticservices@northwarks.gov.uk](mailto:democraticservices@northwarks.gov.uk)**

**For enquiries about specific reports please contact the officer named in the reports.**

**The agenda and reports are available in large print and electronic accessible formats if requested.**

## **EXECUTIVE BOARD AGENDA**

**13 FEBRUARY 2023**

The Executive Board will meet in The Chamber, The Council House, South Street, Atherstone on Monday, 13 February 2023 at 6.30pm.

The meeting can also be viewed on the Council's YouTube channel at NorthWarks - YouTube.

### **AGENDA**

- 1 Evacuation Procedure.**
- 2 Apologies for Absence / Members away on official Council business.**
- 3 Disclosable Pecuniary and Non-Pecuniary Interests.**

#### 4 **Public Participation**

Up to twenty minutes will be set aside for members of the public to put questions to elected Members.

Members of the public wishing to address the Board must register their intention to do so by 9:30am two working days prior to the meeting. Participants are restricted to five minutes each.

If you wish to put a question to the meeting, please register by email to [democraticservices@northwarks.gov.uk](mailto:democraticservices@northwarks.gov.uk) or telephone 01827 719221 / 01827 719237.

Once registered to speak, the person asking the question has the option to either:

- a) attend the meeting in person at the Council Chamber;
- b) attend remotely via Teams; or
- c) request that the Chair reads out their written question.

If attending in person, precautions will be in place in the Council Chamber to protect those who are present however this will limit the number of people who can be accommodated so it may be more convenient to attend remotely.

If attending remotely an invitation will be sent to join the Teams video conferencing for this meeting. Those registered to speak should dial the telephone number and ID number (provided on their invitation) when joining the meeting to ask their question. However, whilst waiting they will be able to hear what is being said at the meeting. They will also be able to view the meeting using the YouTube link provided (if so, they made need to mute the sound on YouTube when they speak on the phone to prevent feedback).

5 **Minutes of the Executive Board held on 21 November 2022** – copies herewith, to be approved as a correct record and signed by the Chairman.

6 **Minutes of the Senior Management Recruitment Sub-Committee held on 21 November 2022** – copies herewith, to be approved as a correct record and signed by the Chairman.

### **ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)**

7 **Key Corporate Issues** – Report of the Chief Executive

#### **Summary**

The purpose of this report is to draw Members' attention to the key Corporate issues facing the Council in the mid-term. It seeks to assist

Members in addressing these issues when the Corporate Plan is reviewed after the Borough elections.

The Contact Officer for this report is Steve Maxey (719438).

8 **The Capital Strategy** - Report of the Corporate Director - Resources

**Summary**

This report updates the Capital Strategy approved by the Council in February 2022.

The Contact Officer for this report is Sue Garner (719374).

9 **The Proposed 3 Year Capital Programme 2023/24 to 2025/26** - Report of the Management Team

**Summary**

This report puts forward proposals for the Three Year Capital Programme and outlines the availability of capital resources and the options to meet any shortfalls.

The Contact Officer for this report is Sue Garner (719374).

10 **General Fund Revenue Estimates 2023/24** - Report of the Corporate Director – Resources

**Summary**

This report covers the revised budget for 2022/23 and an estimate of expenditure for 2023/24, together with forward commitments for 2024/25, 2025/26 and 2026/27.

The Contact Officer for this report is Nigel Lane (719371).

11 **General Fund Revenue Estimates 2023/24 and Setting of the Council Tax 2023/24** – Report of the Corporate Director - Resources

**Summary**

This report sets out the proposed General Fund Revenue Estimate for 2023/24 and the options available when setting the 2023/24 Council Tax for the Borough in the context of the Authority's Finance Settlement, and the effect on General Fund balances.

The Contact Officer for this report is Sue Garner (719374).

- 12 **Leisure Facilities: Local Authority Trading Company** – Report of Management Team and the Director of Leisure and Community Development

**Summary**

This report seeks the Board’s consideration and approval of the legal arrangements and formal documentation that will govern the relationship between the Borough Council and its proposed wholly owned Leisure Facilities Local Authority Trading Company.

The Contact Officer for this report is Simon Powell (719352).

- 13 **Constitutional and Delegation Matters** – Report of the Chief Executive

**Summary**

The purpose of this report is to seek Approval for some limited constitutional and delegation changes.

The Contact Officer for this report is Steve Maxey (719438).

- 14 **Exclusion of the Public and Press**

**To consider, in accordance with Section 100A(4) of the Local Government Act 1972, whether it is in the public interest that the public and press be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

- 15 **Senior Management Recruitment Process** – Report of the Chief Executive

The Contact Officer for this report is Steve Maxey (719438).

- 16 **Confidential Extract of the minutes of the Executive Board held on 21 November 2022** – copy herewith to be approved as a correct record and signed by the Chairman.

- 17 **Confidential Extract of the minutes of the Senior Management Recruitment Sub-Committee held on 21 November 2022** – copy herewith to be approved as a correct record and signed by the Chairman.

STEVE MAXEY  
Chief Executive

Present: Councillor D Wright in the Chair

Councillors Bell, Chambers, Davey, Gosling, Hayfield, D Humphreys, H Phillips, Reilly, Simpson and Symonds.

Apologies for absence were received from Councillors Jenns (Substitute Councillor Davey) and Morson.

**33 Declarations of Personal or Prejudicial Interest**

None were declared at the meeting.

**34 Minutes of the Executive Board held on 12 October 2022**

The minutes of the meeting of the Board held on 12 October 2022, copies having been circulated, were approved as a correct record and signed by the Chairman.

**35 Calendar of Meetings 2022/23 and 2023/24**

The Chief Executive sought approval for changes of dates of three Boards meetings in January and February 2023 and a calendar of meetings for 2023/24.

**Recommended:**

- a That the revised calendar of meetings for 2022/23, as submitted at Appendix A to the Chief Executive's report be approved;**
- b That the draft calendar of meetings for 2023/24, as submitted at Appendix B to the Chief Executive's report be approved; and**
- c That a Member briefing session on the Local Authority Trading Company (LATCo) be held on 16 January 2023.**

**36 Elections May 2023 – Voter ID, polling stations and scale of fees**

The Chief Executive set out the changes that would be implemented at the May 2023 elections as a consequence of the Elections Act 2022 (including Voter ID) and actions that would be undertaken by the Democratic Services Team and others in order to prepare for and organise those polls.

**Resolved:**

- a That the preparations to date and proposed actions to implement Voter ID and other changes in May 2023 be noted;
- b That the reinstatement of Chancery Court as a polling station in Hartshill Ward and the use of Austrey Village Hall as a polling station in the Newton Regis and Warton Ward be noted;
- c That the Chief Executive (following consultation with Group Leaders) be given delegated authority to make amendments to the scheme of polling districts/polling places, as necessary, to ensure the running of the May 2023 polls; and
- d That the Chief Executive be given delegated authority to, where necessary, increase the fees paid to elections staff to reflect new responsibilities arising out of the Elections Act 2022, as detailed in his report.

**37 Corporate Plan Performance Update**

The Chief Executive asked the Board to note the Corporate Plan Performance Update and identify any areas where further information was required.

**Resolved:**

**That the report be noted.**

**38 Budgetary Control Report 2022/23 Period Ended 31 October 2022**

The Corporate Director – Resources reported on the revenue expenditure and income for the period from 1 April 2022 to 31 October 2022. The 2022/23 budget and the actual position for the period, compared with the estimate at that date were given, together with an estimate of the out-turn position for services reporting to the Board.

**Recommended:**

**That the report be noted.**

**39 Report of Members' Independent Remuneration Panel**

The Corporate Director – Resources detailed the key recommendations of the Independent Remuneration Panel following a review of the current Members' Allowances Scheme.

**Recommended:**

- a That the Independent Remuneration Panel's report, as set out in Appendix A to the report of the Corporate Director - Resources, be noted; and
- b That the following be approved;
  - 1) That the Special Responsibility Allowances for the roles listed in paragraph 7.1 remain unaltered;
  - 2) That the Vice Chair of Executive Board be paid an SRA of £2,988, with effect from 4 May 2022;
  - 3) That travel allowances are maintained, with the addition of the allowances for travel by motorcycle and bicycle, and the passenger supplement, set out in paragraph 8.2 of the report of the Corporate Director - Resources;
  - 4) That the Travel Allowance Scheme highlights that electric / hybrid travel is payable at the HMRC rate of 45p per mile;
  - 5) That no changes are made to the current definition and scope of approved duties for which Members can claim travel allowances;
  - 6) That no changes are made to current rates and conditions in the Travel Allowance scheme where Members travel by public or other means of transport;
  - 7) That there are no changes to subsistence rates and approved duties, other than to specify that a Member is unable to claim subsistence when attending an approved duty within the Borough of North Warwickshire;
  - 8) That there are no changes to the scope or levels payable in the Dependent Carer's Allowance Scheme; and
  - 9) That indexation, as set out in paragraph 10.1, is applied from 1 April 2022 until March 2026.

**40 Debate Not Hate – LGA campaign**

The Chief Executive asked the Board to note the Local Government Association's (LGA) campaign and to adopt the public statement.

**Resolved:**

**That the Council becomes a signatory to the Debate Not Hate campaign public statement.**

**41 West Midlands Land Charter**

The Chief Executive reported that the West Midlands Combined Authority was seeking the Borough Council's endorsement of the Public Land Charter.

**Resolved:**

**That the West Midlands Public Land Charter be endorsed.**

**42 Draft Local Transport Plan LTP4 Consultation**

The Chief Executive & Corporate Director – Streetscape detailed a consultation, being carried out by Warwickshire County Council, on the Draft Local Transport Plan LTP4. The closing date for comments was formally 2 November 2022, however the Borough Council had been given a time extension for responses by 30 November 2022.

**Resolved:**

- a That the Borough Council supports the work on the LTP4; and**
- b That the County note the comments on the LTP4 strategies, set out in the report of the Chief Executive & Corporate Director - Streetscape in relation to local issues that should be taken into account in the production of the final LTP.**

**43 Climate Change Action Plan Update**

The Corporate Director – Streetscape updated Members on the responses to the public consultation on the Council’s Climate Change Action Plan and recommended that the amended plan, updated in light of comments received, be adopted.

**Resolved:**

**That the text of the Climate Change Action Plan be agreed and adopted, and a final version of the plan be prepared for publication in consultation with the Chairs and Opposition Spokesperson of the Executive and Community & Environment Boards.**

**44 Cost of Living Pressures**

The Chief Executive informed Members of the key outcomes from the Cost of Living Engagement Forum held on 29 September 2022.

**Resolved:**

- a That the report be noted; and**
- b That Councillor Reilly and one Labour Group Member (to be advised) be appointed as Member Champions to provide Councillor oversight of work in this area.**

45 **Minutes of the Safer Communities Sub-Committee held on 27 June 2022 and 14 November 2022**

The minutes of the Safer Communities Sub-Committee held on 27 June and 14 November 2022 were received and noted.

46 **Exclusion of the Public and Press**

**Resolved:**

**That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

47 **Senior Management Recruitment Process**

The Chief Executive updated Members on the Senior Management recruitment process.

**Resolved:**

**That recommendations (a) and (b) set out in the report of the Chief Executive be approved.**

David Wright  
CHAIRMAN

**MINUTES OF THE  
SENIOR MANAGEMENT RECRUITMENT  
SUB-COMMITTEE**

**21 November 2022**

Present: Councillor D Wright in the Chair

Councillors Bell, Gosling, Hayfield, H Phillips, Reilly and Symonds.

An apology for absence was received from Councillor Morson (sub: Cllr Phillips)

**1 Declarations of Personal or Prejudicial Interest**

None were declared at the meeting.

**2 Exclusion of the Public and Press**

**Resolved:**

**That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

**3 Staffing Matter**

The Chief Executive updated Members on a staffing matter.

**Resolved:**

**That recommendations (a), (b) and (c) set out in the report of the Chief Executive be approved.**

David Wright  
CHAIRMAN

**Agenda Item No 7**

**Executive Board**

**13 February 2023**

**Report of the Chief Executive**

**Key Corporate Issues**

**1 Summary**

- 1.1 The purpose of this report is to draw Members' attention to the key Corporate issues facing the Council in the mid-term. It seeks to assist Members in addressing these issues when the Corporate Plan is reviewed after the Borough elections.

<p><b>Recommendation to the Board</b></p> <ul style="list-style-type: none"><li><b>a That the issues raised in this report be noted by Members;</b></li><li><b>b That Members raise any additional issues; and</b></li><li><b>c That the life of the current Corporate Plan be extended until September 2023 as it will be reviewed following the Borough elections in May.</b></li></ul>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2 Consultation**

- 2.1 Many of the key issues in this report have been the subject of discussions in various Board meetings.

**3 Introduction**

- 3.1 As Members will be aware, the Council has an adopted Corporate Plan for the life of this Council which is then refreshed each year. The current version is attached as Appendix A. Performance against that Plan was reported to the Executive Board in November (see Appendix B) and will be reported to Board at the next meeting in March
- ...
- ...

- 3.2 The Corporate Plan sets out the strategic vision for the Council to 2023 and given the Borough elections in May it is suggested that the Plan is reviewed when a new Council is formed. It is suggested therefore that a further report be brought back to this Board after May, and a further meeting of the Member Performance Working Group would also assist with this task.

- 3.3 The Council has an agreed Medium Term Financial Strategy and there are other reports on this agenda looking at the budget and other financial matters.
- 3.4 The purpose of the report therefore is to give Members a strategic overview of the main issues affecting the Council to aid both short term decision making and medium term planning, and to assist with the review of the Corporate Plan for the 2023-27 period once a new Council is formed.

**4 Snapshot of the Borough**

- 4.1 As a rural, former mining area, the Borough had virtually no population growth for over twenty years, but growth, that is significantly higher than historically, is now well underway. The recent census shows that in North Warwickshire, the population size has increased by 4.8%, from around 62,000 in 2011 to 65,000 in 2021. This is lower than the overall increase for England (6.6%), where the population grew by nearly 3.5 million to 56,489,800. Appendix C shows more detail on this.
- 4.2 The population of the Borough is due to continue to grow, due to the housing allocations in the Local Plan. The trajectory of this provision over the life of the adopted Local Plan is shown below.

Years	Dwelling per annum (dpa)
2011-16	203
2016-24	265
2024-25	390
2025-26	700
2026-27	725
2027-33	775

*(Source: Para 7.32, North Warwickshire Local Plan 2021)*

- 4.3 The Local Plan was prepared and adopted during a period when there was a national push for housing and economic growth. Members will be aware that the Government is consulting on a revision to national planning policy, as part of the planning reforms contained in the Levelling Up and Regeneration Bill. As [reported](#) to this month’s Planning and Development Board (item 8), this could have a significant impact on future Local Plans given changes to the Housing Delivery Test, removal of the Duty to Cooperate and the practice of ‘exporting’ need to other areas, and no longer needing to demonstrate a continuous 5 year housing supply if the Council has an up-to-date Local Plan based on housing figures that are less than five year old. Consideration of a review of the Local Plan will be a key task for the 2023-27 period and the main points to be addressed were [reported](#) to the Local Development Framework Sub committee last month (item 7).
- 4.4 It would appear therefore that the recent uplift in the housing requirements for North Warwickshire, directly or indirectly via provision for other Local Planning Authority areas, may ease. There are however a number of urban

areas that are planned to be given a 35% uplift, including Birmingham and Coventry. How this is delivered and the role of neighbouring areas (including in situations where the Government describes there being 'minimal distinction' between urban and neighbouring areas) in this will be a key issue. The Council will also need to review its approach to managed growth given the link between the growth and investment in infrastructure such as road, schools and transport links.

- 4.5 In employment terms, the Borough remains very popular due to its strategic position on the transport network and Members will recall that the Borough's economy was the second fastest growing in the country prior to the pandemic.
- 4.6 Due to its location, the economic connections go in a number of directions, namely towards Greater Birmingham (including South Staffordshire); Leicestershire (particularly Hinckley & Bosworth) and the Coventry and Warwickshire sub-region. As a result, there is a great deal of inward and outward job migration as the Borough still provides more jobs than working age people.
- 4.7 Despite its key strategic position in the country, North Warwickshire does still have a significant issue with communication and access. There is still an underlying issue around Broadband access and mobile connectivity (although this, as shown below, has greatly improved with the Council and other partners working together to provide significant investment) and rural transport, particularly, but not exclusively, in relation to accessibility to local employment. The accessibility issue is also accentuated by our ageing population and the financial constraints which are pulling more and more key services out of rural areas and into towns and cities.

## **5 Key External Issues Affecting North Warwickshire**

- 5.1.1 As with any organisation, external factors have a huge impact on what the Council can and cannot do and its direction of travel. This section looks at the various external issues which may affect the Borough over the next few years.
- 5.1.2 Clearly the COVID outbreak has been the largest external factor in recent years; this report does not seek to repeat the reports (informally and formally Members have had on the pandemic). It has been almost a year since the final restrictions were removed albeit it that the impacts of the virus and the response will be felt for some time, for example on the recovery of certain sectors such as Leisure and with regard to health issues, as seen in the winter pressures over the last few months.

## 5.2 Political

- 5.2.1 In recent years there has been less money available to fund local government provided services. Despite a not entirely unreasonable financial settlement for the forthcoming year (as with the current year), this is just a one year settlement and overall the resources available to the Council remain very tight, whilst it deals with increasingly complex individual cases and issues. The lack of certainty is increasingly being felt and the difference between the various scenarios on what funding may be received in the future means that some activity that could be afforded cannot currently be progressed due to the uncertainty.
- 5.2.2 Linked to these issues, the national debate about devolution continues and the last year has seen a number of deals struck with places that had not previously seen very much devolution, such as Derbyshire/Nottinghamshire, Norfolk and the North East. These more recent deals have been smaller in scale than seen previously in Greater Manchester and the West Midlands (the North East for example have been offered £17.4m in brownfield redevelopment, compared with over £500m secured for the WMCA) and may reflect a 'wider but shallower' approach to devolution reflecting current economic and fiscal conditions. Further deals for Greater Manchester and the WMCA are still promised albeit talks have been slow to date. How this benefits North Warwickshire or Warwickshire remains to be seen.

## 5.3 Economic

- 5.3.1 There is of course a distinct overlap between political and economic issues, particularly at the moment, and, helped by the national drive to build more housing, there has been an upsurge in the demand for residential development in areas around the Borough. As mentioned above, this has had a significant impact on what North Warwickshire will look like in the future, reflected in the 2021 Local Plan.
- 5.3.2 As also touched on above, the Council will also continue to face pressure to release sites for development in the Borough.
- 5.3.3 Whilst the discussion above focusses on approaches to future Local Plans, there is much to do regarding the implementation of the current Plan, particularly the delivery of the development and infrastructure planned in the Local Plan.
- 5.3.4 Other current factors include the need to improve the mix of jobs available in the Borough, partly to increase living standards, partly to ensure the Borough benefits from emerging sectors linked to the autonomous and green vehicle 'mega trends' and partly to address longer standing challenges include the impact of robotics in the logistics industry which could lead to a massive reduction in the number of jobs available in the Borough in future years. As part of this theme, the Council continues to work with MIRA and the planning application for the Southern Manufacturing Sector allocated in the Local Plan has now been received. The Council continues to

work with MIRA on ensuring there is an enhanced skills offer to increase the chance of our residents being able to directly benefit should the planning application be approved. To this end, the Mira Technology Institute is likely to continue to play a major part in providing the skills training for this strategy given their activity to date (shown below) and their plans to enhance the offer in areas such as Robotics, AI Digital, high value manufacturing, automation, Forklift and material handling, hydrogen HGV/buses and HS2 Rail.

	Oct 18- March 19	April 19- March 20	April 20- March 21	April 21- March 22	April 22-Aug 22	Sept 22- Nov 22	<b>Total</b>
Accredited Qualifications	234	410	157	730	572	614	2717
Apprenticeships	135	178	121	215	30	146	825
CPD Courses	1610	2510	1945	530	857	912	8364
Meetings/Events/STEM Events	1076	1713		1207	2080	976	7052
<b>Total</b>	3055	4811	2223	2682	3539	2648	18958
							<b>Total Visitors</b>
							<b>18958</b>

5.3.5 However the principal economic issue in the last year has been inflation, the consequent pressure on the cost of living and the performance of the economy as a result. The headline rate of inflation in December was 10.5%, down slightly from November but with the cost of food, for example, running at 16.8%. The pressures of the last few years have increased the number of people claiming out of work benefits in the area, as shown below. Members will recall that the Council held an engagement forum in September on the help and support available at this time, which was [reported](#) to the last meeting of this Board (item 15) and Officers continue to work through the actions identified.

Area	March 2020	December 2021	October 2022	November 2022	December 2022
Coventry	8,000	12,495	11,615	11,775	11,945
North Warwickshire	845	1,210	985	1,040	1,025
Nuneaton & Bedworth	2,830	3,650	3,055	3,050	3,095
Rugby	1,535	2,145	1,910	1,900	1,905
Stratford-on-Avon	1,050	2,035	1,630	1,630	1,605
Warwick	1,570	2,430	2,070	2,070	2,015
Warwickshire	7,830	11,470	9,650	9,690	9,645
<b>CWLEP</b>	<b>15,830</b>	<b>23,965</b>	<b>21,265</b>	<b>21,465</b>	<b>21,590</b>

Source: Office for National Statistics

## 5.4 Social

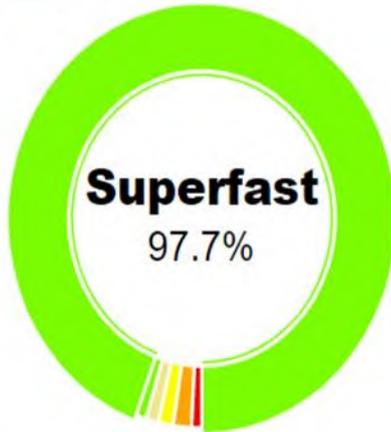
- 5.4.1 The outputs from the 2021 Census are starting to be released and a summary of some of the releases is attached to this report as Appendix C.
- 5.4.2 North Warwickshire continues to have a higher than average demographic profile, with a relatively low proportion of 20-39 year olds. There is a continuing national issue about how the public sector will cope with our ageing population moving into the future.
- 5.4.3 The position with regard to jobs and the level of skills held by our residents is set out above and Appendix C continues to show the challenges as the percentage with no qualifications has increased, those with Level 1 and Level 2 as their highest qualification has decreased but those with Level 3 and 4 as their highest qualification has increased.
- 5.4.4 These factors link to the crucial issue of housing in the Borough. The average house price in North Warwickshire is now £256,854, a rise of 10% in the last year. This is slightly higher in terms of price than Nuneaton but much lower than elsewhere in the county, particular the south, but still represents a significant increase and presents affordability issues. There is a need therefore to continue to review how affordability can be addressed via a number of models and the Council will review its overall Housing Needs as part of the review of the Local Plan evidence mentioned above.
- 5.4.5 The ongoing issue of rural isolation continues to be a factor in terms of, for example, access to services for older people and access to employment for younger ones, as well as those people without their own private transport. As a Council we have persistently sought discussions with the County Council to develop a separate transport strategy for North Warwickshire, looking for innovative sustainable transport solutions. This work will now be subsumed within the County wide review of the Local Transport Plan, consultation on which has started as [reported](#) at the last meeting of this Board (item 13) as well as to other Boards.

## 5.5 Technical

- 5.5.1 Since 2012, the availability of Superfast Broadband has increased from just 50% of the Borough having access, to around 97% at the end of Contract 3 of the CSW Broadband Project as set out below, with CSW having delivered superfast broadband to around 77,000 properties across the sub region. Ansley and Wishaw are the latest places in the Borough to have been given access, with Arley and Kingsbury scheduled to receive the faster, full fibre service this year. Openreach have a programme to extend 'full fibre' to a number of other areas across North Warwickshire in their programmes that run until 2026. Connectivity is a key aspiration in the Levelling Up White Paper.

## North Warwickshire Superfast and Fibre Coverage

Latest Figures History ?



Authority classed as Rural-50 (R50) ?

Superfast (>24 Mbps):	97.86%	Below 2 Mbps down:	0.21%
Superfast (>=30 Mbps):	97.68%	Below 10 Mbps down: (Legal USO)	1.12%
Gigabit (DOCSIS 3.1 or FTTP):	46.37%	Below 10 Mbps, 1.2 Mbps up:	1.07%
Full Fibre (FTTP or FTTH):	32.02%	Below 15 Mbps: (High Speed Broadband)	1.70%
Alt Net FTTP: FTTP excluding Openreach, KCOM and Virgin Media RFOG	0.00%	Ultrafast (>100 Mbps):	47.96%
Openreach FTTP:	24.71%	Virgin Media Cable:	22.52%
'Fibre' partial/full at any speed: (FTTC/VDSL/G.fast/Cable/FTTP)	99.68%	Openreach (>30 Mbps):	96.63%
		Openreach G.fast:	1.72%

Coverage percentages include both residential and business premises and is based around postcode level data. The speed available are determined by a model that reconstructs the Openreach exchange/cabinet based network, and takes into account the distance limitations of ADSL2+ and VDSL2/G.fast (FTTC) services.

The use of an independent model constructed and continually updated as the network roll-outs continue is different to the methodology used by Ofcom which is reliant on data provided by broadband providers. By running our model we are able to provide a verification for the Ofcom data and are not reliant on quarterly data releases but can update data on a daily or weekly basis as needed. The largest factor for any differences with the Ofcom analysis is down to the timing of publication.

Tweet Share

## North Warwickshire Speed Test Results (Mbps)

Last Quarter History

Any Openreach ADSL FTTC Cable FTTH 3G/4G

ADSL, ADSL2+, FTTC, fibre, cable, mobile and wireless speeds ?

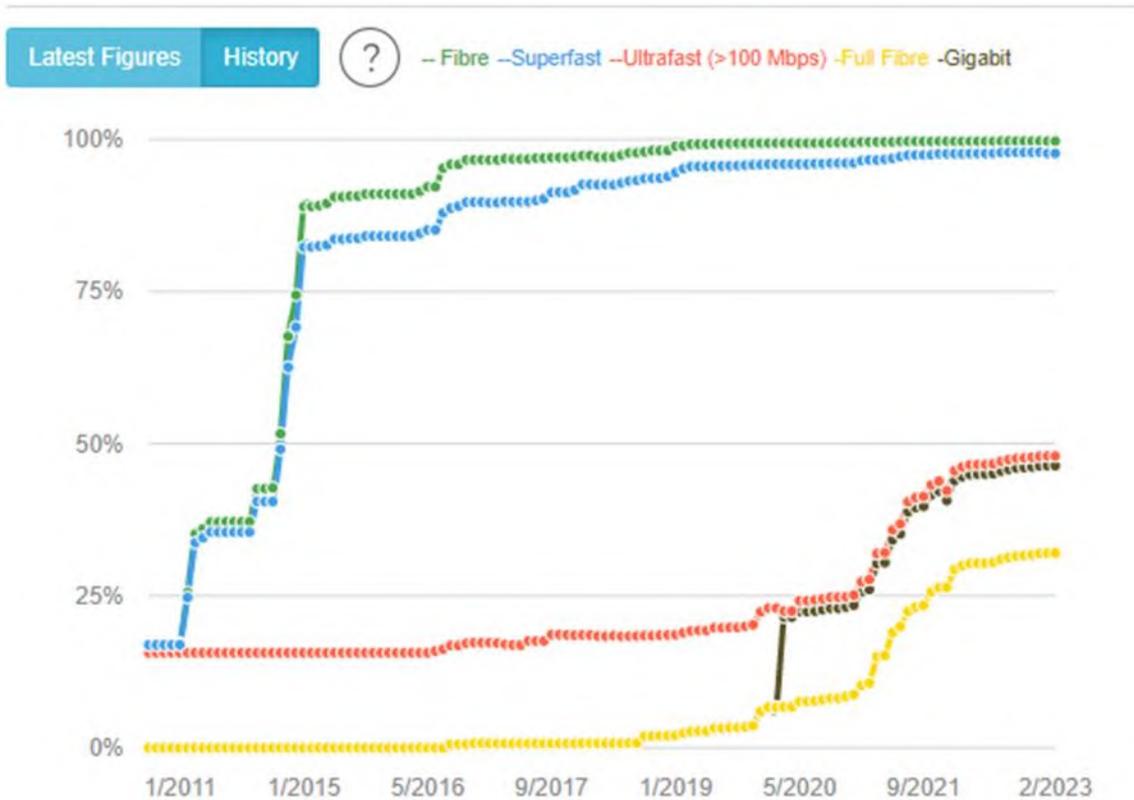
Technology Split: FTTC 100%



Estimated Maximum Mean Download Speed: 399 Mbps

This figure is based around everyone buying the fastest Virgin Media, KC or Openreach product available to them, based on current product availability. Distance limitations of ADSL2+ and VDSL2 are factored into the calculation.

Speed test results are based on the analysis of results from our speed test or partners who use our speed test service. We believe this is the largest analysis of crowd sourced speed test data for the UK and the technology splits by area help to show what the public is experiencing for the different types of services across the UK.



5.5.2 Ways of addressing the remaining shortfall are being investigated, including problems with mobile coverage, and the Leader of the Council sits on the newly established Warwickshire Digital Infrastructure Board. Connectivity is one of the topics in the investment plan for the UK Shared Prosperity Fund.

## 6 Internal Issues

6.1 North Warwickshire Borough Council has been in existence for nearly fifty years and prides itself on delivering effective and efficient local services to meet local need. This has been more and more challenging over the last few years as finances have continued to diminish, but the authority has been peer assessed as “punching far beyond its weight” and has proved it through obtaining national award recognition in a number of areas, including national awards recently for the Local Plan, and Transport and Refuse and Recycling teams. This section looks at North Warwickshire Borough Council as an organisation and the challenges it might face over the next few years.

### 6.2 Partnership

6.2.1 The financial constraints applying to the Council also affect many other bodies in the public and third sectors. This Council has a good and long track record of achieving impressive results through partnership including:

- Maximising public building usage by having other agencies in the Council offices, most notably the co-located Job Centre, Atherstone Town Council, Warwickshire Police and Warwickshire County Council officers.

Further opportunities are being sought through the Government's 'One Public Estate' and Levelling Up Fund programmes;

- Sharing the Building Control Service with six other authorities across three counties;
- Shared management of Revenues & Benefits, with Nuneaton & Bedworth Borough Council;
- Joint working on HS2 transport and economic development;
- The Warwickshire North Health & Wellbeing Partnership, working with a wide range of parties across our Place and system;
- The Northern Warwickshire Financial Inclusion Partnership which is a local operational and strategic group to support customers impacted by current economic conditions;
- The HEART Partnership with Nuneaton & Bedworth Borough Council, Warwick District Council, Stratford-on-Avon District Council, Rugby Borough Council and Warwickshire County Council;
- Partnership with the County Council and other Districts and Boroughs to work jointly to prevent homelessness;
- The work of our Community Development team with voluntary organisations and town centre organisations;
- Work across our functional economic and planning geography assessing housing and employment needs;
- The A5 Partnership

6.2.2 It is important that the authority continues to look to use partnerships for opportunities to both maintain/enhance services and make financial savings, but, equally important, is that we use them to ensure that North Warwickshire has a voice. North Warwickshire is small in population terms and, as a result, did not always find itself at the table in terms of bigger strategic issues.

6.2.3 The benefits of this work could be demonstrated by any number of examples, including the Council's COVID recovery work in our market towns and the significant success of the £80m A5 funding (one of only three schemes being directly funded by the March 2020 budget).

## 7 Stakeholders

7.1 This is a brief section on who our stakeholders are and what their aspirations might be.

### 7.2 Politicians

7.2.1 Members' aspirations will continue to be constrained by diminishing resources, how the country recovers from COVID, high energy prices and general inflation. How the Government handles 'big ticket' items such as Levelling Up, Devolution and subsequent years' financial settlements will also determine what opportunities and risks the Council will operate within.

7.2.2 Members have become familiar with the financial pressures and the reality that not all previous services will be able to continue in the manner hitherto.

### 7.3 Staff

7.3.1 We continue to have a well-motivated, largely stable and dedicated workforce. The results of the 2021/22 staff survey results were very encouraging (see the detail on page 6 of the Performance Report at Appendix B). The survey for 22/23 has closed and the results are being collated and will be reported to this Board as part of the Performance Report in March. These results will continue to have been impacted by the attrition the country has experienced in recent months, and as difficult decisions have had to be implemented linked to the need to save money, to name only two recent external pressures. The need to maintain morale levels is undoubtedly becoming more challenging as reducing resources are available to deal with increasing demand in a number of areas. In line with national employment trends/labour market issues there continues to be some difficulties in recruiting to our vacancies in a number of key areas in what are already small teams. Following the pandemic, the Council's Flexible Working Policy was revised to include a section on the Council's approach to hybrid working, which allows some employees to split their time between attending the workplace/office and working remotely. Hybrid working is an important element of both the Council's strategy for adapting to, and thriving in, the new working environment following the pandemic; and its commitment to supporting a positive work-life balance for our employees. Such arrangements are now common in many workplaces and offering similar conditions will play an important part of the Council's recruitment and retention strategy, something particularly important in the current 'tight' labour market.

7.3.2 A key issue for the Council from a staffing perspective in the last year therefore has therefore been this return to the office and the need to strike the right balance with hybrid working, where that is available for staff. Guidance was given to office based staff to work at least two to three days a week in the office including one or two days with their teams. Initial reports suggest this has gone well with staff welcoming the flexibility and it will continue to be reviewed.

- 7.3.3 As the last two to three years have been very impactful, the Chief Executive has led a number of workshops for managers and staff to assess what we have gained, what needs to change and how things are generally working for the Council. Developed with the West Midlands Employers (WME), the eight workshops, called 'Re-engage, Re-energise', have taken place in December and January looking at customer service excellence, performance management, how our teams work, and management and leadership behaviours. A report from WME will bring together the key themes and an action plan will be developed.
- 7.3.4 In addition, the Chief Executive has been working with those at 'Principal Officer' level, tier three managers mostly, on a number of corporate issues ranging from our approach to Levelling Up (set out briefly below), recognising success and internal processes such as induction, appraisals etc.
- 7.3.5 This year will bring significant changes in senior management with the retirement of the Corporate Director – Resources and the Corporate Director – Streetscape leaving to work full time at the MRF. Both of these roles are extremely important to the Council and have been discharged by the current postholders exceptionally and with great commitment and their leaving represents a major risk to the Authority. However as a result of a successful recruitment campaign, Jane Heppel joins us at the start of April as the new Corporate Director – Resources and Cath James has started as the interim Corporate Director – Streetscape. Both performed very well at interviews and a careful 'on boarding' programme will take place in the coming months.

#### 7.4 Local Community

- 7.4.1 Whilst there have been significant reductions in Council spending over the last few years, these have only recently started to filter through to delivery of front-line services. As mentioned previously, it will be increasingly difficult to continue to deliver everything going forward and Members will continue to face difficult choices.
- 7.4.2 Working with our local communities is therefore going to be less straight forward than previously and expectations on the capacity of the organisation will need to be made clear. That said a more targeted approach and improved communications with key stakeholders will help. Our communications to our communities and local stakeholders has improved in recent years, particularly during the pandemic, however our approach to communicating, consulting, and engaging with residents continues to evolve. The Council is starting to roll out the Gov Delivery platform to improve the way it electronically engages with residents given the fact that lots of people contact the Council each week with various requests. This would not change the need to continue to offer a variety of communications methods.
- 7.4.3 As a Council we have continued to advocate for local government services to continue to be delivered with as much focus on our local area as possible

and any changes that may take place, linked or not to the devolution and Levelling Up debates, will have a significant impact on our local community whose voice must be built into any ongoing delivery of services.

7.4.4 The Housing Division works closely with its tenants and specifically the Borough Wide Tenants' Forum to deliver the Council's landlord services. The Forum provides for a scrutiny role and supports the Division in policy development.

## 7.5 External Partners

7.5.1 We work with a number of organisations across the public and voluntary sectors, as well as with local businesses. Frequently, the Borough Council itself is perceived to be a partner of choice.

7.5.2 Like this Council, many of these organisations are reviewing how they provide and deliver services and often the Council is seen as a long-stop when local services disappear. Whilst there are some really good examples where this makes sense (eg, providing accommodation for phlebotomy services locally) and we will always try and look for efficiencies through partnership working, what the Borough Council cannot do is pick up work that was main-stream for other organisations on a regular basis in order that they do not stop altogether.

## 8 **Key Service Issues**

### 8.1 **Housing Services**

8.1.2 The Asset Management Plan for the Council's stock has been reviewed and is being considered by the Housing Task and Finish Group. It sets out the priorities and the resources for the service over the next 3 years. It anticipates the Social Housing (Regulation) Act requirements which are set out in the current Bill and reflects the changes which are being made to regulation.

8.1.3 Over the last 12 months we have continued with our major refurbishment works to blocks of flats. The programme at Alexandra Court, Atherstone was completed in 8 months and provided a pitched roof, new windows, external wall insulation and external improvement works. The energy efficiency and fire safety of the premises has been improved. Work is also nearly complete to install the pitched roof at St Leonards Close and works include external wall insulation. Energy efficiency programmes to provide external wall insulation and new windows have been provided in Polesworth, Hartshill, Baddesley and Warton. We have continued to provide Air Source Heating systems to our properties in villages which do not have gas. We have addressed the backlog of electrical testing properties and are acting in accordance with the new regulations for smoke and carbon monoxide alarms.

- 8.1.4 Teams continue to perform well to collect rent due. This is in the face of significant challenges to households from inflationary costs. The team are experienced and work proactively with tenants to prevent high arrears. They are assisted by software that analyses payment patterns and makes them aware if an account is likely to fall into arrears at an early stage.
- 8.1.5 The local authority Warwickshire partnership is delivering the objectives set out in the countywide strategy. Work streams include domestic abuse, young people, offenders, financial inclusion and health. Our teams support the work of the partnership and act to prevent the use of temporary accommodation, provide a designated services for single men/ Veterans, a proactive service to support households with financial matters and have a dedicated officer to deliver safe accommodation for victims of domestic abuse.
- 8.1.6 The Housing Task and Finish Group is established. The initial task was to consider the regulatory framework for the Council's landlord's stock and this will continue as we address the new requirements of the Social Housing Regulator. The Group has reviewed the Lettings Scheme, the vacant property standard and polices for the maintenance service.
- 8.1.7 The necessity for the Council to support the Government and County Council's services for migrants has become more prevalent this year. Of particular note is the support that the Council has given to Sponsors of Guests from the Ukraine and the Guests themselves. This includes visits to Sponsors before Guests arrived and consequent support and North Warwickshire is providing a countywide housing options service to prevent homeless for this Group.
- 8.1.8 The HEART partnership of the six local authorities in Warwickshire is delivering an integrated service to provide Disabled Facilities Grants and adaptations for residents. The partnership is emerging from a period of review and challenges and has delivered a new Business Case and improvements to enable the service to deliver home adaptations and improvements to assist residents to remain independent at home and prevent hospital admission.
- 8.1.9 The Private Sector Housing partnership with Nuneaton and Bedworth Borough Council provides services to address house conditions in the private sector. The service is largely reactive and responds to private tenants' concerns about disrepair and the condition of their tenancy. This includes damp and mould. This issue has escalated up the national agenda in recent months following the inquest into the death of Awaab Ishak in Rochdale which found that there had been prolonged exposure to mould and damp in the property Awaab lived. It is hoped that this national attention is sustained and backed with resources and powers to deal with the worst examples of poor housing. Landlords in both the private sector and the social housing sector will be expected to proactive address concerns raised by Government. Enforcement will be by private sector housing teams for private tenants and by the Housing Ombudsman or Regulator in for social housing.

8.1.10 Whilst the service provided by the Private Sector Housing team is largely reactive it does provide assurance for Houses in Multiple Occupation in the Borough and has been proactive in providing energy efficiency measure grants to private owners as part of Government schemes.

## 8.2 Revenues & Benefits and Customer Services

8.2.1 Whilst the Division has mostly returned to business as usual as far as the pandemic is concerned, cost of living pressures has meant additional tasks for the team by way of the distribution of funding in the form of Council Tax rebates. It is to the credit of the Local Government sector that Councils were identified as the most reliable delivery route to get much needed payments to residents facing rising energy bills, a reputation that this Council has contributed to with its exceptional performance in delivery COVID grant support.

8.2.2 In addition to sympathetically ensuring collection rates are maintained during the cost of living increases, the Division has led the Council's work (together with colleagues in Housing) on its response to rising costs via the Financial Inclusion Partnership and including successful funding bids for direct measures to help those in need.

## 8.3 Planning

8.3.1 Members will be aware that Planning, both in terms of Development Control and Forward Planning, is a very busy division with a number of key strategic challenges. As is reported regularly to the Planning and Development Board, case numbers have risen in the last year and a key part of the division's work in the coming year will be to deliver, as far as it is within our control, the developments allocated in the Local Plan, together with related infrastructure and any other major speculative applications which may be promoted despite (or because) land was not allocated in the Local Plan.

8.3.2 Planning enforcement casework always exceeds capacity however steps have been taken to recruit further staff in this area, as set out in another report on this agenda. The recruitment and retention of staff, as elsewhere within the Council, is a key issue to ensure we deliver on the agenda, and the changes expected to the national system, which should be announced this year and will have particular emphasis on design codes.

8.3.3 HS2 continues to be a very prominent issue both in terms of the actual development, which is now starting to be seen, and in terms of our role in seeking to mitigate the impact on are area, albeit that our powers here are very limited.

8.3.4 With the adoption of the Local Plan, work moves (as mentioned above) to the review of the evidence base that sits behind the Local Plan, as well as a number of other policy documents (Development Plan Documents, DPDs) and guidance (Supplementary Planning Documents, SPDs) and masterplans

for larger developments which will be considered by Members in the coming months. The introduction of the need for sites to result in a net gain with regard to biodiversity, as well as the wider green/climate change adaptation agenda, will be new areas of importance in the coming year.

- 8.3.5 New planning software is currently being developed and will go live in April 2023. This is also at a time of changes to the Land Charges system.

#### 8.4 **Leisure & Community Development**

- 8.4.1 The future of Atherstone Leisure Complex is a key issue given the latest Levelling Up Fund bid was unsuccessful. Detailed design work continues to be undertaken in anticipation of a third round for the Fund. As Members are aware, the current building is considerably past its expected life span and in the last few weeks has experienced a number of problems which has led to it needing to close. It should be expected that these problems will increase, potentially very significantly.
- 8.4.2 The long-term future of leisure facility provision in Polesworth also remains a key work focus. Whilst preliminary design work on a potential new facility in Abbey Green Park has been undertaken, the detailed capital and revenue implications of any new development have still to be established
- 8.4.3 Members will be aware from previous reports, and reports elsewhere on this agenda, of the work continuing in support of the introduction of the Local Authority Trading Company. In the meantime, there is the need to ensure operational growth within the current service in an environment that is still challenged by the on-going impact of the pandemic (for all leisure operators)
- 8.4.4 There is a need to introduce the agreed revised structure within Community Development and then advance a new approach to service delivery in conjunction with key partners and local communities. The work with partners will be particularly challenging
- 8.4.5 This work will be undertaken at the same time as supporting implementation of the UK SPF project plan, hopefully the REPF plan and the Levelling Up pilot project. Whilst discussions continue at a national and County level as to what Levelling Up will mean in practical terms, officers from this Council and the County Council are looking to establish a pilot Levelling Up project to see what barriers exist within communities and how partners can work together the address these. The Lower Super Output Area of Mancetter and Ridge Lane has been suggested and officers are currently scoping the nature of this pilot. Further details, including Member involvement, will be reported as the pilot is established.
- 8.4.6 The reviews of both the Green Space Strategy and the Playing Pitch Strategy are underway, with an intention for revised drafts of both documents to be available for consideration by Members in the autumn. This will involve the need to ensure the appropriate engagement of partners and key community groups.

- 8.4.7 Detailed development and business planning work is being undertaken with Atherstone Sports Club in an effort to secure the growth of Royal Meadow Drive Recreation Ground as a community “sports hub” that also accommodates a full-size 3G artificial grass pitch (both of which are priorities within the adopted PPS).
- 8.4.8 Community Development will also be working on the enhancement of Borough Council Play Areas in Mancetter and at Kitwood Avenue, in Dordon, as part of the approved Play Area Development Programme
- 8.4.9 In conjunction with Housing, the Division will continue to advance the Borough Council’s Safeguarding commitments and ensure its compliance with its responsibilities as a “Relevant Agency” within Warwickshire safeguarding

## 8.5 Finance & Human Resources

- 8.5.1 With regard to Finance, the main issues are reported to Members on a regular basis, including elsewhere on the agenda for this Board. In short, the position can be summarised as follows.
- 8.5.2. The Council has a difficult financial position to manage, with insufficient revenue funding to cover all the activities currently being undertaken by the Council. General balances are being used in the short term to cover unfunded spending whilst reductions are made in the base budget, but this cannot be sustained.
- 8.5.3 The funding available for capital spending is also limited, and the Council has needed to be mindful of this for some time. External funding is brought in wherever possible but cannot be guaranteed. Spending has therefore been limited to match the funding available. Even with this approach, there is expected to be a shortfall in funding over the medium term.
- 8.5.4 The Housing Revenue Account covers the management and maintenance of the Council’s housing stock and operates as a separate account in line with legal requirements. Whilst it does not have the same level of financial issues as the Council’s General Fund, there are demands around the condition of some of the stock and these will need to be managed within the available funding.
- 8.5.5 A new Financial Management System has been procured and is in the process of being implemented.
- 8.5.6 A lot of work for the team relates to providing support for services looking to implement new initiatives for both service improvement and financial reduction reasons, such as the LATCo and Levelling Up Fund bid. This impacts on one area of the team particularly, so achieving full staffing in that area will be critical to achieve the expected challenges in the year ahead.

8.5.7 With regard to Human Resources the main issues are:

- Recruitment & Selection– hard to fill roles such as Planning, Environmental Health and Finance. We continue to strive to make NWBC an employer of choice to attract and retain talent in a competitive market;
- Hybrid Working – embedding the ‘new normal’ and continuing with changes to ways of working which bring about efficiencies
- Wellbeing of employees, particularly mental health and expanding current offer of support for employees;
- Training & Development – focus on learning and development of employees, e.g. grow our own (this links with Recruitment issues above and workforce/succession planning)
- Diversity, Equality and Inclusion – work to ensure a diverse and representative workforce to support the inclusive services offered to the community
- Pay and benefits - supporting staff where possible with cost of living issues and responding to pay requests as a result of increased inflation, whilst mindful of our own very challenging budget position
- Employee engagement – focus on engaging employees in the NWBC objectives and priorities to ensure they feel valued, trusted and have pride in customer excellence.

## 8.6 **Streetscape**

8.6.1 The Streetscape team has continued to provide a very high level of service provision despite staffing pressures, particularly regarding HGV driver recruitment to which the Council has responded imaginatively and successfully.

8.6.2 The Council wishes to continue to improve the service even further and the incab system is now ready to be implemented and will be rolled out in the coming months. Work also continues on the sub regional MRF which is reported regularly to Members and we look forward to working closely with the new Managing Director.

8.6.3 The implications of the change to the enforcement of on street parking in North Warwickshire and the linked changes to off street parking were introduced very well. The next key stage will be inputting into the County Council’s review of on street parking particularly with regard to residents’ parking.

8.6.4 The Division is also looking at changes to the Street Cleaning and Grounds Maintenance services which have been reported to Members recently and which will be the subject of further reports.

8.6.5 The Division is also leading on the Council’s work with regard to Climate Change, including work with the Member working group. A plan drawing all the work to date together will be considered by Members in the next few months.

8.6.6 Finally, there is a lot of work relating to the Council's property estate, linked to its age and condition but also linked to changing working patterns and Members will be aware of decision that have been taken with regard to a number of assets in the Council's ownership.

## 8.7 Democratic Services and Legal Services

8.7.1 The Democratic Services Team continues to service meetings of the Council, its various Boards and Sub-committees and support members, together with a wide range of election, voter registration and referendum functions in the post-Covid era. Challenges facing the Team include a significant amount of work to implement voter identification prior to the May elections and a continued high number of neighbourhood planning referendums. The Team has two relatively new members of staff who have settled in and are performing extremely well but are still building their knowledge in some aspects of the role. The promotion of another Team member to a senior position is assisting their development and that of the service as a whole. Following a number of enquiries and issues arising from Parish Councils, it is possible that some Community Governance Review work will need to be undertaken. This will need to be ahead of and part of a boundary review of the Borough which is expected likely to start in summer of 2023.

8.7.2 The Legal Services Team provide support across the whole of the Council's functions. There has been a notable increase in advice relating to partnership working with other public bodies with whom we are jointly providing services. There is also a high demand for support across the Council's regulatory and enforcement functions including planning control, anti-social behaviour and environmental health functions. This has included an increase in the amount of planning enforcement, particularly at short notice, and significant work for the whole Team in obtaining and enforcing the injunction relating to protests at the Oil Terminal.

## 8.8 Other Issues

8.8.1 Having looked at the main demands and challenges on a service by service basis, there are some other key areas which require a specific mention.

## 8.9 Cross-Agency Issues

8.9.1 The remaining areas are all ones where we work closely with partners often with more resources and wider remits than we have.

### (a) Health & Wellbeing

Local Government has direct responsibility for Public Health exercised through the County Health & Wellbeing Board on which we are represented. Health Improvement has been a key concern for the Council over many years and, with a higher age profile than many areas, it is important that we play our role with partners in improving the quality of life of our residents. Many of our functions are health related, eg, Environmental Health, Leisure

and Community Development Services and Housing, and we work with partners to look at ways of improving public health and unlocking financial resources. Our resources for getting involved in the bigger health issues are, however, limited and capacity remains a real problem in such a complex partnership agenda. Looking into the future, the Council needs to give consideration as to how it can maximise its effectiveness in this area as pressures on Health Budgets grow and there is greater pressure (and willingness) on Health Agencies to work more closely and potentially integrate with local government services, particularly but not exclusively, adult social care. This is particularly the case as resources from other agencies, particularly the County Council, have been squeezed over the last year with vacant posts taking some time to fill and in some cases not being filled at all.

The Borough Council has taken the proactive step to introduce a Health and Wellbeing Working Party, which has led on the production of the authority's corporate "Health and Wellbeing Action Plan". The authority is also a key partner within the Warwickshire North Health & Wellbeing Partnership, which the Chief Executive chairs, and is active at both officer and Member level in the Warwickshire Health & Wellbeing Board, which is playing a significant role in trying to facilitate improvements in key health issues.

As is often the case in the Health system, major structural change took place this year with the introduction of Integrated Care Partnerships and it is reasonable to say that the role Councils play within these partnerships, particularly District/Borough Councils, remains to be confirmed. A key concern for the Council will be to ensure that the local area has its voice heard in the wider subregional system.

(b) Community Safety

As with the previous topic, we have a lot of involvement but limited resources to deal with this key issue. The Borough Council has, however, made some important interventions working in partnership, particularly in relation to reducing rural crime. In particular this year, work on fly tipping has undergone a thorough review via the Council's transformation programme with a number of teams working increasingly closely and deploying increasingly cutting edge technology to respond to an increasing problem. The Council will also work with partners on the current serious concerns regarding knife crime, particularly in respect of our younger residents.

There are external influences, including changes to local Policing structures/resourcing which require effective partnership arrangements to sustain Making North Warwickshire a Safer Place.

The Council's work in the area is overseen by the Safer Communities Sub Group and more details is given the performance report at Appendix B.

## 9 **Conclusion**

- 9.1 It is hoped that this report has given Members sufficient information on external factors affecting the Council, internal issues which they may wish to take account of, including challenges facing individual services, and the requirements and aspirations of stakeholders.
  
- 9.2 In addition, when considering options for reviewing existing and determining future priorities, Members need to be aware of the resources available and or potentially available to them. That information is also outlined in the report so, hopefully, this provides enough of a framework to enable further discussion and planning to take place in preparation for the next few years.

The Contact Officer for this report is Steve Maxey (719438).



North Warwickshire  
Borough Council



# Corporate Plan 2022-23



MIRA Technology Park

---

2022/23 Revision

**Protecting the rurality of North Warwickshire, supporting its  
communities and promoting the wellbeing of residents and business.**



01

# Introduction

The last year has been another very challenging year for everyone and the impact on residents, communities, business and the Council has again been significant. The Council would like to extend our sympathies to you if you have been particularly affected by the COVID 19 outbreak, especially if you have lost someone close to you during this time.

As a Council we have continued to experience ongoing challenges, not least of which were keeping staff as safe as possible, whilst continuing service provision. We have continued to review how we operate services, trying to build in service efficiencies wherever possible. Whilst not all of the additional work required during the early part of the response to Coronavirus was needed last year, we continued to support other service providers. We also continued to administer a range of business grants to businesses in the Borough in line with national and local restrictions and administered the Track and Trace scheme in line with national requirements.

## Like many others, our finances continued to be hit by the pandemic.

Refuse and recycling costs have remained high, whilst income streams in areas such as leisure have not recovered due to restrictions on numbers attending activities at times and lower take up generally. Managing our financial position will be very challenging going forward, even with the council tax increase set for the coming year.

However, the Council also had some notable achievements last year, with the completion of the Local Plan, ongoing improvement in the quality of superfast broadband provision in the Borough, hosting the first ever International Women's Cycle Race Time Trials, hundreds of fly tipping incidents cleared on average in less than one day, improved play areas and sporting facilities across the Borough progress with the start of the project to improve the A5 in the Borough, the provision of new housing in Warton, Polesworth, Grendon and Atherstone, and setting up a revised leisure facility in Polesworth.



Whilst we need to find ways of reducing our expenditure significantly over the next few years, we will continue to do all we can to support our communities and improve jobs and opportunities for the residents of North Warwickshire.

Despite these challenges I am pleased to say that we have been able to announce some exciting new investment projects in the budget agreed on 23rd February by the Council. Despite the significant constraints on our budget we will now work towards a new Leisure Centre in Polesworth, a new 4G playing pitch at the Sheepy Road football ground and additional much needed car parking space in Coleshill.

We will also continue to seek Government funding for a replacement Leisure Centre in Atherstone, and have allocated match funding from our budget to support this.

**There continues to be considerable uncertainty as the country learns to live with COVID and other external events that is putting pressure on everyone's finances, both individual and Government.**

North Warwickshire Borough Council, working with partners, has produced a package of support and advice for anyone struggling with these issues, particularly the increasing cost of energy, and you'll find information setting out this help enclosed with this letter, as well as details of the Government scheme.

There are major challenges ahead, but we are up to the task and I am excited to continue to work on numerous projects designed to improve North Warwickshire.



**Vision**

Protecting the rurality of North Warwickshire, supporting its communities and promoting the wellbeing of residents and business.



**Values**

Service provider, enabler, point of contact, champion of North Warwickshire



**Priorities and Objectives**

This section of the plan outlines how we will achieve our priorities and objectives and how we will measure our progress

# Priorities:

---

**Efficient organisation:**

- Finances
- Lean
- Responsive



**Safe, Liveable, Locally Focussed communities:**

- Feeling safe
- Place based enforcement
- Quality of life



**Prosperous and healthy:**

- Jobs
- Infrastructure
- Connectivity
- Health



**Sustainable growth, protected rurality:**

- Vibrant growth
- Sense of place
- Recognisably home



In addition, the Council will continue its work to adopt a meaningful climate change strategy, as well as fully exploring the devolution opportunities available as a result of the 'Levelling Up agenda, particularly through the Trailblazer Devolution Deal' for the West Midlands Combined Authority and a potential County Deal for Warwickshire.

# 02

## Efficient organisation

– financial management, lean and responsive organisation

### Our Strategic Aims

We need to be the most **focused and prioritised organisation** we can be – clear on our vision and priorities, skilled and motivated staff in the right places.

We need to **know what we are about** but also that we can't cover as many areas as before and will continue to **harness the power of the community**.

Our **advocacy for the area** will aim to ensure other parts of the systems we live in recognise the needs of North Warwickshire.

We recognise that North Warwickshire Borough Council is an organisation a lot of people turn to for help and we are proud of this – it played a vital role in supporting communities through COVID and will continue as we learn to live with the virus in the longer term. A key reason for this is our **responsiveness – we know the area and can be relied on to respond**. This need to be allied with a greater understanding of you, as residents of the Borough. Recent changes in our working practices have shown the benefit of the **Council truly leaving the building** in every sense, being more problem solving in complex cases and seeing the person as well as the process.



### How we will achieve this

Make the financial savings we need in ways which least affect our residents

A robust transformation programme to ensure our services and processes are as lean as possible

Identifying the resources needed to deliver the Council's plan to provide high-quality priority services to our communities

Consider new models of working and providing services

Develop our staff in the new skills needed, properly supported by IT

Develop our vulnerability work from COVID 19 to provide additional assurance to residents who may be experiencing difficulties

Ensure as many services are based in North Warwickshire as possible to ensure they reflect and respond to the Borough.

### How we will measure this

- Balanced budget and savings identified in the Medium Term Financial Strategy (N)
- A minimum of two major services reviews and reporting on the savings and efficiencies achieved (PI)
- Increased commercial activity in areas that will promote the wellbeing of the Borough to assist with market weaknesses and make a contribution to the Council's budget (N&PI)
- Appropriate charges for Green Waste and Parking to help sustain services (PI)
- Contact those we know to be vulnerable with information, advice and as often as possible with direct contact to ensure the help available is reaching our residents (N&PI)
- Efficiently collect money due to the Council, whilst continuing to offer support (PI)
- Staff survey results (PI)
- Customer satisfaction (PI)

## 03

# Safe, Liveable, Locally Focussed Communities

– feeling safe, place based enforcement, quality of life

## Our Strategic Aims

North Warwickshire is a recognisable community with a distinctive sense of place. It is connected to but separate from the wider West Midlands area as well as the East Midlands and therefore benefits from public services based on its real geography rather than administrative convenience.

Key to our sense of place is **quality of life** – being able to enjoy the rurality and communities within North Warwickshire. **Feeling safe** is of paramount importance to this and as part of our **advocacy role** for the Borough we will work with the Police and other partners on the key safety issues of concern to local residents.

We will adopt a **placed based approach to enforcement** using our powers where appropriate to ensure the protections to residents' quality of life are used. As well as our professional powers in areas such as Planning, Housing and Environmental Health we will use a problem-solving approach to cross cutting and multi agency issues to ensure people enjoy their homes and communities.



## How will we achieve this

Continue to play a leading role in the North Warwickshire Community Safety Partnership working with the community, including the Police, Town and Parish Councils and people of all ages, background and areas, to improve public perception of crime and public confidence in feeling safe by contributing towards the achievement of the Partnership plan actions and targets for the current strategic priorities. This will be particularly important for those who have spent considerable periods of time shielding against the risk caused by COVID 19.

Advocate on behalf of the Borough to ensure sufficient levels of key services in the area, particularly Police and street lighting.

To review the implementation of Civil Parking Enforcement in North Warwickshire as part of steps to improve and increase, amongst other things, parking in our town centres, and work with partners on improving HGV parking.

Work with partners to resolve Safer Neighbourhood issues, including, where necessary, taking action to address anti-social and nuisance behaviour

Maintain a very high standard of street cleanliness throughout the Borough, tackling litter and flytipping as quickly as possible.

Ensure maximum coordination between enforcement teams to resolve complex social and environmental issues likely to significantly impact on quality of life.

## How we will measure this

- Reporting on a range of Safer Communities indicators linked to Violent Crime (with a focus on domestic violence and abuse, sexual offences and drug and alcohol related), Anti-Social Behaviour, Road Safety (with a focus on road traffic accidents resulting in killed or serious injuries), Crime in Rural Areas (PI, N)
- Report on the cleanliness of the Borough (PI)
- Report on the work of our enforcement teams in Planning, Housing and Environmental Health (N)
- Satisfaction surveys with residents and key partners such as Town and Parish Councils. (N)



Key to our sense of place is quality of life, feeling safe and using our powers to protect residents' quality of life

# 04

## Prosperous and healthy

– Jobs, Infrastructure, connectivity, health

### Our Strategic Aims

The first two objectives may be regarded as ensuring the foundations for the organisation and Borough are as firm as possible – the Council should add value to the area and residents should feel at home and secure in their communities.

The next two objectives build on the **quality of life theme** to ensure our communities **thrive**, being **prosperous and healthy**.

Key to this theme is a **healthy and inclusive economy** with a good supply of jobs, including in emerging 'mega trend' sectors, prioritised in national and regional Industrial Strategies. Ensuring our residents can **acquire the skills** for new and existing jobs is important in this aim.

As part of the final aim, ensuring investment into North Warwickshire in terms of sufficient housing and employment for our residents is a generally shared aim as long as the **infrastructure that makes places work** comes with it.

The Council has established an ambitious growth and investment programme following years of low input to the area and we will continue to lead on the Borough's input into securing the improvements to roads, schools, community services and environmental assets to **bring quality to growth**.

A key component is ensuring we are **connected with the people, places and factors which influence our life** – in terms of transport and physical connection and also technology as COVID produces a generational shift to digital services.

Finally, but fundamentally, a number of **health outcomes need to significantly improve** within the Borough. Loss of economic opportunity can often be replaced eventually but reduced health prospects are more damaging.



We want our communities to thrive, being prosperous and healthy, and ensure we add quality to prosperity and growth

### How will we achieve this

Produce a revised Economic Development Strategy linked to the UK and WM Industrial Strategies, including identifying projects to be supported from Government funding.

Use developer contributions and other funding to maximise opportunities for the employment of local people including addressing skills gaps as well as the improvement of the environment, leisure and other community services that add value to people's lives.

Manage development and work with partners to deliver its associated infrastructure, in line with the Infrastructure Delivery Plan

Progress the North Warwickshire Transport Strategy to improve strategic roads such as the A5 and A446, improve transport links, including cycle links, footpath links, public transport, and all forms of rail provision.

We will work in partnership with other agencies to tackle health inequalities through implementation of the corporate Health and Wellbeing Action Plan and relevant Warwickshire North Place Plan priorities, as part of our advocacy work for the Borough within the health system as well as by ensuring access to leisure and other community service opportunities that promote active, healthy lifestyles.



Ensure our work through a number of services such as Planning, Environmental Health, Leisure and Community Development and Housing contribute to improving the wider determinants of health and to enhancing the physical and mental wellbeing of local residents.

### How we will measure this

- A dashboard of economic indicators linked to the Economic Development Strategy including skill levels, employment rates, benefit claimant rates, wage/salary data (PI, N)
- Progress reports on the action plan for the Transport Strategy (N)
- Progress reports on the action plans for the corporate Health and Wellbeing Action Plan and JSNA and relevant Warwickshire North Place Plan priorities (N)
- A dashboard of health indicators on key health indicators, including life expectancy, access to mental health services, road mortality, and active lifestyle indicators (PI)

# 05

## Sustainable growth, protected rurality

– Vibrant growth, sense of place, recognisably home

### Our Strategic Aims

Linked to the last theme, one of the most important roles North Warwickshire Borough Council can play is to **shape the type of place** North Warwickshire is and ensure there is **a plentiful supply of houses, of the right type and quality.**

There is a housing crisis in the UK caused by insufficient properties being built over a long period of time. The Council will therefore play its part in providing **sustainable growth, facilitating investment in the Borough.** This will ensure the housing needs of the area are met and provide impetus through new jobs, and good quality facilities and services in North Warwickshire.

The growth however must not come at the expense of future generations and must seek to **retain the rurality of North Warwickshire.** The new necessary growth must integrate well with existing development and seek to retain a recognisable North Warwickshire, in particular protecting as far as possible our Green Belt and other strategic designations of land.

Working with partner organisations and advocating for the Borough for the infrastructure mentioned in the last objective is key to this aim.



### How will we achieve this

We will ensure we have an up-to-date Local Plan, which remains the best way to provide the homes, jobs and other sustainable growth needed in the area. Crucially it also provides the best mechanism to ensure as far as we can that development only happens in the right areas, and for the protection of the Green Belt.

We will continue to work with regional partners to ensure our Plan fits into the wider regional context and that we all working together ensure the necessary supply of homes, jobs and infrastructure.

Use our Design Champions to ensure the best achievable designs are implemented and developed so as to reflect setting and local character.

Seek to secure the protection of the best of the Borough's built and rural heritage, as well as our natural assets such as the Tame Valley Wetlands Partnership

To press for the maximum mitigation and benefits for the Borough arising from HS2, particularly during construction in partnership with other affected Councils and community action groups

Continue to implement the adopted North Warwickshire Leisure Facilities, Green Space and Playing Pitch Strategies, and the accompanying Local Football Facilities Plan, in accordance with their associated Action and Funding Plans.

To implement our Homeless Strategy and work on private housing.

### How we will measure this

- Report on progress of the Local Plan and subsequent reviews (N)
- Report on key planning and housing data such as the five year housing supply, percentage of affordable homes, amount of land built on brownfield and allocated sites. (PI)
- Report to the Planning and Development Board on pressures on the Green Belt, design and heritage issues including conservation areas (N)
- Report progress on Leisure Facilities, Playing Pitches and Green Space Strategies (N)
- Report progress on homelessness, private housing and other housing issues (N)



Sustainable growth providing sufficient houses and jobs, bringing investment into our places whilst keeping our recognisable rurality



**Protecting the rurality of North Warwickshire, supporting its communities and promoting the wellbeing of residents and business.**





North Warwickshire  
Borough Council



[www.northwarks.gov.uk](http://www.northwarks.gov.uk)





November 2022

# PERFORMANCE REPORT NOVEMBER 2022

## TRAFFIC LIGHT

Measure improving markedly

Measure improving

No/virtually no change, no trend or measure not “good” or bad”

Measure worsening

Measure worsening markedly

Corporate Plan key objectives:

**Efficient organisation – financial management, lean and responsive organisation**

**Safe, Liveable, Locally Focussed Communities – feeling safe, place-based enforcement, quality of life**

**Prosperous and healthy – jobs, infrastructure, connectivity, health**

**Sustainable growth, protected rurality - vibrant growth, sense of place, recognisably home**

## EFFICIENT ORGANISATION – FINANCIAL MANAGEMENT, LEAN AND RESPONSIVE ORGANISATION

<p>EO 1 - Make the financial savings we need in ways which least affect our residents</p> <p>Identifying the resources needed to deliver the Council's plan to provide high-quality priority services to our communities</p>	<p><i>Balanced budget and savings identified in the Medium Term Financial Strategy (N)</i></p> <p><i>Increased commercial activity in areas that will promote the wellbeing of the Borough to assist with market weaknesses and make a contribution to the Council's budget (N&amp;PI)</i></p> <p><i>Appropriate charges for Green Waste and Parking to help sustain services (PI)</i></p> <p><i>Efficiently collect money due to the Council, whilst continuing to offer support (PI)</i></p> <p>The Council's Medium Term Financial Strategy is reported to the Executive Board and the latest update can be found <a href="#">here</a></p> <p>Work on finding savings is ongoing, with the draft estimates for the 23/24 budget reported to Members in February.</p> <p>Charging for Green Waste has been implemented as well as changes to the management of car parking in the Borough as part of the Civil Enforcement of parking.</p> <p>We continue to offer support to those who need it and have renewed and coordinated the help available to residents, particularly given the current cost of living pressures. The outcomes of the Engagement Forum held on 29<sup>th</sup> September are reported elsewhere on this agenda and the help available to residents can be found <a href="#">here</a></p> <p>Collection rates for the current year at the end of October are:</p> <ul style="list-style-type: none"> <li>• Business rates - Target 67%, Collection 64.38%</li> <li>• Council Tax – Target 67%, Collection 64.69%</li> <li>• Sundry Debts – Collection rate 82% (Average collection rate 79.5%)</li> </ul> <p>The contract has been awarded for a new Finance system; we anticipate that the system will be live by the Autumn 2023.</p>
<p>EO 2 - A robust transformation programme to ensure our services and processes are as lean as possible</p>	<p>The Administration Unit has been subject to a full transformation review led by the Head of Corporate Services and the Transformation Manager which was complete at the end of 2021. A saving of £140,000 was achieved as a result of the review.</p>

Consider new models of working and providing services

A new system has been procured for Environmental Health. The new system will manage cases from end-to-end, i.e., from a receipt of a citizen request to closure and reporting. The system enables officers to go on site with their mobile devices, enabling processes to be electronic, reduce printing, paper, and eliminate re-keying of information freeing up officers to focus on service delivery. We will also be using the new system to manage the fly-tipping process, instead of being reliant on paper-based systems. The project is currently on schedule and planning for go-live during Spring 2023.

The Council has a continuous improvement objective in delivering and developing our accessible digital services with citizens to be able to report, apply and pay for services online. Our reception is now a self-serve area where residents can use our phones to speak to a customer services advisor or use a tablet to report, apply and pay for services. There is also a visitor check-in area.

During 2022 we have re-located all staff from Old Bank House to the Council House, with minimal disruption.

Work continues to develop and support hybrid working by:-

Enabling staff to post correspondence to citizens from any location (home or office), supporting efficiencies and reflecting having a smaller team for incoming and outgoing post as a result of the Admin Review mentioned above. Hybrid mail is heavily used by some teams. We are currently looking at a managed service for our Revenues and Benefits Team which will create a small efficiency within the team without increasing our postage costs.

Microsoft Teams has been optimised to all office-based staff to enable and promote better communications from any device and location, using technology to support efficiency gains.

The Council has purchased an In Cab software solution for our waste and recycling collection vehicles to enable increased service efficiencies in key areas, improved quality and management of performance data, improved access for customers and staff to service information as well as enabling much better allocation of resources and improved communication. Once implemented it should

	<p>have a positive impact on reducing some administration work that is carried out by the Streetscape Admin Support Team.</p> <p>This year we are implementing three new IT systems. This provides a good catapult for change, and we work together to challenge and improve processes and make best use of the technology.</p>
<p>EO 3 - Develop our staff in the new skills needed, properly supported by IT</p>	<p><i>Staff survey results (PI)</i></p> <p>Staff appraisals take place on an annual basis and lead to the production of a training plan</p> <p>The Council undertakes an annual staff survey. The key results for the 21/22 survey as are follows:</p> <p>A total of 117 employees completed the survey. This is a response rate of 36%, which is less than previous years. There were 47 questions in total, which were split over 7 areas.</p> <p>The results of this year’s survey are lower in comparison to the results from the previous year’s survey. However overall, we have still had many positive results in each of the sections. For example, the question “Do you know how you can help the Council to succeed?” may be lower, however, 82% of respondents answered ‘Yes’.</p> <p>Examples of questions within the sections of the survey are as follows:</p> <p><b>Communication</b></p> <ul style="list-style-type: none"> <li>• <i>Are you satisfied that relevant information reaches you on a regular and timely basis?</i> – 71% of respondents answered ‘Yes’.</li> <li>• <i>How would you rate communication with: Your immediate boss/supervisor/manager?</i> – 78.6% of respondents said that communication was either good / very good.</li> <li>• <i>How would you rate communication with: Your team?</i> – 77.6% of respondents rated it as either good / very good.</li> </ul>

## Training and Development

- *Is the Council committed to developing people?* – 81% of respondents answered 'Yes'.
- *I have the materials and equipment to do my work correctly* – 82.6 % of respondents answered 'Yes'.
- *I am encouraged and supported to work towards personal objectives* – 71.3% of respondents answered 'Yes'
- *I have the opportunity to use my abilities at work* – 89.7% of respondents answered 'Yes'.
- *Do you know what opportunities for training and development exist for you?* – 38.3% of respondents said that they were unaware of what opportunities were available.

## Staff Morale

- *The Council is a caring employer* – 87.1% of respondents agreed / strongly agreed.
- *I would recommend the Council as a good place to work* – 87.9% of respondents agreed / strongly agreed.
- *Overall I am satisfied with my job* – 81.9% of respondents agreed / strongly agreed.
- *I am happy with the balance between my work and home life?* – 91.4% of respondents agreed / strongly agreed.
- *Change is managed well by the Council* – 72.4 % of respondents agreed / strongly agreed.

## COMMUNITY ENGAGEMENT

- 92.2% agreed / strongly agreed that the Council makes a positive difference to the world we live in.

	<p><b>MANAGEMENT</b></p> <ul style="list-style-type: none"> <li>• <i>I get plenty of support from my manager – 84.7% of respondents agreed / strongly agreed.</i></li> <li>• <i>I feel my manager talks openly and honestly with me – 84.6% of respondents agreed / strongly agreed</i></li> <li>• <i>I have confidence in the leadership skills of my manager – 76.9% of respondents agreed / strongly agreed.</i></li> <li>• <i>Managers in my Division do their job well – 77.4% of respondents agreed / strongly agreed.</i></li> <li>• <i>I have confidence in the leadership skills of the senior management team – 80.4% of respondents agreed / strongly agreed.</i></li> </ul> <p><b>HEALTH &amp; SAFETY</b></p> <ul style="list-style-type: none"> <li>• 88% of respondents believe that the Council manages Health &amp; Safety well.</li> </ul> <p><b>E LEARNING</b></p> <ul style="list-style-type: none"> <li>• <i>The E Learning System is easy to use – 77% of respondents agreed / strongly agreed.</i></li> <li>• <i>The E Learning modules I've completed have improved my knowledge / understanding of the subject – 75.9 % of respondents agreed / strongly agreed.</i></li> </ul> <p>The Council is co-ordinating the Staff Survey 2022/23, which has been sent to all employees. This survey will use the same survey format as in previous years, in order to undertake a comparison exercise to former results.</p>
<p>EO 4 - Develop our vulnerability work from COVID 19 to provide additional assurance to residents who may be experiencing difficulties</p>	<p><i>Contact those we know to be vulnerable with information, advice and as often as possible with direct contact to ensure the help available is reaching our residents, in particular with regard to inflationary pressures especially the increased cost of energy</i></p> <p>The Council has worked to minimise the likelihood and impact of financial exclusion in North Warwickshire</p>

	<p>through the provision of advice, support and project delivery in a co-ordinated manner that demonstrates value for money and maximises benefits to its communities.</p> <p>Support for those most vulnerable is coordinated through the Northern Warwickshire Financial Inclusion Partnership</p> <p>NWBC Financial Inclusion (FI) Initiatives include:</p> <ul style="list-style-type: none"> <li>• NWBC Promotion Activity – social media campaigns</li> <li>• FI Training – staff/teams/partners/community attended</li> <li>• Financial Education in Secondary Schools / College</li> <li>• Community Events and Job Fairs</li> <li>• Customer Referral Form (inc Foodbank)</li> <li>• LA Support for Vulnerable Customers – non LA tenure / LA tenure (FISO work)</li> <li>• A Data Dashboard in conjunction with Warwickshire County Council</li> <li>• Reviews of Housing Benefit/Council Tax Support caseload performance</li> </ul> <p>The Council has allocated around £190,000 of support from the Local Community Fund, almost £90,000 of which was related to work within the community to counteract the impacts of the pandemic, allied to direct work by Community Development in support of local community groups</p> <p>As mentioned above, the Council has reviewed the services available to residents and businesses during the period of increased cost of living pressures. An Engagement Forum took place in 29<sup>th</sup> September and the outcomes of that event are reported elsewhere on this agenda.</p>
<p>EO 5 - Ensure as many services are based in North Warwickshire as possible to ensure they reflect and respond to the Borough.</p>	<p>The Council continues to advocate for as many services as possible to be delivered in the Borough.</p> <p>Recently a number of services have been co-located with leisure services, such as the phlebotomy service at Atherstone Memorial Hall and Coleshill Leisure Centre</p> <p>Our work on Community Safety continues to push for greater Police resource in the Borough and more continuity of service. Discussions are currently ongoing regarding an offer from the Police and Crime Commissioner regarding a focus on rural crime.</p>

**SAFE, LIVEABLE, LOCALLY FOCUSED COMMUNITIES – FEELING SAFE, PLACE BASED ENFORCEMENT, QUALITY OF LIFE**

<p>COM 1 - Continue to play a leading role in the North Warwickshire Community Safety Partnership working with the community, including the Police, Town and Parish Councils and people of all ages, background and areas, to improve public perception of crime and public confidence in feeling safe by contributing towards the achievement of the Partnership plan actions and targets for the current strategic priorities. This will be particularly important for those who have spent considerable periods of time shielding against the risk caused by COVID 19.</p> <p>COM 2 - Work with partners to resolve Safer Neighbourhood issues, including, where necessary, taking action to address anti-social and nuisance behaviour</p>	<p><i>Reporting on a range of Safer Communities indicators linked to Violent Crime (with a focus on domestic violence and abuse, sexual offences and drug and alcohol related), Anti-Social Behaviour, Road Safety (with a focus on road traffic accidents resulting in killed or serious injuries), Crime in Rural Areas (PI, N)</i></p> <p>Updates regarding the key Safer Communities issues are reported to the Safer Communities Sub Group</p> <p>The latest agendas can be found <a href="#">here</a>, <a href="#">here</a> and <a href="#">here</a> including the latest performance data is attached to this report</p>
<p>COM 3 - Advocate on behalf of the Borough to ensure sufficient levels of key services in the area, particularly Police and street lighting.</p>	<p>See update on EO 5 above, pages 4-5</p>
<p>COM 4- Maintain a very high standard of street cleanliness throughout the Borough, tackling litter and fly tipping as quickly as possible</p>	<p><i>Report on the cleanliness of the Borough (PI)</i></p> <p>The latest position on fly tipping is reported to the Safer Communities Sub Group and can be found <a href="#">here</a></p> <p>The clean-up response to fly tipping has remained very quick. As detailed below recruitment to the Environmental Health team has gone well and more resources is now available to investigate case. We will be using the new Environmental Health system to manage the fly-tipping process end-to-end. We have a specific project team working on fly-tipping, who will; increase our communications, install portable high-definition cameras in remote hotspot locations and review our performance</p>

	<p>regularly using a new reporting tool (Power BI), which is an interactive visual up to date report.</p> <p>It is hoped to recommence street cleanliness monitoring which has been effect by the absence of a key supervisory member of staff.</p>
<p>COM 5 - Ensure maximum coordination between enforcement teams to resolve complex social and environmental issues likely to significantly impact on quality of life.</p>	<p><i>Report on the work of our enforcement teams in Planning, Housing and Environmental Health (N)</i></p> <p>The Planning and Environmental Health teams continue to work together on cross cutting issues,. Staffing vacancies are being filled in Environmental Health following a restructure agreed by Special Sub Group. All roles are now filled save for the Manager’s position which is covered on an interim basis pending consideration of a final structure for the team.</p> <p>The Chief Executive will chair joint working project groups on issues as necessary, for example on the Lea Marston Shooting Ground, and various fly tipping and anti social behaviour reports in the Borough. A further Abatement Notice has now been served with regard to the shooting ground and enforcement work on this case continues.</p> <p>A revised Planning Enforcement Policy has been drafted and discussed informally with Members. It will be formally reported to Members later in 2022, once the new Principal Planning Enforcement Officer has had the opportunity to review the draft provided by his predecessor.</p> <p>The new Planning system is currently on schedule and planning for go-live during Spring 2023. The system enables officers to go on site with their mobile devices, enabling processes to be electronic, reduce printing, paper, and eliminate re-keying of information freeing up officers to focus on service delivery. All planning officers now have mobile devices to enable mobile working.</p>

Prosperous and healthy –

Jobs, Infrastructure, connectivity, health

PROSPEROUS AND HEALTHY – JOBS, INFRASTRUCTURE, CONNECTIVITY, HEALTH

<p>PH 1 - Produce a revised Economic Development Strategy linked to the UK and WM Industrial Strategies, including identifying projects to be supported from Government funding.</p>	<p><i>A dashboard of economic indicators linked to the Economic Development Strategy including skill levels, employment rates, benefit claimant rates, wage/salary data (PI, N)</i></p> <p>A draft Economic Development Strategy, to complement the employment land strategy within the adopted Local Plan, was considered by Executive Board. Since then a successful bid has been made to the LGA for external resource to help finalise the draft, and a presentation on this work will be given to Members on 28<sup>th</sup> November at 4pm. This will then be considered by the Member working group before a further report to the Executive Board, and then public consultation</p> <p>As part of this work draft economic development dashboard is being created with Warwickshire County Council and data from that will be included in future reports</p>
<p>PH 2 - Use developer contributions and other funding to maximise opportunities for the employment of local people including addressing skills gaps as well as the improvement of the environment, leisure and other community services that add value to people's lives.</p>	<p>The Council issues an Infrastructure Funding Report every year the latest of which can be viewed <a href="#">here</a>, and the previous year's statement can be found <a href="#">here</a></p> <p>The County Council's statements can be viewed <a href="#">here</a></p> <p>There is an extensive Infrastructure Delivery Plan linked to the adopted Local Plan which will seek developer contributions on a range of issues <a href="#">IDP 2018</a></p> <p>A number of related DPDs are being produced for consideration by the LDF Sub Committee prior to formal consultation. The Open Space, Sports and Recreation contributions DPD was reported to Members in May, with Affordable Housing and Developer Contributions DPDs being reported in the Spring.</p> <p>Work continues to offer support to those seeking jobs and further training. In particular a skills plan is being developed with local partners to support the employment land allocation in the Local Plan for Horiba MIRA, and we are working also on skill support for a major employer at the Core 42 development in Dordon</p>

PH 3 - Manage development and work with partners to deliver its associated infrastructure, in line with the Infrastructure Delivery Plan

Following the adoption of the Local Plan the focus of the Forward Planning Team now moves towards delivery of the Plan. This is particularly important in relation to the strategic allocations.

The Local Development Scheme will be updated to reflect the work programme. This is currently being developed.

The high-level work programme is as follows and will be developed by the LDF Sub committee (to be renamed the Planning Policy and Delivery Group). A series of meeting for this Group has been arranged for the coming year:

- 1 Delivery of Strategic Allocations – in particular allocated sites H2, H4, E4
  - o Master Plans
  - o Design Codes
  - o Infrastructure delivery
- 2 Delivery of infrastructure
  - o A5 Phases 1 and 2 – HIG funded
  - o A5 Phases 3 and 4 – RIS3 pipeline project
  - o Other key facilities and services such as education, health and community facilities
- 3 Supplementary Planning Documents
  - o Residential Design SPD
  - o Open Space and Sports SPD
  - o Developer Contributions SPD
- 4 Gypsy, Romany and Traveller Development Plan Document
- 5 Neighbourhood Plans
  - o Advice and guidance to those preparing their NP's
- 6 Improve monitoring of Local Plan
  - o Reviewing current process and looking to improve use of IT
- 7 Review and keep evidence up to date
  - o HEDNA – Housing and Economic Development Needs Assessment
- 8 Conservation work
  - o Designation of Conservation Area for Caldecote
  - o Designation of Conservation Area for Frazley

The report on the updated Housing and Employment needs of the Coventry and Warwickshire Market area will be published shortly and reported to Members.

	<p>A study into the wider Employment needs of the West Midlands area has now been commissioned.</p>
<p>PH 4 - Progress the North Warwickshire Transport Strategy to improve strategic roads such as the A5 and A446, improve transport links, including cycle links, footpath links, public transport, and all forms of rail provision.</p>	<p><i>Progress reports on the action plan for the Transport Strategy (N)</i></p> <p>Warwickshire County Council is developing a revised Transport Strategy and the strategy relating to North Warwickshire will now be contained within that document. The consultation on that strategy is reported elsewhere on this agenda</p> <p>Nearly £80m was allocated for the first phase of improvements to the A5 in the March 2020 budget, one of only three schemes in the country allocated funding. Project meetings have started on that scheme and National Highways have consulted on three options for this work, as reported to Members last month. The wider upgrade from the M42 to the M69 is now thought more likely as a result of the funding for the first phase. That proposal will be submitted for inclusion in the next phase of the Government’s Road Investment Strategy</p>
<p>PH 5 - We will work in partnership with other agencies to tackle health inequalities through implementation of the corporate Health and Wellbeing Action Plan and relevant Warwickshire North Place Plan priorities, as part of our advocacy work for the Borough within the health system as well as by ensuring access to leisure and other community service opportunities that promote active, healthy lifestyles.</p> <p>PH 6 - Ensure our work through a number of services such as Planning, Environmental Health, Leisure and Community Development and Housing contribute to improving the wider determinants of health and to enhancing the physical and mental wellbeing of local residents</p>	<p><i>Progress reports on the action plans for the corporate Health and Wellbeing Action Plan and JSNA and relevant Warwickshire North Place Plan priorities (N)</i></p> <p><i>A dashboard of health indicators on key health indicators, including life expectancy, access to mental health services, road mortality, and active lifestyle indicators(PI)</i></p> <p>The Council’s Health and Wellbeing Action Plan is reported to the Health and Wellbeing Working Party and the Community and Environment Board. The latest update report can be viewed <a href="#">here</a></p> <p>A health inequalities dashboard is being developed with Warwickshire County Council and data from that will be included in future reports.</p> <p>The Warwickshire North Place partnership has developed a dashboard. The latest <a href="#">Health Index</a> updating the data to 2020 was published on the 9<sup>th</sup> November and the dashboard will be updated. Some extracts of the current data are embedded into this report.</p>



WiderDeterminant dashboard Nov 2022



Integration dashboard Nov 2022



Healthy behaviours and lifestyles dashb

The Warwickshire North Health and Wellbeing Board has identified four priorities, identified through workshops prior to the COVID 19 outbreak – Access to services; Reducing Health Inequalities; Housing and Health; and Reducing Obesity and Improving Lifestyles. Meeting of this Board will restart in the New Year as recruitment issues within the wider health system have now been resolved. Reduced overall capacity is likely to result in a review of the Delivery Plan with more targeted focus on projects.

Work within the Housing and Health priority is progressing and reported to the Board and Partnership

Officers continue to attend the Local Estates Forum which looks at physical assets available to promote health and wellbeing

## SUSTAINABLE GROWTH, PROTECTED RURALITY – VIBRANT GROWTH, SENSE OF PLACE, RECOGNISABLY HOME

SG 1 - We will ensure we have an up-to-date Local Plan, which remains the best way to provide the homes, jobs and other sustainable growth needed in the area. Crucially it also provides the best mechanism to ensure as far as we can that development only happens in the right areas, and for the protection of the Green Belt.

*Report on progress of the Local Plan and subsequent reviews (N)*

*Report on key planning and housing data such as the five year housing supply, percentage of affordable homes, amount of land built on brownfield and allocated sites. (PI)*

*Report to the Planning and Development Board on pressures on the Green Belt, design and heritage issues including conservation areas (N)*

The North Warwickshire Local Plan was adopted on 29<sup>th</sup> September 2021

Regular updates are reported to the Planning and Development Board on recent appeal decisions

Monitoring information on the development provided during each year will be report to Board on an annual basis

As Members are aware, there is an almost constant need to update the evidence base that sits behind the Local Plan and, as mentioned above, a revised Housing and Employment Needs analysis for Coventry and Warwickshire is on the final stages of production and will be reported to Members in due course.

<p>SG 2 - We will continue to work with regional partners to ensure our Plan fits into the wider regional context and that we all working together ensure the necessary supply of homes, jobs and infrastructure.</p>		<p>The Duty to Cooperate was a key component in the North Warwickshire Local Plan and the housing allocations make a substantial contribution to the wider regional housing need, a requirement given that North Warwickshire is part of both the Coventry and Warwickshire and Greater Birmingham Housing Market Areas.</p>
<p>SG 3 - Use our Design Champions to ensure the best achievable designs are implemented and developed so as to reflect setting and local character.</p> <p>SG 4 - Seek to secure the protection of the best of the Borough's built and rural heritage, as well as our natural assets such as the Tame Valley Wetlands Partnership</p>		<p>Members will be involved in Master Planning for the Strategic Allocations.</p> <p>Design Champions will continue to be involved with developers at both pre-application and application stages of the process</p> <p>Officers to continue to sit on the board of the Tame Valley Wetlands Partnership</p> <p>Opportunities for biodiversity net gain will be explored and developed, particularly as the Environment Act has been enacted. A report on the Government's consultation with regard to how this will be implemented has been reported to the Planning and Development Board.</p>
<p>SG 5 - To press for the maximum mitigation and benefits for the Borough arising from HS2, particularly during construction in partnership with other affected Councils and community action groups</p>		<p>Officers continue to meet with HS2 regularly to discuss the project, including attendance at a fortnightly multidisciplinary Consents Working Group. In the field of engagement, officers attend the Special Management Zone, Warwickshire Wide Engagement Meetings, and the Hams Hall Working Group.</p> <p>HS2 have agreed to fund an officer to deal with consents under the HS2 Act as well as other development issues, and an appointment to this role was made in earlier this year. Recent work has included concerns regarding the Bromford Tunnel extension and the current position has been reported to the Planning and Development Board. This issue is now the subject of an appeal to the Planning Inspectorate and HS2 has also applied for a Transport and Works Act Order. The appeal has now been recovered by the Secretaries of State (Transport and LUHC).</p> <p>Officers continue to be part of the national HS2 Planning Forum.</p>
<p>SG 6 - Continue to implement the adopted North Warwickshire</p>		<p><i>Report progress on Leisure Facilities, Playing Pitches and Green Space Strategies (N)</i></p>

<p>Leisure Facilities, Green Space and Playing Pitch Strategies, and the accompanying Local Football Facilities Plan, in accordance with their associated Action and Funding Plans.</p>	<p>Progress in respect of the implementation of the Leisure Facilities, Green Space and Playing Pitch Strategies, and the accompanying Local Football Facilities Plan, continues to be reported regularly to the Community and Environment Board.</p> <p>As the Board is aware, Members have approved the establishment of a Leisure Facilities Local Authority Trading Company (LATCo), in respect of which the required Business Case, Service Specification and strategic objectives for the company have all been reported to Board. The draft Contract, Articles of Association and Member Agreement are also being prepared for the consideration of Members.</p> <p>Alongside the establishment of the LATCo, work is also progressing with the design team in respect of the potential development of a new leisure facility, library and health centre in Atherstone. This project is the subject of a substantial bid to the Government’s Levelling Up Fund, the outcome of which is anticipated by the end of the year.</p> <p>The adopted Green Space and Playing Pitch Strategies are now subject to a formal review process, which will be completed in the autumn of 2023. In the meantime, progress continues to be made in respect of the development of a number of significant sports pitch and play area-related undertakings in particular.</p> <p>A new Sports, Recreation and Open Space Supplementary Planning Document has been produced, which will be used to secure the provision of appropriate service and facility infrastructure across the Borough in support of new housing development.</p>
<p>SG 7 - To implement our Homeless Strategy and work on private housing.</p>	<p>Report progress on homelessness, private housing and other housing issues (N)</p> <p>An <a href="#">update</a> on the Lettings Scheme and work with refugees and asylum seekers was given to Resources Board in September, as part of the work of the Housing Task and Finish Group</p> <p>As mentioned in the last performance update, progress with the HEART partnership was <a href="#">reported</a> to the</p>

Resources Board earlier this year. The strategic action plan and a revised Business Case that the HEART Board set out for the service is being delivered, with a new HR Protocol and a new case management IT system being delivered. The priority services have been delivered this year (HMO; tenant complaints) and delivery of the housing hospital liaison service. However the need to support the Homes for Ukraine arrangements have taken up resource – a new proactive housing options team started in June to serve Sponsors and Guests from Ukraine with housing options.

The housing assistance policy is being revised and will be submitted to the Resources Board in January along with a general update on work in this area.

Work on the Countywide strategy continue with the Director of Housing chairing the Strategic Group. North Warwickshire Borough Council has the lowest use of temporary accommodation in the County. We are delivering good supported housing for Veterans and single men across two schemes.

Following two successful bids for Green Homes funding, a range of energy efficiency measures have been undertaken to our stock (external wall insulation, windows, air source heat pumps). 90 properties have had external wall insulation. We have provided 28 properties with air source heat pump heating.

Extensive refurbishment work have been carried out to our blocks of flats - Welcome Street (wall insulation & windows) and Alexandra Court (flat to pitched roof, windows, wall insulation, improvement works inside and outside). In addition, the new developments in Atherstone are almost complete.

# North Warwickshire – Area Profile

## Census 2021



### Population

**65,000**  
people

**59,597,500** people in England and Wales

Rounded to the nearest 100 people

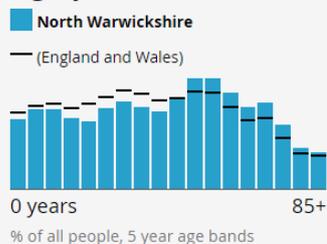
### Number of households

**27,600**  
households

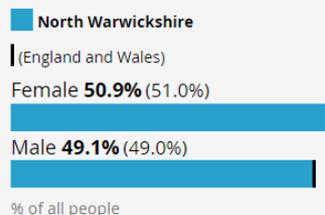
**24,783,200** households in England and Wales

Rounded to the nearest 100 households

### Age profile



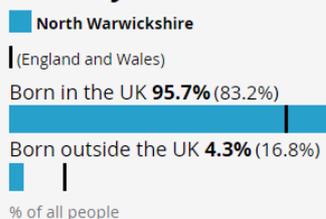
### Sex



### Legal partnership status



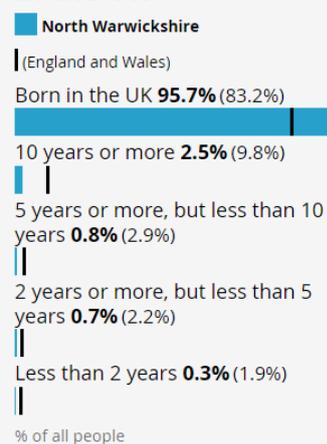
### Country of birth



### Passports held

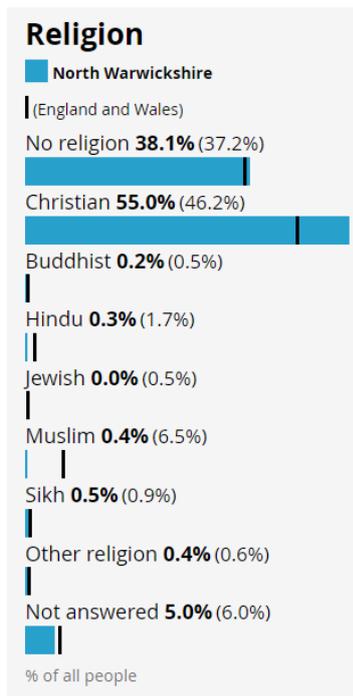
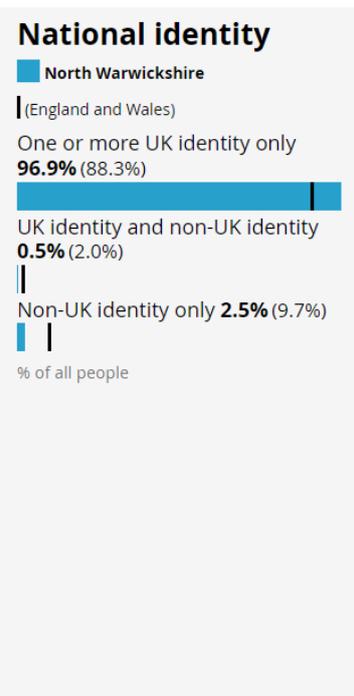
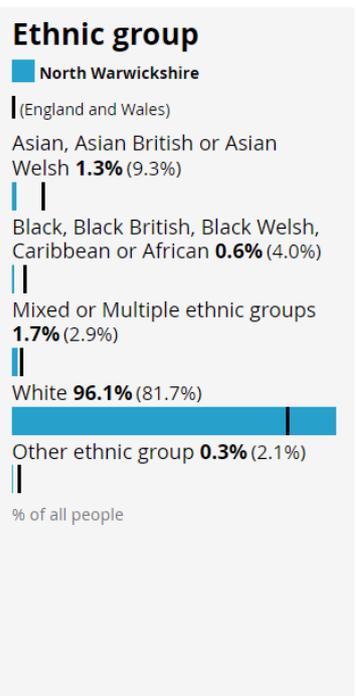
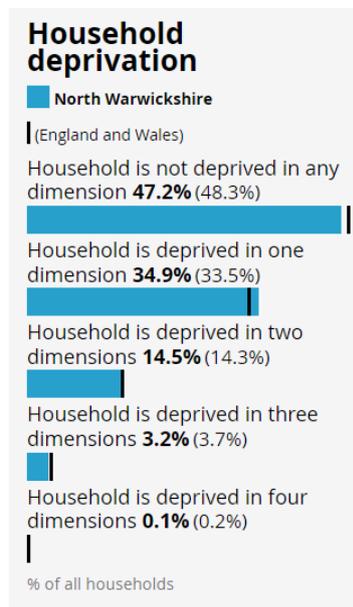
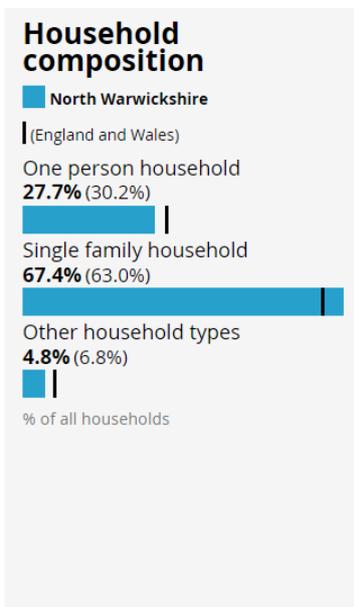
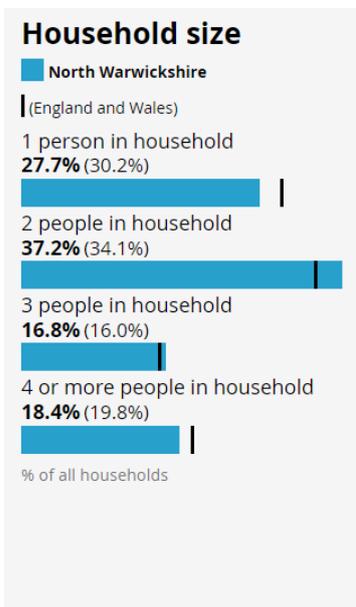


### Length of residence in the UK



# North Warwickshire – Area Profile

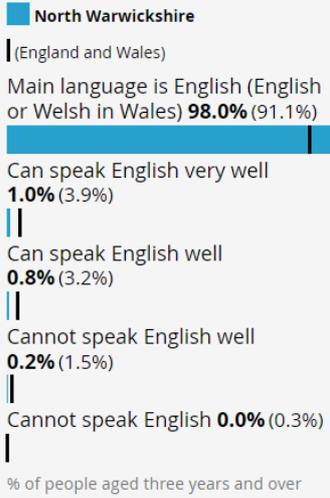
## Census 2021



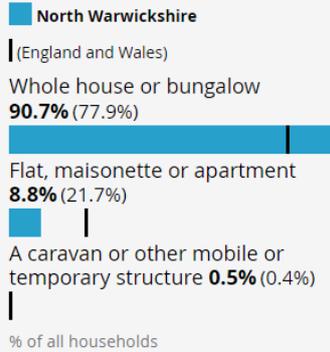
# North Warwickshire – Area Profile

## Census 2021

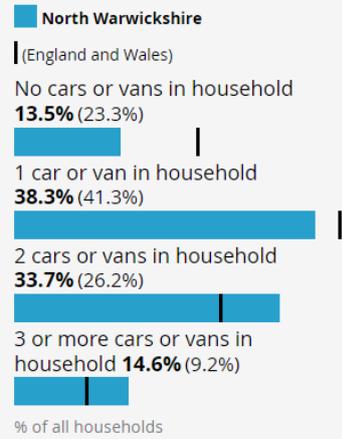
### Proficiency in English



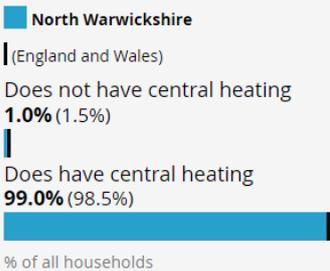
### Accommodation type



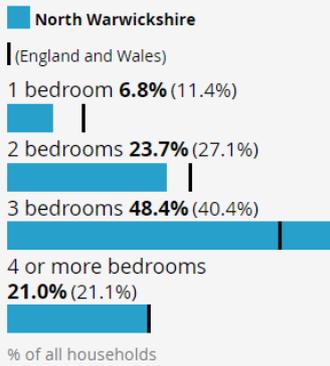
### Number of cars or vans



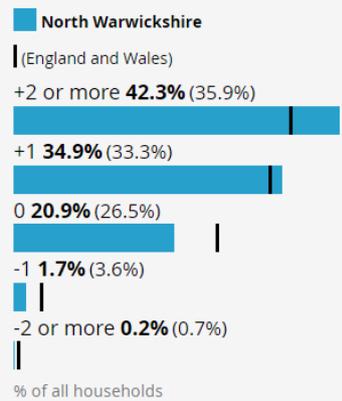
### Central heating



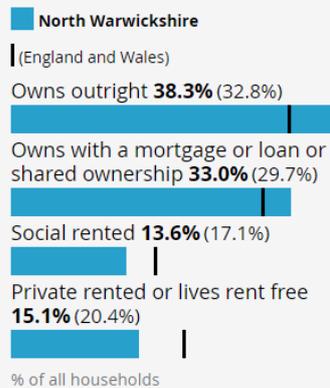
### Number of bedrooms



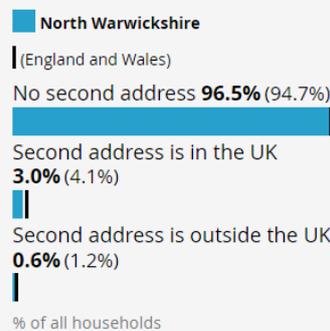
### Occupancy rating for bedrooms



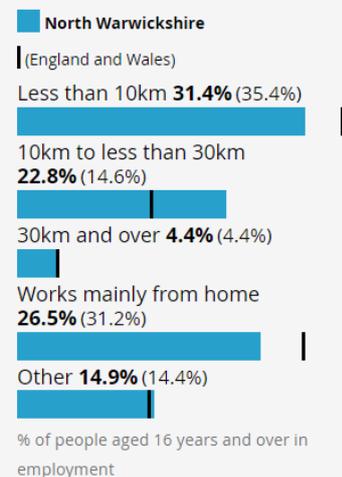
### Tenure of household



### Second address indicator



### Distance travelled to work



# North Warwickshire – Area Profile

## Census 2021

### Method of travel to workplace

North Warwickshire

(England and Wales)

Work mainly at or from home  
**26.5%** (31.2%)

Underground, metro, light rail, tram  
**0.0%** (1.8%)

Train **0.6%** (1.9%)

Bus, minibus or coach **1.3%** (4.2%)

Taxi **0.4%** (0.7%)

Motorcycle, scooter or moped  
**0.4%** (0.5%)

Driving a car or van **59.2%** (45.1%)

Passenger in a car or van  
**4.5%** (3.9%)

Bicycle **0.9%** (2.0%)

On foot **5.5%** (7.6%)

Other method of travel to work  
**0.8%** (1.0%)

% of people aged 16 years and over in employment

### Economic activity status

North Warwickshire

(England and Wales)

Economically active: In employment  
**58.9%** (57.2%)

Economically active: Unemployed  
**2.7%** (3.4%)

Economically inactive  
**38.4%** (39.4%)

% of people aged 16 years and over

### Employment history

North Warwickshire

(England and Wales)

Not in employment: Worked in the last 12 months  
**11.6%** (13.1%)

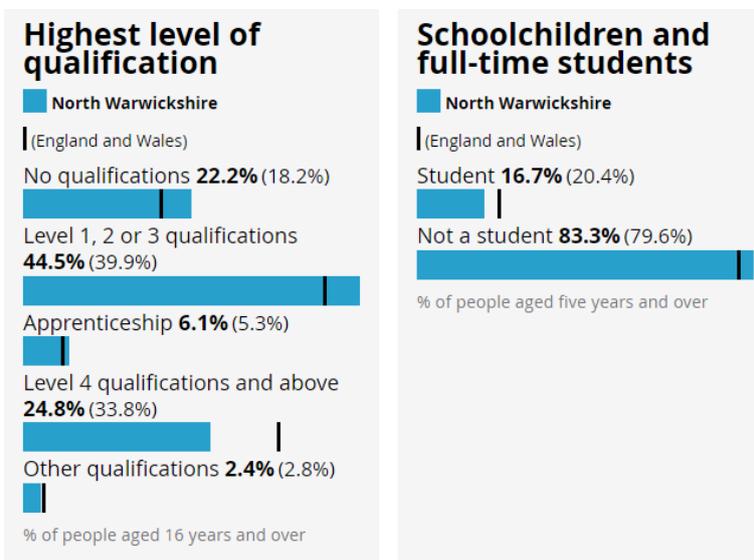
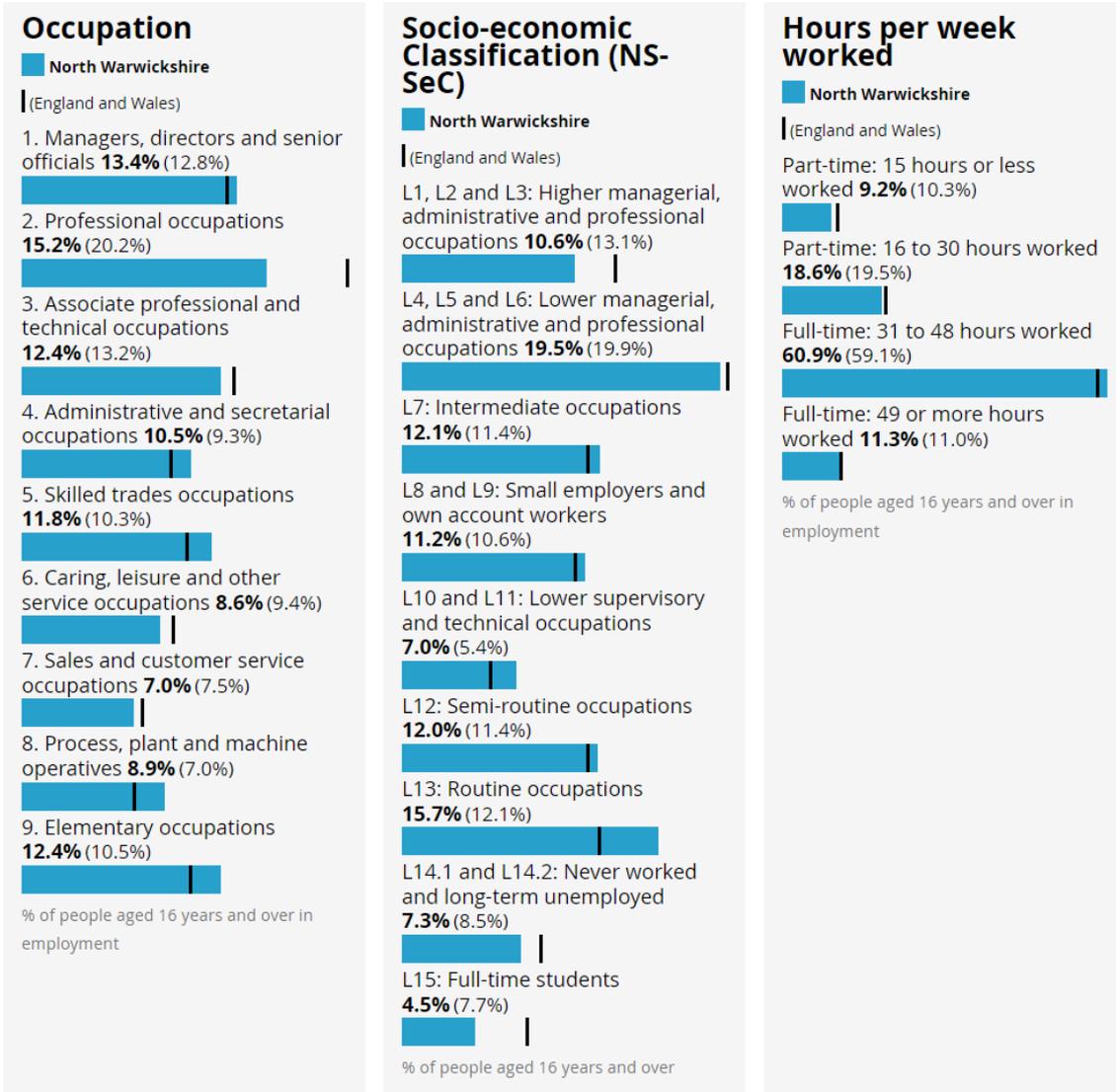
Not in employment: Not worked in the last 12 months  
**67.1%** (61.4%)

Not in employment: Never worked  
**21.2%** (25.5%)

% of people aged 16 years and over not in employment

# North Warwickshire – Area Profile

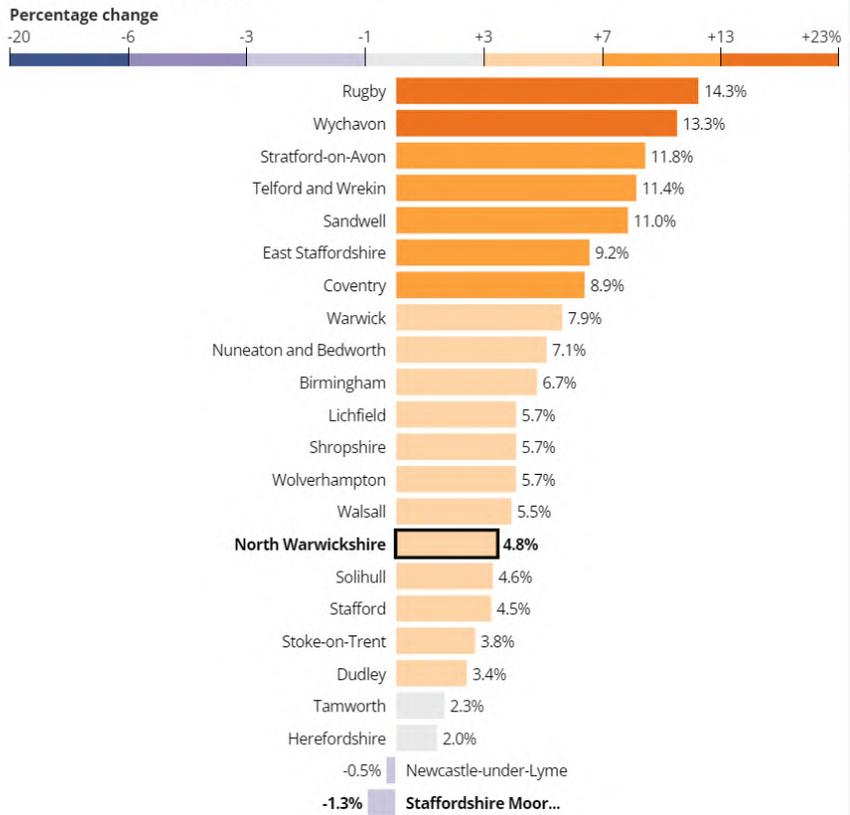
## Census 2021



# North Warwickshire – Area Profile

## Census 2021

Population change of selected local authority areas in the West Midlands between 2011 and 2021

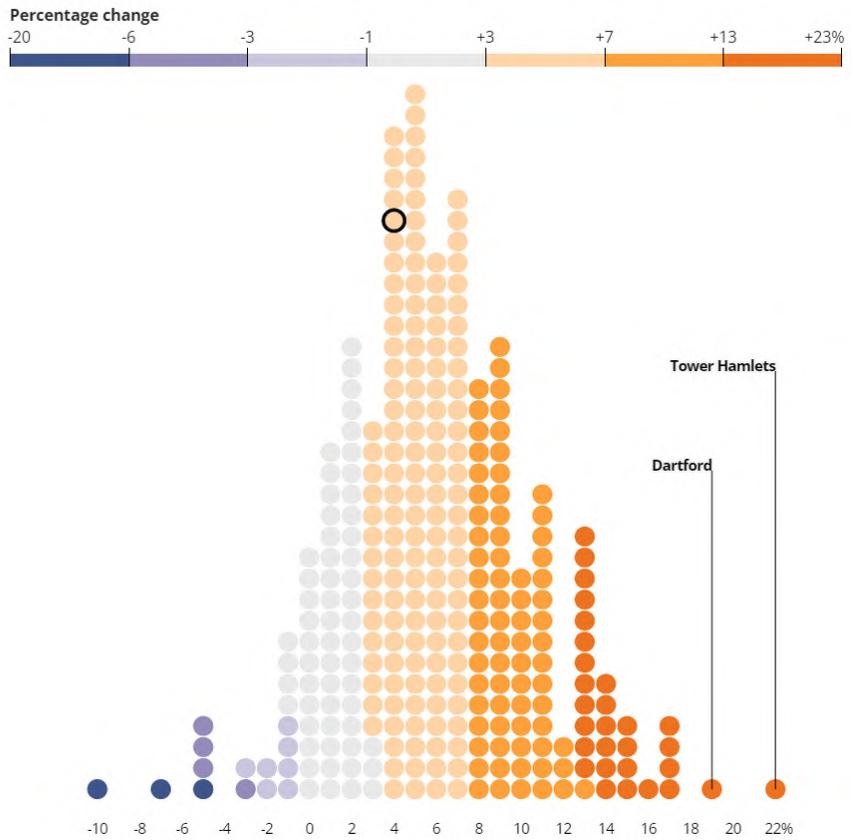


At the other end of the scale, [Staffordshire Moorlands](#) has seen a fall of 1.3%.

# North Warwickshire – Area Profile

## Census 2021

Local authority areas grouped by population change in England, 2011 to 2021



[Tower Hamlets](#) saw the largest percentage growth in population in England, increasing 22.1% between 2011 and 2021. [Dartford](#) was second, increasing 20.0%.

**Agenda Item No 8**

**Executive Board**

**13 February 2023**

**Report of the  
Corporate Director Resources**

**The Capital Strategy**

**1 Summary**

- 1.1 This report updates the Capital Strategy approved by the Council in February 2022.

**Recommendation to the Council**

**That the Capital Strategy, attached at Appendix A, be approved.**

**2 Introduction**

- 2.1 The Prudential Code requires all authorities to produce a detailed Capital Strategy. The current Code includes requirements on non-treasury investments and especially on the purchase of property with the intention of generating income, as such purchases may involve undertaking external borrowing to finance these acquisitions or utilising cash balances which exposes the council to risk.
- 2.2 The Council has had an approved Capital Strategy, which is updated on a regular basis, for a number of years.

**3 Capital Strategy**

- 3.1 The Capital Strategy forms a key part of the Council's overall Corporate Planning Framework and Medium Term Financial Strategy. It provides a mechanism by which the Council's capital investment and financing decisions can be aligned over a medium term planning horizon.
- 3.2 The Capital Strategy describes the Authority's priorities and its approach to capital investment. It also describes how the use of capital resources will contribute to the achievement of the Council's objectives and desired outcomes.
- 3.3 The Strategy overlaps with the Treasury Management Policy, as it includes the limits for external borrowing. It also sets out the Council's approach to commercial activities and how risk will be assessed in taking opportunities forward.

- ... 3.4 The revised strategy is attached as Appendix A.

## 4 Report Implications

### 4.1 Finance and Value for Money Implications

4.1.1 An assessment of future expenditure requirements and available resources has been undertaken in the capital programme report later on this agenda.

4.1.2 The Public Works Loans Board (PWLB) is a good source of borrowing for local authorities. To access this funding in the future, the Council will need to ensure that the capital programme doesn't include any purely commercial schemes. Schemes that have both service and commercial elements are permitted.

### 4.2 Legal and Human Rights Implications

4.2.1 The Council has a fiduciary duty to its taxpayers to maintain its assets and a duty to maintain a register of those assets as part of its accounting records. Statutory Guidance issued under the Local Government Act 2003 requires the Council to have regard to the Prudential Code when reviewing its borrowing requirements. The proposed strategy has been prepared in accordance with the current Code.

### 4.3 Environment and Sustainability Implications

4.3.1 The use of an effective Capital Strategy will make the most of the resources available to the Council. This will help to achieve the Council's aims, benefiting all who live and work within the Borough.

### 4.4 Risk Management Implications

4.4.1 The Council has limited resources in both capital and revenue terms and needs to ensure these are used effectively. The use of a Capital Strategy will ensure that resources are directed towards the Council's priorities.

### 4.5 Equalities Implications

4.5.1 The Capital Strategy needs to be equality assessed for impact and needs. If and when decisions are made in relation to the Capital Programme, then individual bids will need to be Equality Impact Assessed (EIA) to determine any adverse impact which may affect local communities.

The Contact Officer for this report is Sue Garner (719374).

## Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
The Capital Strategy	NWBC	Report to Executive Board	14 Feb 2022

## THE CAPITAL STRATEGY 2023/24

### 1 Introduction

- 1.1 The Council's vision is to "*protect the rurality of North Warwickshire, support its communities and promote the wellbeing of residents and businesses.*" To do this we provide many services for the people who live or work in or visit the Borough, with the aim of improving the quality of life in North Warwickshire.
- 1.2 The Council has a number of plans and strategies relating to different areas of its business, including: the Housing Strategy and HRA Business Plan; the Local Development Framework; the Green Space Strategy; and the Playing Pitch and Play Strategy. The Council uses a Corporate Plan to set out its corporate and service objectives and to provide a framework for individual service plans over the next three years. The Corporate Plan therefore provides the focus for the capital strategy and capital programme.
- 1.3 The purpose of the capital strategy is to show how the Council determines its priorities for capital investment, decides how much it can afford to borrow and sets its risk appetite.

### 2 Capital Investment Programme

- 2.1 Capital Investment is the term used to cover expenditure which provides value for a period of more than one financial year. This includes expenditure on:
- property, plant and equipment – assets held for use in the production or supply of goods or services, or for administrative purposes;
  - heritage assets – these may relate to the Council's history or local area;
  - investment properties – properties used solely to earn rentals and / or for increases in value; and
  - intangible assets – spending where long term benefit is obtained, but a physical asset is not evident, such as computer software.
- 2.2 The Council is required to maintain both a General Fund Account and a Housing Revenue Account. The General Fund Account covers the majority of the services provided by the Council, with some funding from residents of the Borough through Council Tax. The Housing Revenue Account covers the management and maintenance of the Council's housing stock, and is funded by rental income from tenants. Capital investment for the two accounts is considered separately, due to the different funding arrangements.
- 2.3 Within the strategic framework, key priorities for capital investment over the medium term are, subject to availability of resources, as indicated below:
- to meet the Authority's statutory duties, secure the safety of the public, its tenants and the Council's own employees, and meet operational requirements for information technology, vehicles and equipment.
  - to maintain the Council's existing housing stock to an acceptable standard, and to increase the stock where possible and cost effective.
  - to increase affordable housing within the Borough, through a variety of means. The Council may act as an enabler, or a direct provider.

- to address the problems of public and private sector dwellings, which are unfit for purpose.
- to secure the long-term availability and viability of key facilities provided by the Council and, at the same time, ensure they meet the changing needs and demands of users.
- to deliver services in ways that will best fit the needs of its citizens, at an affordable cost. The key priorities are to look at ways of providing 'joined up' services and better access to services.
- to assess the options for implementing the action plan stemming from the Green Space Strategy, including the maximisation of external funding and partnership working.

### 3 Funding for Capital Investment

3.1 The Capital Investment Programme can be funded from the following sources:

- Capital receipts from asset sales. The Council's main source of receipts come from the Right to Buy sales of council homes;
- Government grants. These may be government grants for specific purposes, such as Disabled Facilities Grant;
- External contributions, such as Section 106 developers' contributions towards the public services and amenities required for development. Section 106 contributions may be tied to a particular area, or to a specific service. The Council can also attract partnership funding from other agencies;
- Capital Reserves. The Council has limited reserves which it has put aside for capital spending. The use of these reserves is restricted to the Fund which set them aside;
- Revenue contributions. Revenue balances from both the General Fund and Housing Revenue Account may be used to support capital expenditure (relating to the relevant account); and
- Borrowing (also known as the Capital Financing Requirement). The Council is allowed to borrow to support its capital expenditure as long as this is prudent, sustainable and affordable.

### 4 Approach to Prioritising Investment

4.1 The main factors in determining the size of the capital programme are the requirements for capital spending, the availability of resources for capital projects and the impact of the programme on the Council's revenue budgets. However, some resources are specific to a particular scheme or service, and this must also be taken into account.

4.2 The expected resources available for capital spending are pulled together over both a three and ten year period and are shown in the table below. Looking at both time periods allows capital resources to be balanced over both a medium and longer term. Resources are recorded for both accounts, to ensure that spending for each account remains within the resources available to it.

	3 Years £000	10 Years £000
HRA	19,909	55,030
General Fund	5,901	10,586
<b>TOTAL</b>	<b>25,810</b>	<b>65,616</b>

- 4.3 Funding from Right to Buy receipts have been assumed in resource projections, but this source of funding has a degree of risk associated.
- 4.4 Funding for the construction of affordable houses will be generated from a number of sources which includes an annual contribution from rental income, receipts from the sale of land and houses, and grants received through partnership working. Right to Buy Sales above the forecast level in the HRA business plan can be used to offset the construction of new affordable housing.
- 4.5 The demand for capital spending is consistently higher than the funding available. In order to decide which schemes should be included in its capital programme, the Council prioritises the capital schemes put forward. The assessment criteria used include:
- the contribution to corporate and community plan priorities,
  - if spending enables a statutory obligation to be met;
  - if spending is to maintain an asset;
  - if external funding is available;
  - the revenue impact of individual schemes; and
  - the risk of not taking the scheme forward.
- 4.7 The Service Boards consider their support for individual schemes. Subject to consideration of any comments from the Service Boards, the Executive Board approves a three year programme. The first year is taken as being firm and schemes are put in hand. The later two years are provisional and only preparatory work is allowed to go ahead. The aim is to maintain a small but balanced programme over a ten-year period.
- 4.8 The consistent shortfall in funding has meant that the majority of non urgent General Fund projects have been excluded from the programme. Some of these schemes will become more urgent as time passes, and the Council will need to take steps to address the funding gap.
- 4.9 The proposed programme for the next three years is summarised below:

	3 Year Programme £000
HRA	16,581
General Fund	9,385
<b>TOTAL</b>	<b>25,966</b>

## 5 Revenue Implications of Capital Investment

- 5.1 The revenue impact of capital expenditure is itself a key factor in capital investment and is considered as part of any bid for capital resources. When approving the capital programme, the Executive Board is made aware of the revenue implications of each scheme and these are built into the budget, which is considered at the same time. These will include any borrowing costs (internal or external) as well as any increased operational costs.
- 5.2 The use of leasing to finance vehicle replacement was used in the past, however it is currently more cost effective to finance the expenditure through borrowing. External borrowing has therefore been assumed for the vehicle replacement programme. Any additional borrowing would only be added to the revenue budget, on a scheme by scheme basis.
- 5.3 Some projects may provide revenue savings, by reducing future running costs or by generating income. However others won't. The Authority will spend money to save money, and will seek the capital resources for investments that will increase efficiency or reduce revenue expenditure.

## **6 Managing and Monitoring the Capital Programme**

- 6.1 The Executive Board approves the capital strategy of the Authority and subsequently a three-year expenditure programme. The Resources Board undertakes the monitoring and management of the capital programme throughout the year. Progress against the programme is reported to Resources Board, together with the explanations for any variances. The Resources Board also review the outcomes of the spending undertaken.
- 6.2 The Council has a Corporate Property Officer who is responsible for the management and maintenance of the Council's portfolio of General Fund assets. This is the Council's Corporate Director of Streetscape. The Director of Housing is responsible for the management and maintenance of assets within the Housing Revenue Account.
- 6.3 Resources Board manage the majority of the Authority's own property portfolio including Council housing, the potential disposal of surplus land and the efficient use of property. The Community and Environment Board also have a property management role, where it relates to leisure facilities.

## **7 Disposal of Capital Assets**

- 7.1 The Authority does not have a large portfolio of assets that can be used to fund future investment. We are subject to Right to Buy legislation for council housing and have assumed the sale of 20 properties in projecting the resources in this strategy until 2025/26. After this, the sale of 15 properties per annum has been assumed.
- 7.2 Any decision to dispose of other assets will be taken with full consideration of the economic position and requires the approval of the Resources Board. Decisions on the use of any additional receipts will be made by the Executive Board, taking into account the priorities of schemes that are currently excluded from the capital programme.

## **8 Commercial Activities**

- 8.1 The Council has previously entered into some relatively low level commercial activity, in order to provide economic development opportunities for small businesses, through the provision of industrial units. These have worked well, and also provide a contribution towards the Council's overheads in the revenue budget. However additional spending on these assets is required in the future, which will require an assessment of the future value of the industrial units.
- 8.2 The Council is interested in looking at new commercial ventures, although investment must not be primarily for commercial returns. Investment must relate to a council function, although it may generate an income stream. Each investment opportunity will be assessed on an individual basis, by the appropriate Service Board and Executive Board. They will only be progressed where there is a viable business case, following consideration of the costs and risks involved. Where appropriate, the Council will procure additional external resource when either there is insufficient officer availability or when specialist advice and support is required.
- 8.3 The Council has started to identify possible commercial opportunities for investigation. In the event that a commercial vehicle is needed to progress any of the opportunities, the Council will need to take professional advice on both financial and legal issues.
- 8.4 Any commercial activity undertaken will be monitored by the Resources Board, as part of its budgetary control monitoring.

## **9 Risk Appetite**

- 9.1 Financial risks are closely monitored as part of the corporate risk management framework. The Council's risk appetite for commercial activities is likely to evolve as opportunities are assessed.

Whilst recognising the importance of generating income to support services, the Council will seek to balance income from more commercial ventures against the overall level of risk and the amount of reserves available to mitigate this risk.

- 9.2 The assessment of each commercial activity will include: the level of risk inherent in the income stream, the security held, the ability to realise assets or other security should the need arise and the level of income likely to be received from the commercial activity. The assessment will be used to ensure that the Council is not exposed to unknown, unmanaged or unacceptable risks. In this way the Council can judge what level of risk it is willing to take to achieve strategic outcomes, on a case by case basis.
- 9.3 The Council has previously taken a low risk approach to investment decisions, but has started to move to a managed risk approach in light of its service aspirations. An example is the agreed investment in the Materials Recycling Facility project.

## 10 Debt and Borrowing and Treasury Management

- 10.1 The Capital Financing Requirement (CFR) is the outstanding capital expenditure which has not yet been paid for from either revenue or capital resources, it is essentially a measure of the Council's underlying borrowing need. Where borrowing is used to fund capital schemes, the Council may borrow externally. However, the Council manages its cash balances as a whole and may choose to use internal cash, generated by holding reserves and the timing of cash flows, to finance capital schemes. Where the Council decides to borrow to fund capital expenditure the annual cost of borrowing is included within the revenue budget.

CFR	Original 2023/24 £'000	Forecast 2024/25 £'000	Forecast 2025/26 £'000	Forecast 2026/27 £'000
HRA	50,414	48,796	47,078	45,311
General Fund	12,539	15,746	15,203	14,750
<b>Total</b>	<b>62,953</b>	<b>64,542</b>	<b>62,281</b>	<b>60,061</b>

- 10.2 External borrowing was taken out to fund the 'buy out' of the housing stock from the national subsidy system. This is currently being repaid in line with the agreed strategy, which will reduce a substantial part of the debt. However, this repayment strategy is being revised to enable additional planned work to be undertaken on some of the housing stock. Although det levels won't fall as quickly as initially planned, the outstanding debt will still be repaid as part of the HRA's 30 Year HRA Business Plan.
- 10.3 In recent years, internal borrowing has been used by the General Fund to fund some spending. It is currently a cheaper alternative than borrowing externally and the Council has sufficient cash flow to allow this. As reserves get spent, this internal borrowing will need to be replaced by external borrowing. Market rates are monitored, so that external debt can be sourced when appropriate.
- 10.4 The council does not hold any purely commercial investments and has therefore complied with the Prudential Code in relation to investments for commercial purposes. The Council has not taken out borrowing to invest for the primary purpose of financial return.
- 10.5 Treasury Management, including the Council's approach to Investments, is covered in more detail within the Authority's Treasury Management Strategy.

## 11 Authorised Limit and Operational Boundary

- 11.1 There are two limits on external debt: the Authorised Limit and the Operational Boundary.

- 11.2 The Authorised Limit is a statutory limit determined under section 3 (2) of the Local Government Act 2003, which sets a boundary for overall borrowing by the Council. It provides for some headroom in the event of unexpected activity which results in an increased call on the Council's budgets but is not sustainable in the longer term.
- 11.3 A key control for treasury activity is to ensure that over the medium term, net borrowing (borrowings less investments) will only be for a capital purpose. Gross external borrowing should not (except in the short term) exceed the total of the CFR in the preceding year plus estimates of any additional capital borrowing in the years covered by the Medium Term Financial Strategy. The Operational Boundary is calculated using the expected activity included within the Council's budgets, with a small allowance for timing issues.
- 11.4 Both of these limits are monitored by the Resources Board as part of its monitoring of treasury management activity.

## **12 Provision for the repayment of debt**

- 12.1 The Council is required to make prudent provision, by way of a charge to the revenue account, to repay the debt taken out. This must be over a period that is reasonably commensurate with that over which the capital expenditure provides benefit.
- 12.2 The Council has chosen to repay older General Fund debt using 4% per annum of the Capital Financing Requirement relating to the General Fund. Any borrowing taken out from 2011/12 onwards is repaid on a prudential basis, which requires an assessment of the life of the asset that the borrowing has been used for. Where possible the Council uses borrowing to fund longer dated spending, rather than assets with relatively short lives.
- 12.3 Repayment of HRA debt is currently in line with the external loans taken out. New loans taken out will initially be borrowed internally where this is possible and advantageous, and externalised when appropriate.

## **13 Skills, Knowledge and Professional Advice**

- 13.1 Internally the Council employs fully qualified and experienced staff such as accountants, surveyors and solicitors, and supports those staff to complete their Continuing Professional Development requirements.
- 13.2 The Council uses Link Asset Services, Treasury Solutions as its external treasury management advisors. They assist with advice on the management of cash flows, investments and borrowings and with market information. The Councils VAT advisers are PSTax.
- 13.3 Treasury Management training for members of the Resources Board is provided periodically, or when requested.

## **14 Long Term View of Capital Expenditure Plans and Financing**

- 14.1 After programming in all previously approved schemes and those which have been deemed essential, the Council has a deficit in General Fund capital resources over the next ten years, which will need to be addressed before year 4.
- 14.2 Major schemes, such as the replacement of existing leisure facilities, will require external funding to be obtained to enable them to progress, but some provision has been made in the current capital programme to provide match funding. As detailed in the Council's Medium Term Financial Strategy, the Council is facing a significant reduction in its anticipated financial resources for General Fund activities. Given the current financial position, borrowing to fund the shortfall won't be an option. In order to progress these schemes therefore, external funding from other sources will be essential.

**Report of the Management Team**

**The Proposed 3 Year Capital Programme 2023/24 to 2025/26**

**1 Summary**

- 1.1 This report puts forward proposals for the Three Year Capital Programme and outlines the availability of capital resources and the options to meet any shortfalls.

<p><b>Recommendations to the Board</b></p> <p><b>a That the Board adopts the Revised Capital Programme for 2022/23 as set out in Appendix A;</b></p> <p><b>b That the Board adopts the 3 Year Capital Programme for the period 2023/24 to 2025/26 as set out in Appendix B, subject to the transfer of funding from the Business Rate Reserve to be considered later in the agenda; and</b></p> <p><b>Recommendation to Council</b></p> <p><b>c That the prudential indicators set out in Section 9 are approved, subject to any changes that may be required as a result of decisions taken during this evening's meeting.</b></p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2 Background**

- 2.1 The Council is permitted to borrow to fund capital expenditure, but no longer receives government support for any new borrowing. The Council has the ability to undertake unsupported borrowing and have forecast the use of this in order to fund the purchase of vehicles from the vehicle renewal programme and the provision of a new leisure facility in Polesworth.
- 2.2 The majority of housing capital spending is funded from the revenue generated through the Housing 30 Year Business Plan. In addition, borrowing is used as needed.
- 2.3 Other sources of finance are required to enable the Council to fund the Capital Programme and we will continue to be dependent on the use of capital receipts from the sale of Council Houses and land, together with external sources, such as specific grant funding.

2.4 The Council has benefited from additional business rates above its baseline funding level and is able to retain a proportion of these. Whilst some are held in case of successful future appeals by ratepayers, the level of business growth achieved will allow some to be used to support the General Fund capital programme, reducing the need to borrow.

### 3 **2022/23 Revised Capital Programme**

3.1 In relation to capital expenditure, Appendix A shows the originally approved programme for 2022/23 alongside the in-year movements. The revised position is £891,825 less than the approved programme.

3.2 The revised budget for the HRA housing programme has decreased by £351,120 as the replacement of Housing Direct Works and Inspectors vehicles has been deferred.

3.3 Within the General Fund programme, provision for Disabled Discrimination Adaptations and the structural maintenance programme of car parks has been moved into 2023/24, along with the replacement of some vehicles. Provision for work on the shops and flats at High Street Coleshill has been taken out of the programme following the decision to sell the properties, whilst additional provision has been added in for Innage Park. The replacement of the refuse vehicles has taken place, with a small amount of budget provision not required.

3.4 Within Information Services, the additional work involved in implementing the environmental health, planning and finance systems have had an impact on other planned work. Allocations for web development and uninterruptible power have been moved into 2023/24, with work on the telephone system moving back into 2024/25. No further work is expected on computer hardware and software, and this has been taken out of the programme.

3.9 The final actual expenditure out-turn for 2022/23 could still differ to the revised position shown. It is difficult to predict when some work will be completed and some schemes, like the Decent Homes Grants for Private Sector Housing are reliant on the timing of client claims for works over which the Council has no control. In line with normal practice, the Executive Board may be asked to approve the carry over of some of these budgets into 2023/24, once the final spend for 2022/23 is established.

### 4 **Formulating the Capital Programme**

4.1 The Council needs to control its capital programme carefully, firstly to ensure that available resources are targeted effectively towards meeting corporate targets and secondly, to take into account the effect that capital expenditure has on revenue budgets.

4.2 The capital programme, by its nature, is long term and therefore the initial programme drawn up is for a ten year period to 2032/33. However, as both expenditure and funding are difficult to predict so far in advance, a more detailed three-year programme has also been developed.

## 5 10-Year Capital Resource Forecast - 2023/24 to 2032/33

5.1 The resources for 2023/24 to 2032/33 have been estimated using the following assumptions:

- Capital receipts will be received from Right to Buy sales. The Council has entered into an agreement with the government which allows the retention of a greater proportion of these receipts. The additional receipts retained must be used for the construction/purchase of new affordable properties within 3 years of receipt;
- Future year estimates of the Disabled Facility Grant have not been included on the basis that all government funding in relation to this grant will be transferred from the Council to the Heart project;
- The use of revenue contributions to fund HRA expenditure, together with increases in borrowing where needed;
- Borrowing will also be used for the purchase of General Fund vehicles, and for the construction of a new Leisure Facility in Polesworth, amounting to £8,852,230 over the 10 year programme.

5.2 The expected resources for the period 2023/24 to 2032/33 are shown in the table below:

	<b>HRA £'000</b>	<b>Gen Fund £'000</b>	<b>Total £'000</b>
Resources b/fwd	(5,225)	(3,488)	<b>(8,713)</b>
Revenue Contributions to capital schemes	(32,369)	(1,734)	<b>(34,103)</b>
Borrowing/Leasing	(14,370)	(8,852)	<b>(23,222)</b>
Capital receipts	(3,878)	-	<b>(3,878)</b>
Capital receipts – New Build	(4,413)	-	<b>(4,413)</b>
<b>Total</b>	<b>(60,255)</b>	<b>(14,074)</b>	<b>(74,329)</b>

5.3 This gives a total of £74.329 million available resources over the ten-year period to 2032/33. HRA resources include an expected £4.413 million that will be limited to use on new build schemes, for up to 40% of the scheme cost. In the event that these cannot be used in the required timeframe, they will have to be returned to the government.

5.4 General Fund resources include the proposed transfer of £1.5 million from the Business Rate Volatility Reserve set out elsewhere on the agenda.

5.4 It must be emphasised that figures for 2024/25 onwards are indicative only, and firmer figures will only be available a few months ahead of the relevant year.

## 6 Ten Year Capital Expenditure Forecast – 2023/24 to 2032/33

- 6.1 An initial forecast of all potential capital projects has been collated covering the next 10 years, including both HRA and GF schemes. This followed an analysis of the general fund building maintenance requirements and a detailed breakdown of the key components needed to maintain the Decent Homes Standard within the Council's housing stock in the future.
- 6.2 Given the constraints on available funding, a draft 10 year capital programme commencing in 2023/24 has been compiled based on the approved schemes from 2022/23. The opportunity has been taken to assess any new schemes and review schemes previously classed as non-essential, to assess whether this classification is still valid. The review also gave the opportunity to reconsider the timing of existing schemes.
- 6.3 The cost of the extensive structural repair work required to the flats at Abbey Green Court has increased and the revised cost of £4,000,000 has been included in 2023/24. Some additional resources have been included for window replacement along with a separate allocation for fire doors.
- 6.4 A number of General Fund schemes were moved back into 2023/24, relating to IT schemes and maintenance work at the car parks.
- 6.5 There has been an increase in the capital requirement for the Sherbourne Recycling Facility of £3.056m as a result of negative movements in the exchange rate for sterling pounds to Canadian dollars, the currency that the equipment manufacturer is paid in; and additional costs due to changes in the scope for civils which has resulted in a delay in the timeline. Of the total costs, the Council's share is 4.67% which equates to £142,720, which will be added to the existing commercial loan already provided.
- 6.6 The draft programme is summarised below and the details are shown in Appendix B:
- ...

<b>Initial Forecast 2023/24 to 2032/33</b>	<b>£000</b>
HRA	(49,052)
General Fund	(15,672)
<b>TOTAL</b>	<b>(64,724)</b>

- 6.7 As shown in the previous section, the total estimated resources for the ten-year period are £74.329 million compared with the expenditure bids of £64.724 million. This expenditure reflects the total bids put forward for consideration that have been identified to ensure the continuity of current services.
- 6.8 This leaves a surplus of £9.605 million in overall terms, although each Fund needs to be considered separately. Whilst the HRA funds exceed the draft programme by £11.203 million, £4.413 million of this is subject to possible return. Borrowing is required particularly at the start of the programme to cover higher levels of spend in the first year, although the requirement to borrow continues throughout the period. With regards to the General Fund,

there is an expected deficit of £1.598 million in the General Fund programme over the ten year period. The shortfall in resources is expected to start in 2026/27, as available funding will be used in 2025/26. The transfer of funding from the Business Rate Reserve Reserve is essential to enable the full capital programme for 2023/24 to proceed.

## 7 Unallocated Schemes

- 7.1 The level of schemes required for inclusion in the capital programme outweighs the General Fund resources available. As a consequence, some projects which have been assessed as non-essential or unaffordable have not been included in the proposed programme. These include improvement works at existing pavilions owned by the Council. Only limited funding has been included for the replacement of Atherstone Leisure complex, as external funding will be needed to progress this scheme.
- 7.2 In addition, over the coming years there are also some IT systems that will need to be reviewed, to assess whether they still meet user needs, both corporate and service specific.

## 8 Three-Year Capital Spend and Resources to 2025/26

- 8.1 As well as the long term programme, it is prudent to ensure that the Council can afford the capital schemes required in the medium term. As such, schemes included in the next 3 years have been assessed in more detail.
- 8.2 The table below highlights that there is an overall surplus generated over the 3 year period. However, looking at each Fund separately highlights a particular issue for the General Fund.

Potential 3 year programme	HRA £'000	Gen Fund £'000	Total £'000
Resources b/fwd	(5,225)	(3,488)	(8,713)
Total 3 year resources	(19,909)	(5,901)	(25,810)
Total 3 year expenditure	16,581	9,385	25,966
<b>Total</b>	<b>(8,553)</b>	<b>(4)</b>	<b>(8,557)</b>

- 8.3 If resources come in as expected, there will be just enough resource to fund the General Fund 3 year capital programme. Resources for the longer term programme will need to be found.

## 9 Prudential Indicators for Capital Investment

- 9.1 The introduction of the Local Government Act 2003 resulted in a change in the capital finance system for Local Authorities and established a prudential framework for capital investment. Under this system, Councils are free to determine the affordability of their capital investment proposals and of any borrowing required to finance those proposals.

- 9.2 A prudential code was developed in 2011, which required the Council to consider the affordability of its proposals, their prudence and sustainability, value for money, asset management planning, practicality and service objectives. The prudential code was updated in September 2018, and then again in December 2021.
- 9.3 In addition to the information already provided within this report, the Council is required to set and review regularly a range of indicators that have been developed as part of the Code, which will be used to support capital investment decision-making. As risk and uncertainty form a key part of capital investment planning, the Code requires a minimum three year integrated capital and revenue spending plan to determine the indicators. These need to be set as part of the overall budget-setting process. The Code requires a number of indicators to be set and these are set out below.
- 9.4 **External Debt Indicators** – these include the Authorised Limit and the Operational Boundary. The Operational Boundary links to the Authority's plans for capital spending and borrowing requirement, with some provision allowed for cash flow requirements. The Authorised Limit is higher than the Operational Boundary as it provides additional headroom to allow for unusual cash movements.

	<b>2022/23 £000</b>	<b>2023/24 £000</b>	<b>2024/25 £000</b>	<b>2025/26 £000</b>
Authorised Limit for External Debt	73,259	76,975	78,761	76,704
Operational Boundary	65,903	69,525	71,212	69,053

- 9.5 **Capital Expenditure Indicators** – the Council is required to make a reasonable estimate of the capital expenditure it plans to incur in each of the next three years, and report actual expenditure incurred at year-end. Using the proposals contained within this report, these are set out below, together with the actual position for 2021/22 and the revised position for 2022/23.

	<b>Actual 2021/22 £'000</b>	<b>Revised 2022/23 £'000</b>	<b>Original 2023/24 £'000</b>	<b>Forecast 2024/25 £'000</b>	<b>Forecast 2025/26 £'000</b>
<b>HRA</b>	6,620	9,354	8,333	4,082	4,166
<b>HRA - New Build</b>	3,436	499	-	-	-
<b>General Fund</b>	2,418	6,814	7,998	883	504
<b>Total</b>	<b>12,474</b>	<b>16,667</b>	<b>16,331</b>	<b>4,965</b>	<b>4,670</b>

- 9.6 **Capital Financing Requirement Indicators** – these indicators measure the Council's underlying need to borrow to fund capital expenditure, which is the normal level of borrowing expected. The actual capital financing requirement as at 31 March 2022, the revised estimate for 2022/23 and estimates for the next three years are set out below. The method of calculation is set out as Appendix C.
- ...

	<b>Actual 2021/22 £'000</b>	<b>Revised 2022/23 £'000</b>	<b>Original 2023/24 £'000</b>	<b>Forecast 2024/25 £'000</b>	<b>Forecast 2025/26 £'000</b>
HRA	44,934	47,324	50,414	48,796	47,078
General Fund	12,380	12,101	12,539	15,746	15,203
<b>Total</b>	<b>57,314</b>	<b>59,425</b>	<b>62,953</b>	<b>64,542</b>	<b>62,281</b>

- 9.7 **Capital Financing Cost Indicators** – an indicator of affordability is the estimated ratio of financing costs to net revenue stream in percentage terms. If the ratio is increasing rapidly over time, then a larger proportion of revenue resources are being taken up by financing costs, which could be used to fund direct service delivery. This indicator is calculated for both the General Fund and the Housing Revenue Account, and these are shown below. The calculation of both is shown in more detail in Appendix D.

...

	<b>Actual 2021/22</b>	<b>Revised 2022/23</b>	<b>Original 2023/24</b>	<b>Forecast 2024/25</b>	<b>Forecast 2025/26</b>
HRA	30.41%	29.08%	28.16%	29.02%	29.14%
General Fund	4.14%	(2.42%)	(9.64%)	(2.48%)	0.22%

- 9.7.1 HRA financing costs reflect both the scheduled repayment of the debt taken out by the Council as part of the move to self financing and the new loans required to fund the capital programme. The movement in the General Fund amount reflects the expected changes in investment rates and the use of borrowing to fund vehicle replacements and the new leisure facility in Polesworth.

- 9.7.2 The indicators required by the Code may need to be amended, depending on the decisions on the capital programme taken by this Board.

- 9.8 **Net debt and the capital financing requirement** – an indicator of prudence. In order to ensure that over the medium term debt will only be for a capital purpose, the Authority must ensure that external debt does not exceed the total capital financing requirement for the preceding year and the estimates for the next two financial years. Current external borrowing is £44.239 million, well below the Capital Financing Requirement projections shown in Appendix C.

## 10 Conclusion

- 10.1 Some sources of funding are specific to particular types of expenditure. The proposed programme takes this into account, so Members need to be mindful of this should they wish to vary the proposed programme.

- 10.2 Only those schemes that either meet a statutory duty or which score highly against the Council priorities and risk assessment are included in the Capital Programme.

10.3 The proposed 3 Year Programme has a level of unallocated balances for the HRA which is felt prudent as there are certain risks to some income streams and potentially unforeseen costs that may be unavoidable. However, all balances are allocated for the General Fund, leaving the 3 year programme at risk if estimated resources are not achieved.

## 11 Report Implications

### 11.1 Finance and Value for Money Implications

11.1.1 The financial implications of this 3 Year Capital programme, in terms of the cost of funding, are given below.

<b>GENERAL FUND</b>	<b>2023/24 £</b>	<b>2024/25 £</b>	<b>2025/26 £</b>
Financing costs	577,660	115,970	14,660

Not all of the financing costs are additional, as some relate to the replacement of existing vehicles. The maintenance costs of the vehicles are included with the existing revenue allocations.

<b>HRA</b>	<b>2023/24 £</b>	<b>2024/25 £</b>	<b>2025/26 £</b>
Financing costs	4,011,660	3,347,120	3,423,890

The majority of the financing costs for the HRA are funded through revenue contributions to capital expenditure, although borrowing has also been used.

### 11.2 Environment and Sustainability Implications

11.2.1 Continuing to follow the capital strategy when setting a capital programme will ensure that the Council continues to achieve its priorities within the available capital resources.

### 11.3 Equality Implications

11.3.1 The proposals for the capital programme will need to be equality assessed for impact and needs and some of the schemes highlighted in the report will have positive impacts including the housing developments and improvements to Leisure facilities.

### 11.4 Safer Communities

11.4.1 The identified schemes would have positive implications for the development of safer communities, in that the provision of good quality leisure opportunities reduces the likelihood of criminal and/or anti-social behaviour.

## 11.5 Risk Management Implications

11.5.1 There are a number of risks associated with setting a capital programme, as assumptions are made on the type and level of available resources, as well as the required level of expenditure. To minimise the risks, decisions on these have been taken using past experience and knowledge, informed by current forecasts and trends. Risk will be managed through the production of regular budgetary control reports, assessing the impact of variances and reporting on the need to take any further action.

The Contact Officer for this report is Sue Garner (719374).

### Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

<b>Expenditure Proposals</b>	<b>Approved Budget</b>	<b>In Year Virements</b>	<b>Moved to future year</b>	<b>Other Changes</b>	<b>Revised 2022/23</b>
<b>HRA Assets</b>					
Staffing	280,020			13,690	293,710
Electrics	900,000				900,000
Kitchens and Bathrooms	426,870				426,870
Heating	1,035,380				1,035,380
Windows and Doors					-
Energy Saving Measures	350,000	335,580			685,580
Disabled Facilities Adaptations	261,280	130,000			391,280
Roofing	811,970				811,970
Improvement works to blocks of flats - external and common areas	1,759,150	450,000			2,209,150
Improvement works to blocks of flats - Drayton court	2,000,000				2,000,000
Replacement of DLO vehicles	325,811			(325,811)	-
Replacement of Housing Inspectors vehicles	39,000			(39,000)	-
Replacement of Neighbourhood Warden vehicles					-
Multi Trade Contract	300,000	300,000			600,000
New Build - Atherstone	785,580	(335,580)			450,000
New Build - Mancetter	49,100				49,100
<b>HRA TOTAL</b>	<b>9,324,161</b>	<b>880,000</b>	<b>-</b>	<b>(351,121)</b>	<b>9,853,040</b>
<b>General Fund Assets</b>					
Decent Homes Grants & Works (Private Sector)	20,000				20,000
Disabled Facility Grants	713,050				713,050
Telephone System	20,000		(20,000)		-
Financial Management System Replacement	300,000				300,000
Computer Hardware and Software	78,000		(48,000)		30,000
ICT Infrastructure Development	61,300				61,300
Backing Up	20,000		(10,000)		10,000
Network Infrastructure Replacement	25,600				25,600
Uninterruptible Power Supply	10,000		(10,000)		-
Mobile Devices	10,000				10,000
Web Development	50,000			(50,000)	-
Planning System Replacement	75,850				75,850
Environmental Health System Replacement	115,000				115,000
High Street, Coleshill	970,000			(970,000)	-
Innage Park Admin Unit	30,000				30,000
External Works on Industrial Buildings	300,000			170,000	470,000
Refurbishment of Council Owned Buildings	45,000				45,000
Maya Restaurant - Resurfacing Car Park	30,000				30,000
Disabled Discrimination Adaptations	137,310		(120,000)		17,310
Car Parks - Structural Maintenance	345,000			(245,000)	100,000
Car Parking, Pay and Display	12,514				12,514
Car Parking - Coleshill	600,000				600,000
Depot Works	30,600				30,600
Electrical Upgrade at Old Bank House	150,000				150,000
Materials Recycling Facility	1,532,901				1,532,901
Replacement of Street Cleaning Vehicles	192,050		(192,050)		-
Replacement of Horticulture Vehicles	328,990		(310,000)		18,990
Replacement of Leisure Services Vehicles	17,292		(17,292)		-
Replacement of Refuse Vehicles	1,572,582			(41,662)	1,530,920
Play Area Development	332,040				332,040
Playing Pitch Maintenance	21,960				21,960
LUF Bid		400,000			400,000
Atherstone Leisure Complex - Gym Equipment	85,000				85,000
Leisure Equipment	29,100				29,100
Capital Salaries - Management	17,140				17,140
<b>GENERAL FUND</b>	<b>8,278,279</b>	<b>400,000</b>	<b>(727,342)</b>	<b>(1,136,662)</b>	<b>6,814,275</b>
<b>OVERALL TOTAL</b>	<b>17,602,440</b>	<b>1,280,000</b>	<b>(727,342)</b>	<b>(1,487,783)</b>	<b>16,667,315</b>

## Draft Capital Programme - HRA Housing

Name of the Scheme	Basic Details of the Scheme	Year 1	Year 2	Year 3	Year 4 - 10	Total
		2023/24	2024/25	2025/26	2026/27 to 2032/33	10 Year Programme
Electrics	A scheduled programme to replace consumer units and to bring wiring in Council properties up to date.	600,000	309,000	315,180	2,389,980	3,614,160
Staffing	Housing officers who deliver the capital programme to Council properties.	309,580	322,240	331,550	2,536,130	3,499,500
Kitchens and Bathrooms	Replacement programme to ensure these facilities meet the Decent Homes Standard.	600,000	618,000	630,360	4,780,060	6,628,420
Heating	To replace heating systems which are at the end of their component life time, can't be repaired or to provide for controllable systems to meet the Decent Homes Standard.	500,000	515,000	525,300	3,983,380	5,523,680
Windows	Programmes of window and door replacements to address older installations that are not energy efficient and those that are defective.	250,000	257,500	262,650	1,991,680	2,761,830
Fire Doors		200,000	206,000	210,120	1,593,330	2,209,450
Energy Saving Measures	External Wall Insulation & Loft Insulation programmes will be required to ensure properties meet the necessary levels for energy usage.	250,000	257,500	262,650	1,991,680	2,761,830
Adaptations	Undertake adaptations to properties to improve accessibility in accordance with recommendations from social care assessors.	200,000	206,000	210,120	1,593,330	2,209,450
Roofing	To replace roofs (flat or pitched) which do not meet the Decent Homes Standard and cannot be repaired to extend their use.	400,000	412,000	420,240	3,186,610	4,418,850
Improvement works for blocks of flats - external and common areas	In 2019 we started a rolling priority programme of remedial works to blocks of flats. The works deal with blocks of flats that require extensive structural repairs.	250,000	618,000	630,360	4,780,060	6,278,420
Improvement works for blocks of flats - Abbey Green		4,000,000				4,000,000
Replacement of DLO Vehicles	Replacement as per the vehicle replacement schedule.	429,710			616,000	1,045,710
Replacement of Housing Inspectors Vehicles	Replacement as per the vehicle replacement schedule.	43,260			139,000	182,260
Replacement of Neighbourhood Warden Vehicles	Replacement as per the vehicle replacement schedule.				102,000	102,000

**Draft Capital Programme - HRA Housing**

Name of the Scheme	Basic Details of the Scheme	Year 1	Year 2	Year 3	Year 4 - 10	Total
		2023/24	2024/25	2025/26	2026/27 to 2032/33	10 Year Programme
Multi Trade Contract	To cover a range of capital works including remedial work following fire risk assessments and schemes for garages and sheltered scheme communal rooms as well as external works and structural works.	300,000	360,500	367,710	2,788,270	<b>3,816,480</b>
<b>HRA TOTAL</b>		<b>8,332,550</b>	<b>4,081,740</b>	<b>4,166,240</b>	<b>32,471,510</b>	<b>49,052,040</b>

## Draft Capital Programme - General Fund

Name of the Scheme	Basic Details of the Scheme	Year 1	Year 2	Year 3	Year 4 - 10	Total
		2023/24	2024/25	2025/26	2026/27 to 2032/33	10 Year Programme
Decent Homes Grants and Works (Private Sector)	Assistance with repairs and replacements targeted at vulnerable households on a means tested basis to prevent deterioration and associated health effects.	20,000	20,000	20,000	140,000	200,000
Computer hardware and software, purchase and replacement	To continue to provide PC's that meet the requirements of the increasingly complex software that is used to deliver Council services and back office functions. This budget includes the renewal of the Microsoft Software licenses.	35,000	35,000	35,000	245,000	350,000
Replacement of scanner/plotter	Replacement of the existing separate scanner and plotter with a single solution.				10,000	10,000
Replacement Financial Management System (FMS)	The current Financial Management System (TOTAL) is time limited and will be withdrawn in a few years time. As the software has not been developed for some time, this is increasingly causing issues. A replacement system is needed.					-
ICT Infrastructure Development	To further develop the network and hardware structures to ensure that the Council's aspirations of home and mobile working and self service delivery are possible.	20,000	20,000	20,000	140,000	200,000
Network Infrastructure	Replacement of the existing network infrastructure.		50,000			50,000
Telephone System	Replacement of the existing telephone system.		20,000		20,000	40,000
Server Virtualisation	Replacement of the existing virtual server.			50,000		50,000
Backing Up	Primarily used at two levels; the day to day use of the recovery of lost data or damaged systems that need to be rolled back to a previous state. The major use is in the event of fire or theft where the backups we hold would be used to restore systems.	20,000			25,000	45,000
Mobile Devices	Due to Covid the Council has greatly increased the use of mobile devices over and above the use of PC's and laptops. 100 devices will have to be replaced on a 4 year cycle. This will also be used to replace the Housing direct works equipment.	10,000	5,000	5,000	45,000	65,000
Replacement Planning and Enforcement and Local Land Charges Systems	To review and assess system to ensure it still meets user needs and replace if required.					-
Web Development (Internet, Intranet and Extranets)	To review and assess systems to ensure they still meet user needs and replace if required.	50,000			50,000	100,000
Payment Management System Upgrade	Upgrade to Payment Management System to meet new encryption standards and introduce contact less payments.	15,000		15,000	45,000	75,000

## Draft Capital Programme - General Fund

Name of the Scheme	Basic Details of the Scheme	Year 1	Year 2	Year 3	Year 4 - 10	Total
		2023/24	2024/25	2025/26	2026/27 to 2032/33	10 Year Programme
Replacement Environmental Health System	The current system will be unsupported by Civica. A new system is required in 2022/23 to enable Environmental Health to work more efficiently and potentially improve customer satisfaction.					-
Uninterruptable Power Supply	A large 'battery' which ensures power to all systems. This supply is unaffected by power cuts etc.	10,000				10,000
Atherstone Leisure Complex - Replacement Roof	The leisure complex has a single ply flat roof covering virtually all of the facility that has an estimated life span of around 10 years and will need replacing.					-
External Works on Industrial Buildings	Replacement of the roof cladding.					-
Maya Resturant (Bear and Ragged Staff)	To replace the roof covering the building.					-
Refurbishment of Council Owned Buildings	To carry out improvements to all council owned property.		50,000		150,000	200,000
Electrical Upgrade at Old Bank House	The electrical system at Old Bank House is 30 years old and will be in need of updating to comply with current legislation.	75,000				75,000
Disabled Discrimination Adaptations	To undertake work where appropriate to improve access to and around our facilities for disabled users of the service.	120,000				120,000
Works required at High Street, Coleshill	Refurbishment works to shops and flats.					-
Depot - Demolition Works	To undertake work to demolish the single storey building currently used as the main Housing office and archive store.					-
Structural Maintenance Programme of Car Parks and Unadopted Roads	A detailed analysis of the councils car parks and unadopted roads has been carried out and has identified that the thickness of many of the surfaces is below the required levels.	245,000				245,000
Car Parking in Coleshill		400,000				400,000
Innage Park - Mobile Care Admin Facility	Upgrades are required to the energy efficiency of the building, to enable the Council to acquire the necessary Energy Performance Certificate rating.					-
Material Recycling Facility		142,720				142,720
Replacement of Pool Vehicles	Replacement as per the vehicle replacement schedule.	29,000			36,000	65,000
Replacement of Refuse Vehicles	Replacement as per the vehicle replacement schedule.		375,000		3,127,000	3,502,000
Replacement of Cesspool Vehicles	Replacement as per the vehicle replacement schedule.	139,000				310,000

## Draft Capital Programme - General Fund

Name of the Scheme	Basic Details of the Scheme	Year 1	Year 2	Year 3	Year 4 - 10	Total
		2023/24	2024/25	2025/26	2026/27 to 2032/33	10 Year Programme
Replacement of Street Cleaning Vehicles	Replacement as per the vehicle replacement schedule.	219,650	171,670		559,730	951,050
Replacement of Horticulture Vehicles	Replacement as per the vehicle replacement schedule.	323,550	46,340	8,370	606,210	984,470
Replacement of Leisure Services Vehicles	Replacement as per the vehicle replacement schedule.	17,810			21,900	39,710
LUF Bid	atherstone Leisure Complex	2,600,000				2,600,000
New Leisure Facility	Polesworth	3,000,000				3,000,000
Leisure scheme at Royal Meadow Drive	Provision for a Leisure scheme at Royal Meadow Drive Road, subject to generating additional capital funding and a sustainable revenue business case	372,170				372,170
Leisure Equipment	To replace the equipment used in the execution of various activity programmes in each of the leisure centres that conforms to industry and market standards relating to customer needs and safety requirements. The proposed investment protects significant levels of income. Whilst fitness equipment has been replaced over the last few years, there is other sports equipment that is in need of renewal.	20,000	20,000	30,000	140,000	210,000
Leisure Centre Fitness Suite Equipment Replacement	Planned full replacement of the fitness centre equipment at the three leisure centres in the Borough. This replacement will take place once the fund has built up sufficient funding for the work to take place.			250,000	250,000	500,000
Play Area Replacement Programme	Brook Walk, Mancetter and Kitwood Avenue, Dordon	95,000				95,000
Play Area Replacement Programme	Royal Meadow Drive		50,000			50,000
Play Area Replacement Programme	Ridge Lane, Mancetter			50,000		50,000
Play Area Replacement Programme	Various				350,000	350,000
Capital Salaries - Management	General Fund staffing.	19,090	19,820	20,360	155,620	214,890
		<b>7,997,990</b>	<b>882,830</b>	<b>503,730</b>	<b>6,287,460</b>	<b>15,672,010</b>
		<b>16,330,540</b>	<b>4,964,570</b>	<b>4,669,970</b>	<b>38,758,970</b>	<b>64,724,050</b>

**Capital Financing Requirement**

**APPENDIX C**

	HRA (£)	GF (£)	Grand Total
<b>Actual CFR as at 31-3-22</b>	<b>44,934,423</b>	<b>12,379,998</b>	<b>57,314,421</b>
Repayment of HRA borrowing	(2,310,000)		(2,310,000)
Repay Principal - Kingsbury Link		(2,681)	(2,681)
Repay Principal - Vehicles		(61,176)	(61,176)
Repay Principal - Lower House Farm		(9,116)	(9,116)
Repay Principal - Coleshill LC		(40,914)	(40,914)
Repay Principal - Recycling Containers		(1,939)	(1,939)
Repay Principal - Office Accommodation		(80,735)	(80,735)
Repay Principal - Play Areas		(17,905)	(17,905)
New prudential borrowing	4,700,000	18,986	4,718,986
MRP		(83,929)	(83,929)
<b>Estimated CFR as at 31-3-23</b>	<b>47,324,423</b>	<b>12,100,589</b>	<b>59,425,012</b>
Repayment of HRA borrowing	(2,400,000)		(2,400,000)
Repay Principal - Kingsbury Link		(2,682)	(2,682)
Repay Principal - Vehicles	(33,783)	(56,619)	(90,402)
Repay Principal - Lower House Farm		(9,117)	(9,117)
Repay Principal - Coleshill LC		(40,914)	(40,914)
Repay Principal - Recycling Containers		(1,939)	(1,939)
Repay Principal - Office Accommodation		(80,735)	(80,735)
Repay Principal - Play Areas		(17,905)	(17,905)
New prudential borrowing	5,522,970	729,010	6,251,980
MRP		(80,572)	(80,572)
<b>Estimated CFR as at 31-3-24</b>	<b>50,413,610</b>	<b>12,539,116</b>	<b>62,952,726</b>
Repayment of HRA borrowing	(2,400,000)		(2,400,000)
Repay Principal - Kingsbury Link		(2,682)	(2,682)
Repay Principal - Vehicles	(67,567)	(157,045)	(224,612)
Repay Principal - Lower House Farm		(9,117)	(9,117)
Repay Principal - Coleshill LC		(40,914)	(40,914)
Repay Principal - Office Accommodation		(80,735)	(80,735)
Repay Principal - Play Areas		(17,905)	(17,905)
New prudential borrowing	850,000	3,593,010	4,443,010
MRP		(77,349)	(77,349)
<b>Estimated CFR as at 31-3-25</b>	<b>48,796,043</b>	<b>15,746,379</b>	<b>64,542,422</b>
Repayment of HRA borrowing	(2,500,000)		(2,500,000)
Repay Principal - Kingsbury Link		(2,682)	(2,682)
Repay Principal - Vehicles	(67,568)	(205,998)	(273,566)
Repay Principal - Lower House Farm		(9,116)	(9,116)
Repay Principal - Coleshill LC		(40,914)	(40,914)
Repay Principal - Office Accommodation		(80,735)	(80,735)
Repay Principal - Play Areas		(17,905)	(17,905)
Repay Principal - Polesworth Leisure Centre		(120,000)	(120,000)
New prudential borrowing	850,000	8,370	858,370
MRP		(74,255)	(74,255)
<b>Estimated CFR as at 31-3-26</b>	<b>47,078,475</b>	<b>15,203,144</b>	<b>62,281,619</b>
Repayment of HRA borrowing	(2,650,000)		(2,650,000)
Repay Principal - Kingsbury Link		(2,682)	(2,682)
Repay Principal - Vehicles	(67,567)	(214,969)	(282,536)
Repay Principal - Lower House Farm		(9,117)	(9,117)
Repay Principal - Coleshill LC		(40,914)	(40,914)
Repay Principal - Office Accommodation		(80,735)	(80,735)
Repay Principal - Play Areas		(17,905)	(17,905)
Repay Principal - Polesworth Leisure Centre		(120,000)	(120,000)
New prudential borrowing	950,000	104,480	1,054,480
MRP		(71,285)	(71,285)
<b>Estimated CFR as at 31-3-27</b>	<b>45,310,908</b>	<b>14,750,017</b>	<b>60,060,925</b>

	Actual 2021/22 £000	Revised 2022/23 £000	Original 2023/24 £000	Forecast 2024/25 £000	Forecast 2025/26 £000
<b>HRA</b>					
Interest and Investment Income	(10)	(51)	(185)	(143)	(109)
External Interest Costs	1,460	1,417	1,612	1,769	1,733
Repayment of Borrowing	2,250	2,310	2,400	2,400	2,500
<b>Total</b>	<b>3,700</b>	<b>3,676</b>	<b>3,827</b>	<b>4,026</b>	<b>4,124</b>
Net Revenue Stream	12,167	12,639	13,589	13,875	14,148
<b>Ratio</b>	<b>30.41%</b>	<b>29.08%</b>	<b>28.16%</b>	<b>29.02%</b>	<b>29.15%</b>
<b>General Fund</b>					
External Interest Costs	12	14	14	14	14
Investment Income	(66)	(515)	(1,160)	(823)	(644)
Repayment of Borrowing	288	214	210	516	576
MRP	87	84	80	77	74
<b>Total</b>	<b>321</b>	<b>(203)</b>	<b>(856)</b>	<b>(216)</b>	<b>20</b>
Council Tax	4,569	4,864	5,060	5,295	5,533
New Homes Bonus	578	723	519	0	0
RSG/Service/Funding Guarantee	82	218	470	486	494
NDR Multiplier	100	158	340	353	360
NDR	2,422	2,422	2,494	2,573	2,615
<b>Net Revenue Stream</b>	<b>7,751</b>	<b>8,385</b>	<b>8,883</b>	<b>8,707</b>	<b>9,002</b>
<b>Ratio</b>	<b>4.14%</b>	<b>-2.42%</b>	<b>-9.64%</b>	<b>-2.48%</b>	<b>0.22%</b>

## Agenda Item No 10

### Executive Board

13 February 2023

#### Report of the Corporate Director - Resources

#### General Fund Revenue Estimates 2023/24

### 1 Summary

- 1.1 This report covers the revised budget for 2022/23 and an estimate of expenditure for 2023/24, together with forward commitments for 2024/25, 2025/26 and 2026/27.

#### **Recommendation to the Board**

- a To accept the revised budget for 2022/23; and**
- b To accept or otherwise vary the Estimates of Expenditure for 2023/24, as submitted, for their inclusion in the overall budget considered in a later agenda item.**

### 2 Introduction

- 2.1 In consultation with other Directors, the Corporate Director - Resources has prepared an estimate of net expenditure for 2023/24 and this, together with a revised budget for 2022/23, appears in Appendices A and B. To provide a more complete picture of the spending pattern of the service, the actual figures for 2021/22 are shown.

- 2.2 At its meeting in October 2021, the Executive Board agreed the budget strategy for 2023-2027, which required savings of £2.55 million over a four-year period. This required budget savings of £1.9 million in 2023/24 with additional savings of £100,000 in 2024/25 and £550,000 in 2025/26. A savings target was not included for 2026/27 at that time. Some limited growth was built into the strategy in specific areas.

- 2.3 Directors were asked to identify areas where savings could be made, either by a reduction in expenditure or through the generation of additional income.

2.4 A subjective analysis of the Board's requirement is shown below:

	<b>Original Budget 2022/23 £</b>	<b>Revised Budget 2022/23 £</b>	<b>Original Budget 2023/24 £</b>
Employee Costs	260,800	254,760	281,820
Premises	410	410	430
Supplies and Services	144,750	79,360	133,500
Earmarked Reserves	(11,860)	5,560	(5,000)
<b>Gross Expenditure</b>	<b>394,100</b>	<b>340,090</b>	<b>410,750</b>
Income	(3,060)	(20,000)	(3,060)
<b>Net Controllable Expenditure</b>	<b>391,040</b>	<b>320,090</b>	<b>407,690</b>
Departmental Support	204,340	204,340	145,500
Central Support	167,230	167,230	102,140
Capital Charges	9,870	9,870	-
<b>Net Expenditure</b>	<b>772,480</b>	<b>701,530</b>	<b>655,330</b>

2.5 The Council values all of its assets using a five-year rolling programme, and this can affect the level of capital charges that are made to services and can therefore significantly affect the net service cost. Although few assets are used for the services within this Board, changes in net service expenditure that are as a result of increases or decreases in capital charges are shown below net operating expenditure in the following pages.

### 3 **Comments on the 2022/23 Revised Budget**

3.1 The revised budget for 2022/23 is estimated to be £701,530, a reduction of £70,950 on the original budget. The main reasons for variations are set out below.

#### 3.3 **Corporate Communications** **(£8,840)**

3.3.1 There is an in year saving in the printing and delivery costs of North Talk, partly offset by a loss of advertising income.

#### 3.3 **Emergency Planning** **(£3,110)**

3.3.1 Lower spend on equipment is expected.

#### 3.4 **Local Development Framework** **(£59,000)**

3.4.1 The delay in inspection of the Local Plan has changed the timing of ongoing work, resulting in a lower spend on professional fees than was originally anticipated.

## 4 **Comments on the 2023/24 Estimates**

4.1 The 2023/24 estimates have been prepared, taking into account the following assumptions:

- A 4% pay award from 1 April 2023;
- An inflationary increase of 3% on supplies and services.

4.2 The estimated budget for 2023/24 is £655,330; a decrease of £117,150 on the 2022/23 approved budget, and a decrease of £46,200 on the revised 2022/23 budget. The main variations from the revised budget are set out below:

4.3 **Outreach and Access to Services** **(£2,300)**

4.3.1 The reduction is due to the removal of the remaining costs relating to community hubs.

4.4 **Corporate Communications** **£10,180**

4.4.1 Savings realised in 2021/22 have been reinstated and inflationary increases applied on those budgets.

4.5 **Community Strategy** **£5,660**

4.5.1 The increase relates to the pay award and some inflationary increases on supplies and services.

4.6 **Emergency Planning** **£3,210**

4.6.1 The equipment budget has been reinstated.

4.5 **North Warwickshire Local Development Framework** **£70,850**

4.5.1 There is an increase in the budget for the Local Development Framework to match the anticipated work programme.

4.6 **Departmental and Central Support Services** **(£123,930)**

4.6.1 The reduction in both departmental and central support is due to the reallocation of staff time away from the Outreach and Access to Service budget.

## 5 **Income**

5.1 There are no fees and charges for services under the responsibility of this Board.

## 6 **Risks to Services**

6.1 The key risks to the budgetary position of the Council from services under the control of this Board are:

	<b>Likelihood</b>	<b>Potential impact on Budget</b>
The Local Plan requires regular analysis and updating in line with changing circumstances and changes in national guidance.	High	Medium
The Emergency Planning budget may be insufficient to cover the costs of any major local emergency.	Low	High

## 7 Future Year Forecasts

7.1 In order to assist with medium-term financial planning, Members are provided with budget forecasts for the three years following 2023/24. The table below provides a subjective summary for those services reporting to this Board:

	<b>Forecast Budget 2024/25</b> £	<b>Forecast Budget 2025/26</b> £	<b>Forecast Budget 2026/27</b> £
Employee Costs	293,020	302,400	312,150
Premises	450	460	470
Supplies and Services	166,660	105,150	130,650
Earmarked Reserves	(5,000)	(5,000)	(5,000)
<b>Gross Expenditure</b>	<b>455,130</b>	<b>403,010</b>	<b>438,270</b>
Income	(3,180)	(3,310)	(3,440)
<b>Net Controllable Expenditure</b>	<b>451,950</b>	<b>399,700</b>	<b>434,830</b>
Departmental Support	151,460	155,340	159,330
Central Support	105,650	108,680	111,790
Capital Charges	-	-	-
<b>Net Expenditure</b>	<b>709,060</b>	<b>663,720</b>	<b>705,950</b>

7.2 The forecasts given above have used a number of assumptions, which include pay awards of 4% in 2024/25 and 3% in 2025/26 and 2026/27, increases in contracts and general increases in supplies and services of 3%. In total, net expenditure is expected to increase by 8.2% in 2024/25, reduce by 6.4% in 2025/26, and increase by 6.4% in 2026/27. These movements mainly relate to the varying nature of spend on the Local Development Framework budget.

7.3 These forecasts are built up using current corporate and service plans. Where additional resources have already been approved, these are also included. However, these forecasts will be amended to reflect any amendments to the estimates, including decisions taken on any further corporate or service targets.

## 8 Report Implications

### 8.1 Finance and Value for Money Implications

8.1.1 As detailed in the body of the report.

### 8.2 Environment, Climate Change & Health Implications

8.2.1 Continuing the budget strategy will allow the Council to manage its expected shortfall in resources without disruption of essential services.

### 8.3 Risk Management Implications

8.3.1 There are a number of risks associated with setting a budget, as assumptions are made on levels of inflation and demand for services. To minimise the risks, decisions on these have been taken using past experience and knowledge, informed by current forecasts and trends. However, the risk will be managed through the production of regular budgetary control reports, assessing the impact of any variances and the need for any further action.

The Contact Officer for this report is Nigel Lane (719371).

#### **Background Papers**

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
EXECUTIVE BOARD SUMMARY  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/22 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
2000	Housing Strategic Service Review	5,296	-	-	-
2001	Outreach and Access to Services	55,630	2,300	2,300	-
2002	Corporate Communications	50,894	62,050	53,210	63,390
2003	Community Strategy	58,905	43,970	43,970	49,630
2007	Emergency Planning	7,720	6,160	3,050	6,260
2009	North Warwickshire Local Development Framework	224,505	276,560	217,560	288,410
5050	Support to Parishes	7,452	-	-	-
<b>Sub Total</b>	<b>Net Controllable Expenditure</b>	<b>410,402</b>	<b>391,040</b>	<b>320,090</b>	<b>407,690</b>
<b>Sub Total</b>	<b>Departmental Support</b>	<b>157,870</b>	<b>204,340</b>	<b>204,340</b>	<b>145,500</b>
<b>Sub Total</b>	<b>Central Support</b>	<b>149,531</b>	<b>167,230</b>	<b>167,230</b>	<b>102,140</b>
<b>Sub Total</b>	<b>Capital Charges</b>	<b>4,793</b>	<b>9,870</b>	<b>9,870</b>	<b>-</b>
<b>Total</b>	<b>Net Expenditure</b>	<b>722,595</b>	<b>772,480</b>	<b>701,530</b>	<b>655,330</b>

<b>2000 - HOUSING STRATEGIC SERVICE REVIEW</b>				
This budget shows the cost of officer time spent on strategic decision making for Housing.				
<b>DESCRIPTION</b>	<b>ACTUALS 2021/2022</b>	<b>APPROVED BUDGET 2022/2023</b>	<b>REVISED BUDGET 2022/2023</b>	<b>ORIGINAL BUDGET 2023/2024</b>
Employee Expenditure	5,296	-	-	-
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>5,296</b>	<b>-</b>	<b>-</b>	<b>-</b>
Departmental Support	30,471	33,570	33,570	37,550
Central Support	852	1,100	1,100	1,320
<b>NET EXPENDITURE</b>	<b>36,619</b>	<b>34,670</b>	<b>34,670</b>	<b>38,870</b>
<b>Contributes to corporate priority :</b>				
<b>- Promoting sustainable and vibrant communities</b>				

<b>2001 - OUTREACH AND ACCESS TO SERVICES</b>				
This budget provided support for some Community Hubs until March 2022.				
<b>DESCRIPTION</b>	<b>ACTUALS 2021/2022</b>	<b>APPROVED BUDGET 2022/2023</b>	<b>REVISED BUDGET 2022/2023</b>	<b>ORIGINAL BUDGET 2023/2024</b>
Employee Expenditure	50,423	-	-	-
Supplies and Services	13,122	9,160	9,160	-
Earmarked Reserves	(7,915)	(6,860)	(6,860)	-
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>55,630</b>	<b>2,300</b>	<b>2,300</b>	<b>-</b>
Departmental Support	18,718	57,200	57,200	-
Central Support	55,958	52,340	52,340	-
Capital Charges	4,793	9,870	9,870	-
<b>NET EXPENDITURE</b>	<b>135,099</b>	<b>121,710</b>	<b>121,710</b>	<b>-</b>
<b>Contributes to corporate priority :</b>				
<b>- Promoting sustainable and vibrant communities</b>				
<b>- Improving leisure and wellbeing opportunities</b>				

**2002 - CORPORATE COMMUNICATIONS**

North Talk is the Borough Council's newsletter produced two times a year and is distributed to all households in the borough and to businesses, voluntary organisations and other partners.

DESCRIPTION	ACTUALS	APPROVED	REVISED	ORIGINAL
	2021/2022	BUDGET 2022/2023	BUDGET 2022/2023	BUDGET 2023/2024
Employee Expenditure	50,894	56,330	50,290	57,580
Supplies and Services	-	8,780	2,920	8,870
<b>GROSS EXPENDITURE</b>	<b>50,894</b>	<b>65,110</b>	<b>53,210</b>	<b>66,450</b>
GROSS INCOME	-	(3,060)	-	(3,060)
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>50,894</b>	<b>62,050</b>	<b>53,210</b>	<b>63,390</b>
Central Support	9,128	10,070	10,070	8,600
<b>NET EXPENDITURE</b>	<b>60,022</b>	<b>72,120</b>	<b>63,280</b>	<b>71,990</b>

Contributes to corporate priority :

- Promoting sustainable and vibrant communities

**2003 - COMMUNITY STRATEGY**

The Council is working in partnership to deliver improvements in the quality of life for local communities by the implementation of a Sustainable Community Strategy. This includes addressing priorities relating to health, anti poverty, raising aspirations and attainment. The budget is used to deliver projects and initiatives to support the priorities.

DESCRIPTION	ACTUALS	APPROVED	REVISED	ORIGINAL
	2021/2022	BUDGET 2022/2023	BUDGET 2022/2023	BUDGET 2023/2024
Employee Expenditure	58,905	42,440	42,440	47,910
Supplies and Services	1,667	6,530	6,530	6,720
Miscellaneous Expenditure	-	-	-	-
Earmarked Reserves	(1,667)	(5,000)	(5,000)	(5,000)
<b>GROSS EXPENDITURE</b>	<b>58,905</b>	<b>43,970</b>	<b>43,970</b>	<b>49,630</b>
GROSS INCOME	-	-	-	-
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>58,905</b>	<b>43,970</b>	<b>43,970</b>	<b>49,630</b>
Departmental Support	35,387	36,490	36,490	36,380
Central Support	45,309	53,160	53,160	57,000
<b>NET EXPENDITURE</b>	<b>139,601</b>	<b>133,620</b>	<b>133,620</b>	<b>143,010</b>

Contributes to corporate priority :

- Creating safer communities  
 - Protecting our countryside and heritage  
 - Improving leisure and wellbeing opportunities  
 - Promoting sustainable and vibrant communities

<b>2007 - EMERGENCY PLANNING</b>				
Emergency planning budget to cover the costs of fulfilling legal duties under the Civil Contingencies Act 2004				
<b>DESCRIPTION</b>	<b>ACTUALS 2021/2022</b>	<b>APPROVED BUDGET 2022/2023</b>	<b>REVISED BUDGET 2022/2023</b>	<b>ORIGINAL BUDGET 2023/2024</b>
Employee Expenditure	5,554	-	-	-
Supplies and Services	2,166	6,160	3,050	6,260
Earmarked Reserves	-	-	-	-
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>7,720</b>	<b>6,160</b>	<b>3,050</b>	<b>6,260</b>
Departmental Support	30,637	29,940	29,940	30,850
Central Support	12,895	3,990	3,990	21,260
<b>NET EXPENDITURE</b>	<b>51,251</b>	<b>40,090</b>	<b>36,980</b>	<b>58,370</b>
<b>Contributes to corporate priority :</b>				
- Protecting our countryside and heritage				
- Creating safer communities				

<b>2009 - NORTH WARWICKSHIRE LOCAL DEVELOPMENT FRAMEWORK</b>				
Local tier of the Development Plan and other documents required as a statutory duty.				
<b>DESCRIPTION</b>	<b>ACTUALS 2021/2022</b>	<b>APPROVED BUDGET 2022/2023</b>	<b>REVISED BUDGET 2022/2023</b>	<b>ORIGINAL BUDGET 2023/2024</b>
Employee Expenditure	190,256	162,030	162,030	176,330
Premises Related Expenditure	-	410	410	430
Supplies and Services	34,250	114,120	55,120	111,650
Earmarked Reserves	-	-	-	-
<b>GROSS EXPENDITURE</b>	<b>224,505</b>	<b>276,560</b>	<b>217,560</b>	<b>288,410</b>
GROSS INCOME	-	-	-	-
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>224,505</b>	<b>276,560</b>	<b>217,560</b>	<b>288,410</b>
Departmental Support	42,022	46,570	46,570	40,100
Central Support	23,483	44,090	44,090	11,450
<b>NET EXPENDITURE</b>	<b>290,011</b>	<b>367,220</b>	<b>308,220</b>	<b>339,960</b>
<b>Contributes to corporate priority :</b>				
- Protecting our countryside and heritage				
- Promoting sustainable and vibrant communities				

**5050 - SUPPORT TO PARISHES**

To assist Parish Councils on parish plans and provide match funding for projects.

DESCRIPTION	ACTUALS	APPROVED	REVISED	ORIGINAL
	2021/2022	BUDGET 2022/2023	BUDGET 2022/2023	BUDGET 2023/2024
Employee Expenditure	360	-	-	-
Supplies and Services	7,092	-	2,580	-
Earmarked Reserves	-	-	17,420	-
<b>GROSS EXPENDITURE</b>	<b>7,452</b>	<b>-</b>	<b>20,000</b>	<b>-</b>
GROSS INCOME	-	-	(20,000)	-
<b>NET CONTROLLABLE EXPENDITURE</b>	<b>7,452</b>	<b>-</b>	<b>-</b>	<b>-</b>
Departmental Support	635	570	570	620
Central Support	1,906	2,480	2,480	2,510
<b>NET EXPENDITURE</b>	<b>9,993</b>	<b>3,050</b>	<b>3,050</b>	<b>3,130</b>

**Contributes to corporate priorities :**

- Protecting our countryside and heritage
- Promoting sustainable and vibrant communities

**Agenda Item No 11**

**Executive Board**

**13 February 2023**

**Report of the  
Corporate Director - Resources**

**General Fund Revenue Estimates  
2023/24 and Setting the Council  
Tax 2023/24**

**1 Summary**

- 1.1 This report sets out the proposed General Fund Revenue Estimate for 2023/24 and the options available when setting the 2023/24 Council Tax for the Borough in the context of the Authority's Finance Settlement, and the effect on General Fund balances.

**Recommendation to the Council**

- a To approve the savings of £857,860 shown in Appendix H;**
- b To approve the revised estimate for the year 2022/23 and the revenue estimates for 2023/24;**
- c To note the Council Tax base for 2023/24, as set out in Appendix G;**
- d To approve a Council Tax increase of 2.95% for 2023/24;**
- e To approve the transfer of £3,100,000 from the Business Rate Reserve to fund capital expenditure on the refuse vehicles purchased in 2022/23 and to support the proposed 3 year capital programme;**
- f To note the Corporate Director - Resources comments on the minimum acceptable level of general reserves;**
- g To approve the workforce estimates for the year 2023/24 in Appendix L; and**
- h That a Council Tax resolution be prepared for consideration by the Council, using the recommendations agreed by this Board.**

## 2 The Council's Budget Requirement

2.1 All Service Boards have now considered their individual budget requirements for 2023/24, and these are shown in Appendices A – E, along with the revised requirements for 2022/23.

2.2 Board requirements are summarised in the table below, together with other items, such as investment interest and contingencies.

	<b>2022/23 Original Estimate £</b>	<b>2022/23 Revised Estimate £</b>	<b>2023/24 Original Estimate £</b>
<b>Board Summary</b>	<b>9,617,370</b>	<b>10,605,880</b>	<b>11,624,930</b>
Contingencies	141,000	88,290	277,600
Use of Earmarked Reserves	-	(955,000)	-
Financing Adjustment	(772,510)	(936,260)	(806,420)
Investment Interest Income	(323,000)	(515,000)	(1,160,000)
Further reductions proposed	-	-	(341,010)
<b>Service Summary</b>	<b>8,662,860</b>	<b>8,287,910</b>	<b>9,595,100</b>

2.3 Appendix F sets out the figures as presented to the Boards, adjusted for further proposed reductions in the base budget.

## 3 The Council's 2022/23 Estimated Out-turn

3.1 The Council's revised net expenditure requirement for 2022/23 amounts to £8,287,910 which is £374,950 less than the original estimate. The major changes in expenditure were included in the summary report taken to Resources Board on a service basis and a high level summary is set out below, for Members information.

	<b>£000</b>
Increased waste collection costs	584,040
Unbudgeted cost of the pay award	377,970
Reduction in income and increased costs at the Leisure facilities	303,900
Reduced legal cost income from debt recovery action / reduced recovery of housing benefit overpayments	173,610
Borrowing for capital schemes was not required in year	(163,750)
Increased investment income due to higher rates	(192,000)
Vacancy savings above vacancy factor assumed	(488,700)
Use of earmarked reserves	(955,000)
<b>Total</b>	<b>(359,930)</b>

## 4 The Council's 2023/24 Expenditure Requirement

4.1 The Council's net expenditure requirement for 2023/24 amounts to £9,936,110, which is £1,273,250 more than the approved estimate for 2022/23 and £1,648,200 more than the revised estimate. The inclusion of the further

proposed reductions lowers the increase over the revised budget to £1,307,190. The main variations between the 2023/24 original budget and the 2022/23 revised budget are set out below.

- ...
- 4.2 The Financial Strategy required reductions in baseline expenditure of £1,900,000 for 2023/24. A summary of proposed reductions can be found in Appendix H. These total £857,860, with £516,850 included in the Board summary and Financing Adjustment. Further savings proposed amounting to £341,010 are shown separately in the table in paragraph 2.2 and are set out in paragraph 9.2 and 9.3.
  - 4.3 Provision has been made for those posts that were vacant in 2022/23, the payment of annual increments and a pay award of 4%.  
£469,080
  - 4.4 An increase in utility costs has affected council premises across the Board.  
£670,360
  - 4.5 Waste collection costs are expected to reduce, primarily as a result of removing the additional agency costs incurred in 2022/23. In addition, the operation of the Sherborne Recycling Facility part way through the year will reduce disposal costs.  
(£232,030)
  - 4.6 Election expenses have been increased to cover the Borough elections.  
£92,000
  - 4.7 Both Council Tax legal fee income and income from the recovery of housing benefit overpayments has increased to reflect a resumption to normal recovery procedures.  
(£198,900)
  - 4.8 An increase in the financing adjustment to cover the repayments needed for the prudential borrowing assumed in the draft capital programme presented in another report on the agenda.  
£36,690
  - 4.9 A higher level of investment income is expected to be generated, as interest rates have risen. Whilst a proportion is due to the HRA, the majority is retained by the General Fund. In addition, some further investment income will be due relating to the Materials Recycling Facility.  
(£551,850)
  - 4.10 The contingency has been increased to include some provision for an additional refuse round and the effect on council properties of the 2022 Valuation.  
£189,310

- 4.11 The use of earmarked reserves in 2022/23 has been taken out of the budget.  
£955,000

## 5 Budget Projections

- 5.1 In addition to preparing the 2023/24 budget, the three following years have been forecast.
- 5.2 Pay awards of 4% have been included for 2024/25, with awards of 3% used for the 2 following years. Utility costs have been increased by 5% annually, and other premise costs by 3%. Supplies and services costs have also been given an annual increase of 3%.
- 5.3 Some limited provision has been included in the contingency for some expected service pressures such as private sector housing and waste collection.
- 5.4 The revenue implications of the proposed capital programme, covered in a separate report on the agenda, have been included for all years.
- 5.5 The forecast has been summarised and is shown below.

	<b>2023/24 £000</b>	<b>2024/25 £000</b>	<b>2025/26 £000</b>	<b>2026/27 £000</b>
Spending Requirement	9.595	10.303	10.797	11.209

An increase in the expenditure requirement of £1.614 million is expected over the forecast period.

## 6 Summary of the 2023/24 Finance Settlement

- 6.1 The Government's calculation of an authority's Core Spending Power includes the Settlement Funding Assessment, together with an assumed level of council tax and some other grant income. The Settlement Funding Assessment is made up of two elements: Revenue Support Grant (RSG) and Business Rates (NDR).
- 6.2 An authority's settlement funding assessment is added to their Council Tax and then reduced by a given percentage to keep within the national control total. From this total the Council's Business Rates baseline and Council Tax income are deducted to arrive at the level of RSG. In years where an authority's entitlement to RSG is zero, increases to business rate tariffs were planned in order to reduce the amount of income retained by an authority.

- 6.3 The provisional settlement for 2023/24 is for one year only. Our figures are shown below:

	<b>2022/23 £'000</b>	<b>2023/24 £'000</b>
NDR Baseline Funding	1,922	1,993
RSG	-	81
<b>Sub-total - SFA</b>	<b>1,922</b>	<b>2,074</b>
Assumed Council Tax	4,728	4,984
S31 Grant – Business rates multiplier	158	340
New Homes Bonus	723	519
Lower tier Grant	86	-
Services Grant	132	75
Funding Guarantee Grant	-	315
<b>Total Core Spending Power</b>	<b>7,749</b>	<b>8,307</b>

- 6.4 The provisional one-year settlement for 2023/24 has left the business rates multiplier unchanged at 2020/21 levels but has confirmed that an inflationary increase will be paid to Councils through a section 31 grant. For this forecast, it has been assumed that for 2024/25 onwards an inflationary increase in NDR Baseline funding will be received, and that the section 31 grant to compensate for lost inflation in previous years will continue.
- 6.5 The Council had previously been informed of a negative RSG sum from 2019/20 onwards. The Government decided that negative RSG would not be deducted in 2019/20, 2020/21, 2021/22 and 2022/23. This decision has been repeated in the Provisional Finance Settlement for 2023/24. In addition the decision has been taken to roll some service grants into RSG, giving the Council a positive RSG figure in 2023/24.
- 6.6 The Government's calculation of core spending power assumes that all District Councils will increase their Band D Council Tax in line with the referendum limit for 2023/24, by whichever is the greater of £5 or 3%. No information around potential Council Tax increases from 2024/25 onwards is currently available.
- 6.7 Notification of New Homes Bonus of £518,900 has been received for 2023/24. This is a one year allocation for 2023/24. As the New Homes Bonus scheme is being withdrawn and no indications around a potential alternative have yet been provided, no income has been assumed for 2024/25 onwards.
- 6.8 The Lower Tier grant received in 2022/23 has been discontinued but the Services Grant has been continued in the 2023/24 settlement, albeit at a lower level. The reduction is to remove the National Insurance compensation previously included, as the increase in National Insurance is no longer being collected. A new Minimum Funding Guarantee has been included in the 2023/24 settlement. It has been assumed that the Service Grant and the Funding Guarantee funding streams will continue in some form going forwards, although this is unknown.

6.9 The settlement provided only limited indications of funding after 2023/24. Whilst overall resources for local government have increased, individual allocations are uncertain, due to the lack of progress on the Fair Funding Review and the current emphasis on Levelling Up. The assumptions made around the continuation of some income streams increase the financial risk for the Council.

## 7 Council Tax

7.1 As part of the budget setting process, the tax base for the Borough is updated each year to reflect new properties, demolitions and changes to the valuation bands of existing properties. Allowances are also made for properties which are exempt from Council Tax, or where the residents receive discounts. The tax base has been updated for 2023/24 and is attached as Appendix G.

7.2 A review of potential new build in the tax base has taken place, along with a review of exemptions and discounts. Balancing the growth in properties against an expected increase in exemptions and discounts, a growth rate of 1.24% in the tax base has been used in projecting Council Tax income for 2023/24, with 1.5% assumed for 2024/25 onwards.

7.3 The Authority has estimated the Council Tax position that will be brought forward from 2022/23, which is an expected surplus. All major precepting authorities have been notified of the amounts they will receive. North Warwickshire Borough Council will receive a sum of £74,140 for 2023/24.

7.4 In general terms, an inflationary increase in Council Tax is built into the budget on an annual basis. Given the significant pressure on the Council's budget, this budget forecast has used a permitted increase of 2.95% in 2023/24 and has assumed a further 2.95% increase each year in subsequent years.

7.5 A Council Tax increase of 2.95% per annum for ratepayers gives the Council an additional £142,920 in income in 2023/24. The Council could choose to opt for a different Council Tax increase; however, a lower tax increase would not be sustainable. Previous decisions to freeze Council Tax have had an ongoing and cumulative effect on the Council's financial position, reducing council tax income by around £1 million per annum.

7.6 The Government wants to ensure that Council Taxpayers are protected against authorities that impose excessive Council Tax rises. A referendum will be required for any District that proposes a Council Tax increase over 2.99%.

## 8 Expected Resources

8.1 Expected Resources from the sources covered above are set out in the table below:

	2023/24 £000	2024/25 £000	2025/26 £000	2026/27 £000
Council Tax	(4,986)	(5,210)	(5,444)	(5,689)
New Homes Bonus	(519)	-	-	-
Business Rates	(1,993)	(2,073)	(2,115)	(2,157)
S31 Compensation (Business Rates)	(340)	(353)	(360)	(367)
Additional Business Rates	(500)	(500)	(500)	(500)
RSG	(81)	(84)	(86)	(87)
Funding Guarantee Grant	(315)	(328)	(334)	(341)
Services Grant	(75)	(75)	(75)	(75)
Collection Fund Deficit / (Surplus)	(74)	(85)	(88)	(92)
<b>Total</b>	<b>(8,883)</b>	<b>(8,708)</b>	<b>(9,002)</b>	<b>(9,308)</b>

8.2 With Council Tax increases in line with expected Government guidelines, overall resources will increase over the life of the forecast by £425,000. This increases the gap between expenditure and income, leaving unfunded expenditure as follows:

	2023/24 £000	2024/25 £000	2025/26 £000	2026/27 £000
Unfunded Expenditure	712	1,595	1,795	1,901

## 9 Requirement to Reduce Annual Expenditure

9.1 In October 2022, this Board agreed that reductions to the budget of £2.55 million would need to be identified over 2023/24 and the following three years. Directors were tasked with reviewing their service areas, with the aim of producing proposals to meet this challenging target.

9.2 The target for reducing the budget was set at £1.9 million for 2023/24. Amounts totalling £516,860, have been reported to Service Boards and are already built into the 2023/24 estimates. Two further proposals have been considered and approved and the budget will be amended to reflect these:

**Structure changes in Community Development / Policy Support** – these were approved in principle by the Community and Environment Board at its last meeting and are expected to save around £140,000.

**Transfer of leisure facilities to a Local Authority Trading company** – whilst there is still work needed to set the company up, the Council has decided on the transfer so a reduction reflecting the expected saving on rates could be taken into the budget.

- 9.3 In addition, some proposed reductions have not yet been considered by Members and these are set out below:

**Contribution to the LEP** – the Council agreed to make an annual contribution to the Coventry LEP for a fixed period, which ends in 2022/23. Given the financial pressure faced by the Council, a decision not to enter a further agreement would save £20,400 per annum.

**Corporate Communications** – the Council has been managing its communications electronically for the last couple of years. Continuing with this general approach would enable the Council to reduce its costs by £13,340. Hard copies of North Talk could be made available to assist those who don't have ready access to electronic communications, in partnership with Parish Councils and other local facilities.

**Mayoral Spending** – budget provision of £21,770 is currently made available for mayoral activity. Focusing activity primarily on attendance at local events would enable costs to be reduced. Budget provision of £10,000 would still cover the allowances to both the Mayor and Deputy Mayor and allow around £4,700 for travel and other expenses.

- 9.4 Reductions in the budget, both agreed and proposed, are summarised in Appendix H.

- 9.5 Although the target of £1.9 million was not reached for 2023/24, the draft financial settlement is better than expected and will reduce the immediate shortfall. Even with the approval of the additional reductions set out in paragraph 9.2 and 9.3, the revised forecasts still require budget reductions of £1.9 million over the remainder of the strategy period. If some of these are not approved, then the target for budget reductions will increase. If none of the reductions are agreed, then earmarked reserves of £341,010 will need to be used in 2023/24 to keep balances at the required level. In addition, the target for budget reductions in 2024/25 will increase to £1.841 million, with the overall target increasing to £2.241 million.

- 9.6 Any decision not to increase Council Tax by the assumed 2.95% will lead to a direct loss of funding and would increase the required reduction in expenditure in future years by a further £142,920. Given the expenditure reductions highlighted above, this is not sustainable.

## 10 **Performance Against the Budget Strategy**

- 10.1 The budget strategy agreed at the October meeting envisaged reductions in expenditure and the following use of balances over the next four years.

	<b>2023/24 £000</b>	<b>2024/25 £000</b>	<b>2025/26 £000</b>	<b>2026/27 £000</b>
Use of / (Contribution to) Balances	102	115	(135)	94
<b>Level of Balances 31 March</b>	<b>1,424</b>	<b>1,309</b>	<b>1,444</b>	<b>1,350</b>
Reduction in Expenditure needed	1,900	100	550	-

- 10.2 Each Board has projected its expenditure requirements up to and including 2026/27, together with financing and other adjustments. Including the reductions in 2023/24 already identified, the expenditure forecast has been summarised and is shown in the table below, together with expected resources:

	<b>2023/24 £000</b>	<b>2024/25 £000</b>	<b>2025/26 £000</b>	<b>2026/27 £000</b>
Spending Requirement	9,595	10,303	10,797	11,209
Cumulative Reduction in Expenditure needed	-	(1,500)	(1,750)	(1,900)
Expected Resources	(8,883)	(8,708)	(9,002)	(9,308)
<b>Use of / (Contribution to) Balances</b>	<b>712</b>	<b>95</b>	<b>45</b>	<b>1</b>
<b>Level of Balances 31 March</b>	<b>1,532</b>	<b>1,437</b>	<b>1,392</b>	<b>1,391</b>

Net expenditure reductions will need to be found in line with the plan to ensure that there are sufficient balances at the end of 2026/27. Additional detail is given in Appendix M.

...

- 10.3 This predicted use of balances is based on limited growth and a 2.95% increase in Council Tax for 2023/24, with increases of 2.95% for subsequent years. The anticipated General Fund balance at 1 April 2023 is £2,244,000, which is higher than expected in the Budget Strategy. This is due to a lower use of balances in 2021/22.
- 10.4 In order to keep the level of balances in each following year broadly in line with the strategy, the need to reduce expenditure in 2024/25 is still significant, at £1.5 million. A further reduction of £250,000 in 2025/26 and £150,000 in 2026/27 will also be needed. This takes the reductions still needed for 2024/25 onwards to £1.9 million.

## 11 Risks to the Council's Financial Position

- 11.1 As with all types of forecasting, there are certain inherent risks that may affect the financial position of the Council over the forthcoming periods. These risks require that the Council maintains a sufficient level of general reserves. The individual estimate reports to each Board have included a range of potential risks that could impact upon the budgetary position of services. In addition to these specific service risks, there are a number of risks that could impact more

generally on the Council's financial position. The major risks to the Councils budget are highlighted below.

- 11.2 **Business Rates** - the Council has risks it cannot currently quantify, around the retention of business rates in place of revenue support grant and the impact of appeals against valuations. We currently anticipate collecting more business rates than assumed in our baseline funding level. This means that we will retain a proportion of any additional rates collected.
- 11.3 Projections include a benefit of £500,000 in 2023/24. Plans to reset business rates have been delayed but are still expected, and this could remove the growth mentioned above. In this event, the Volatility Reserve will be used to provide an additional £500,000 in 2024/25, 2025/26 and 2026/27, and this has been included in the Strategy.
- 11.4 Any major changes to the Council's tax base through successful appeals, or removal of premises from the rating list over and above those allowed for, could impact on the additional rating income figures mentioned above. Given the increased valuations resulting from the 2022 valuation and the current economic uncertainty, this risk has increased.
- 11.6 **Fair Funding Review** – a national review is planned, which may adversely change the assumed spending need of the council, and therefore the level of government support that is received. The additional resources received in 2023/24 may not continue, or at a different level to that assumed in this forecast.
- 11.7 **New Homes Bonus scheme** – although a scheme for 2023/24 has been announced, there is no detail for further years. The indications seem to be that if it continues, funding will be allocated using a different mechanism.
- 11.8 **Growth in the Borough** – if new homes and estates are delivered in line with expectations, there will be a significant impact on some Council services, for example, refuse and recycling and grounds maintenance. Provision for extra refuse collection has been built into the figures but the actual timing of the additional resources required will need to be monitored and assessed.
- 11.9 **Other Risks** – the current economic position could increase demand for services such as benefits and homelessness could increase, whilst reducing demand in income generating areas. Unexpected changes in the remuneration of the workforce could impact on the financial position, as could any significant loss of employees which required additional resources to complete statutory functions.
- 11.10 An overall risk assessment for 2023/24 has been completed to determine the minimum level of general reserves that the Corporate Director Resources considers it is appropriate for the Authority to hold, and this is shown in Appendix J. This is based on the expected or 'most likely' position and the assumption that not all risks will occur within the next year.

...

- 11.11 As can be seen, the balance between future risks and the adequacy of general reserves held by the Council is a key part in establishing a medium-term financial strategy. Provided that expenditure is reduced in line with the targets identified, the level of balances is expected to remain around £1.4 million over the next four years, although careful monitoring of this will still be necessary. The Council has used some earmarked reserves in 2022/23 to offset some of the additional costs arising from the volatility of the utility markets and the higher than expected pay settlement which limits the ability to do this again in the future.
- 11.12 As already mentioned, there is the potential for the Council to benefit from any additional rates collected, but there is also the risk that if rating income falls, there will be a direct impact on the Council's finances. There is a lot of uncertainty around the collection of business rates and the impact of appeals and refunds.
- 11.13 However, if a general reserve of £1.4 million is held, it is felt that this amount, together with other provisions, reserves and balances held by the Council, is adequate to protect the Council's financial position for both the forthcoming year and in the medium-term.
- 11.14 Although not all risks are likely to occur in 2023/24, there is a real possibility that the position could be worse than that anticipated. It could also be better. Best and worst case scenarios are indicated in Appendix K, and show that in the event of the worst case scenario being realised in 2023/24, the Authority would need to adjust its financial strategy, and manage any changes required in 2024/25. Budgets are monitored throughout the year, with the budgetary position reported to Boards on a regular basis, so the Authority is in a good position to identify risks as they occur.

...

## 12 **Availability of Reserves**

- 12.1 The Local Government Act 2003 requires the Corporate Director Resources to make an annual statement on the adequacy of financial reserves. General reserves or balances are held to provide a general contingency for unavoidable or unforeseen expenditure, and also give stability for longer term planning. The level of general reserves held is based on an assessment of the financial risks attached to the budget, and this is covered in section 11.
- 12.2 In addition to its general financial reserves, the Council holds a number of earmarked reserves, for both revenue and capital purposes. It also holds some reserves on behalf of other organisations.
- 12.3 General Council policy has been not to use earmarked reserves to fund ongoing service activity, so that the base budget position is not understated. An exception to this was made with regards to the pandemic and has also been needed in 2022/23 due to the significant pressures brought about by the current economic position. However going forward, further use will not be assumed. So, for example, external grant received in advance for specific projects will be held in an earmarked reserve until the activity takes place and the grant is

spent. Timing differences on particular activities will also be dealt with through earmarked reserves, to remove unnecessary fluctuations in the base budget, whilst ensuring sufficient budget provision is available.

- 12.4 The Council will use earmarked reserves to set aside funding for capital schemes and projects. The main source of revenue funding for the capital programme currently is from the Business Rate Volatility Reserve.
- 12.5 Where earmarked reserves are used for revenue activities, the expenditure is included within the appropriate service budget, together with the contribution from the reserve to offset this. These movements are highlighted in the budget reports considered by Members. As mentioned above, it was agreed to use the Business Volatility Reserve in order to reduce the call on general balances in 2022/23.
- 12.6 The expected position on earmarked reserves at the end of 2022/23 relating to the General Fund is outlined below, with more detail on the larger reserves given in Appendix I.

<b>Earmarked Reserves</b>	<b>Expected Balance 31 March 2023 £000</b>
Capital	3,016
Revenue	6,691
<b>Total</b>	<b>9,707</b>

Some of the reserves set aside for capital are for specific equipment replacement and are not yet due to be spent.

### 13 **Budget Consultation**

- 13.1 It is planned to use electronic means to carry out budget consultation for 2023/24, in place of the usual meeting set up for business ratepayers.

### 14 **Council Tax Resolution**

- 14.1 A Council Tax resolution will be prepared for consideration at the Council Meeting, using the recommendations agreed by this Board.

### 15 **Workforce Estimate for the Year 2023/24**

- 15.1 Within the Authority's revenue and capital estimates, allowances have been made for the required workforce provision. Appendix L sets out the workforce estimates for 2023/24, compared with 2022/23.

### 16 **Delivering Value for Money**

- 16.1 All Councils will be looking for reductions in net expenditure in the coming year, to sustain their financial position. Efficiencies will be introduced wherever possible to minimise the impact on service provision.

## 17 **Conclusion**

- 17.1 It is clear that even with Council Tax increases of 2.95%, there is an imperative need to reduce the net expenditure of the Council. Reductions of around £1.9 million will inevitably impact on service levels. However if these expenditure reductions can be achieved, current forecasts indicate that reserves will remain around the minimal acceptable level of £1.4 million by the end of 2026/27, although this is subject to the uncertainties inherent in budgetary forecasting, and subject to the level of Council Tax increase agreed.
- 17.2 There are a number of factors that could affect these forecasts. The major factors are set out in section 11. In addition:
- The Council may struggle to deliver the necessary reductions in the required timeframe.
  - The General Fund currently has no external borrowing. However, there is an underlying borrowing requirement, which may increase costs in the future.
  - The ability to earn income from investments is expected to increase significantly, particularly in the short term. This has been taken into account in the budget forecast, along with assumptions on future movements. Any difference in actual experience will affect the financial projections; this could be beneficial or detrimental and will be reliant on how the economy performs.
- 17.3 The options available to the Council to meet these future pressures are restricted: increases in Government funding, higher increases in Council Tax (subject to a referendum) and reductions in service costs. As service delivery pressures increase, the options for reducing expenditure whilst maintaining existing service levels decrease.

## 18 **Report Implications**

### 18.1 **Financial Implications**

18.1.1 As detailed in the body of the report.

### 18.2 **Legal Implications**

18.2.1 As referred to at section 12 above, the Corporate Director Resources has a statutory duty to prepare a report to the council including information about the robustness of the estimates provided for calculating the budget and the adequacy of proposed financial reserves. In turn, the legislation concerned requires the Council to have regard to the content of the report when making the budget calculations concerned.

### 18.3 Safer Communities Implications

18.3.1 The Council provides services and takes part in initiatives that work to improve Crime and Disorder levels within the Borough, and provision is included within the budgets for this.

### 18.4 Environment and Sustainability Implications

18.4.1 The financial strategy is linked to the delivery of targets and actions identified in the Corporate Plan and service plans. Continuing the budget strategy will allow the Council to manage its expected shortfall in resources without disruption of these targets and without disrupting essential services. Progress against both performance and financial targets are reported regularly to Service Boards.

18.4.2 Parts of the corporate and service plans directly support the sustainability agenda, for example, recycling and the green space strategy.

### 18.5 Equality Implications

18.5.1 Equality Assessments should be undertaken when making financial decisions to determine what the adverse impact on individuals or communities will be.

The Contact Officer for this report is Sue Garner (719374).

### Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

<b>Background Paper No</b>	<b>Author</b>	<b>Nature of Background Paper</b>	<b>Date</b>
Financial Strategy 2022/27	NWBC	Report to Executive Board	12 Oct 2022

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
COMMUNITY AND ENVIRONMENT BOARD  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Codes</b>	<b>Description</b>	<b>Actual 2021/2022 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
3072	Polesworth Sport Centre	182,694	117,180	9,490	(3,390)
3073	Polesworth Gym Hub	43,357	-	197,340	228,330
3075	Colleshill Leisure Centre	356,579	285,450	327,610	417,680
3077	Atherstone Leisure Complex	492,977	341,640	518,680	852,180
3082-3	Memorial Hall	142,721	121,680	116,730	159,350
4002	Public Health (Commercial Pollution Control)	237,324	337,700	343,660	379,290
4003	Public Health (Domestic Pollution Control)	25,431	960	3,150	2,140
5000	Domestic Refuse Collection	865,971	688,490	866,570	818,190
5001	Streetscene Grounds Maintenance	63,573	21,240	62,450	40,950
5002	Trade Refuse Collection	(58,406)	(60,020)	(51,190)	(54,530)
5003	Cesspool Emptying	(7,706)	(57,670)	2,170	(20,190)
5004	Recycling	820,902	712,150	1,049,440	865,790
5005	Animal Control	32,935	10,290	12,910	12,690
5006	Abandoned Vehicles	2,804	2,240	3,950	3,470
5010	Amenity Cleaning	576,616	558,080	540,650	598,250
5013	Unadopted Roads	13,874	8,050	8,050	8,290
5014	Flooding And Land Drainage	3,706	-	-	-
5015	Street Furniture	3,576	1,380	1,900	1,440
5016	Atherstone Market	3,219	1,900	2,100	2,770
5019	Green Space Budget	410,105	448,060	455,210	504,160
5021	Public Health (Control of Disease) Act 1984 Burials	4,163	1,670	1,670	1,720
5023	Consultation	1,362	4,740	4,740	4,880
5025	Corporate Policy	57,213	49,190	49,190	20,110
5030	Rural Regeneration	23,819	37,980	37,980	42,450
5034	Landscape	10,982	10,780	11,110	11,440
5040	Marketing and Market Research	2,491	8,930	15,310	7,970
5044	Support to Voluntary Organisations	58,863	56,430	35,550	35,710
5055	Community Development Health Improvement	53,490	42,550	42,620	45,940
5056	Community Development Safer Communities	55,769	61,810	61,810	65,760
5064	QE - Artificial Grass Pitch	(5,740)	(10,610)	(10,610)	(11,590)
7361	England's Rural Heart LEADER Partnership	4,406	-	-	-
72**	Covid-19	77,214	-	-	-
<b>Sub Total</b>	<b>Net Controllable Expenditure</b>	<b>4,556,285</b>	<b>3,802,270</b>	<b>4,720,240</b>	<b>5,041,250</b>
<b>Sub Total</b>	<b>Departmental Support</b>	<b>586,260</b>	<b>702,590</b>	<b>702,590</b>	<b>847,930</b>
<b>Sub Total</b>	<b>Central Support</b>	<b>591,447</b>	<b>628,100</b>	<b>628,100</b>	<b>755,560</b>
<b>Sub Total</b>	<b>Capital</b>	<b>2,189,548</b>	<b>888,950</b>	<b>888,940</b>	<b>889,760</b>
<b>Sub Total</b>	<b>Net Expenditure</b>	<b>7,923,539</b>	<b>6,021,910</b>	<b>6,939,870</b>	<b>7,534,500</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
ALCOHOL AND GAMBLING LICENSING COMMITTEE  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/2022 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
4000	Licensing Authority	(23,759)	(51,030)	(54,470)	(54,430)
4019	Gambling Act Authority	(8,094)	(9,660)	(8,380)	(9,080)
<b>Sub Total</b>	<b>Net Controllable Expenditure</b>	<b>(31,852)</b>	<b>(60,690)</b>	<b>(62,850)</b>	<b>(63,510)</b>
<b>Sub Total</b>	<b>Departmental Support</b>	<b>30,627</b>	<b>37,170</b>	<b>37,170</b>	<b>39,650</b>
<b>Sub Total</b>	<b>Central Support</b>	<b>15,984</b>	<b>4,070</b>	<b>4,070</b>	<b>6,170</b>
<b>Sub Total</b>	<b>Capital Charges</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total</b>	<b>Net Expenditure</b>	<b>14,759</b>	<b>(19,450)</b>	<b>(21,610)</b>	<b>(17,690)</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
LICENSING COMMITTEE (TAXI & GENERAL) SUMMARY  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/2022 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
4001	Licences and Registration	(7,549)	(8,710)	(8,830)	(4,460)
4008	Hackney Carriages	(11,466)	(15,680)	(16,930)	(4,740)
<b>Sub Total</b>	<b>Net Controllable Expenditure</b>	<b>(19,015)</b>	<b>(24,390)</b>	<b>(25,760)</b>	<b>(9,200)</b>
<b>Sub Total</b>	<b>Departmental Support</b>	<b>30,877</b>	<b>62,690</b>	<b>62,690</b>	<b>64,860</b>
<b>Sub Total</b>	<b>Central Support</b>	<b>25,738</b>	<b>3,620</b>	<b>3,620</b>	<b>7,320</b>
<b>Sub Total</b>	<b>Capital Charges</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total</b>	<b>Net Expenditure</b>	<b>37,600</b>	<b>41,920</b>	<b>40,550</b>	<b>62,980</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
RESOURCES BOARD (REMAINING)  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/2022 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
3000	Cost of Democratic Services	364,878	369,760	364,230	421,030
3001	Election Expenses	7,880	5,620	7,990	100,120
3002	Registration of Electors	31,296	28,000	28,000	28,620
3003	Non Domestic Business Rates	954	(32,770)	(31,350)	(56,070)
3004	Council Tax Collection	264,571	87,080	202,300	88,590
3050	Finance Miscellaneous	(638,363)	-	(15,200)	-
3051	Compensation and Pension Increases	335,174	345,000	344,100	309,270
3052	Assisted Car Purchase	(289)	(180)	(180)	(120)
3054	Electricity at Work	24,491	19,300	19,300	20,270
3059	Finance Unused Land	3,592	790	790	1,210
3060	Corporate and Democratic Core	161,801	78,730	202,980	88,580
3061	Unallocated Central Support Services	(508)	120,610	120,470	122,110
3065	Coleshill Shops and Flats	(66,664)	(70,700)	(69,440)	-
3067	The Pavilions, Holly Lane	(68,300)	(80,360)	(88,720)	(93,630)
3068	Carlyon Road Industrial Estate	(130,227)	(130,170)	(131,150)	(131,300)
3069	Innage Park Industrial Estate	(218,323)	(226,290)	(215,710)	(233,000)
3079	Maya Bar & Restaurant	(17,046)	(18,830)	(18,750)	(18,880)
3080	Football Stadium	475	-	1,120	-
3084	Homeless Persons	88,436	77,050	74,840	95,300
3085	Meadow House Young People Support	(14,677)	-	-	-
3086	Homeless Project Watling Street Dordon	-	-	-	-
3089	Public Conveniences	40,678	2,580	1,600	-
3094	Customer Contact	39,659	35,540	35,540	1,680
3097	Rent Allowances	99,027	7,760	47,720	22,760
3098	Housing Benefit Administration and Rent Reba	(23,268)	46,740	65,170	29,660
3101	Council Tax Support	31,088	61,140	57,980	217,690
3102	Car Parks	76,773	117,070	55,920	60,170
5008	Private Sector Housing Assistance	27,616	37,180	37,180	40,490
5035	CCTV	6,971	21,670	26,530	4,060
5036	Community Support	177,775	-	-	-
72**	Covid	22,643	-	-	-
	<b>Net Controllable Expenditure</b>	<b>628,113</b>	<b>902,320</b>	<b>1,123,260</b>	<b>1,118,610</b>
	<b>Recharged to Services</b>	<b>(271,520)</b>	<b>(266,890)</b>	<b>(308,910)</b>	<b>(286,480)</b>
	<b>Departmental Support</b>	<b>916,459</b>	<b>967,470</b>	<b>967,470</b>	<b>1,030,270</b>
	<b>Central Support</b>	<b>1,150,970</b>	<b>905,490</b>	<b>922,290</b>	<b>1,138,340</b>
	<b>Capital</b>	<b>208,368</b>	<b>242,030</b>	<b>241,890</b>	<b>229,490</b>
	<b>Resources Board (Remaining) Total</b>	<b>2,632,390</b>	<b>2,750,420</b>	<b>2,946,000</b>	<b>3,230,230</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
RESOURCES BOARD (RECHARGED)  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/2022 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
Various	Chief Executive	211,248	226,620	226,620	243,330
Various	Corporate Director - Resources	909,723	1,092,930	1,092,930	1,181,000
Various	Chief Executive - Other Services	1,124,120	1,230,970	1,245,360	1,385,550
Various	Corporate Director Resources - Community Services	1,374,749	1,371,350	1,381,850	1,519,950
Various	Director of Housing	1,950,314	1,912,320	1,912,320	1,986,230
Various	Corporate Director Streetscape	838,172	1,053,530	1,053,530	1,130,610
Various	Director of Leisure and Community Development	404,844	596,780	596,780	633,580
3006-3039	Building Maintenance Fund	232,397	232,670	232,670	248,100
3040-3041	Council Offices	149,448	183,380	217,070	322,900
3043	Central Telephones	18,658	11,030	11,030	11,390
3045	Recruitment	28,370	25,200	25,200	25,950
3046	Printing and Stationery	54,514	42,040	42,040	30,190
3047	Training	9,432	84,250	84,250	84,510
3048	Depot and Stores	81,034	83,660	90,490	141,730
3110	Postal Services	35,696	55,060	55,060	30,000
3226	Central Services	330,372	-	-	-
3290	Information Services	755,576	760,430	760,430	882,400
3291	Procurement	48,665	99,990	99,990	109,980
3292	Staff Welfare	20,552	26,730	26,730	27,420
3300	Transport Management Account	766,979	848,710	901,860	939,710
	<b>Net Controllable Expenditure</b>	<b>9,344,863</b>	<b>9,937,650</b>	<b>10,056,210</b>	<b>10,934,530</b>
	<b>Recharged to Services</b>	<b>(11,000,991)</b>	<b>(11,918,620)</b>	<b>(11,984,160)</b>	<b>(13,146,490)</b>
	<b>Departmental Support</b>	<b>20,657</b>	<b>25,610</b>	<b>25,610</b>	<b>30,320</b>
	<b>Central Support</b>	<b>1,308,335</b>	<b>1,539,040</b>	<b>1,539,040</b>	<b>1,760,380</b>
	<b>Capital</b>	<b>325,911</b>	<b>416,320</b>	<b>416,320</b>	<b>421,260</b>
	<b>Resources Board (Recharged) Total</b>	<b>(1,225)</b>	<b>-</b>	<b>53,020</b>	<b>-</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
PLANNING AND DEVELOPMENT BOARD  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/2022 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
4009	Planning Control	(51,273)	(61,680)	(87,240)	15,220
4010	Building Control	36,924	35,900	35,200	36,260
4012	Conservation and Built Heritage	52,009	44,580	44,580	48,150
4014	Local Land Charges	(62,735)	(45,080)	(30,140)	(43,500)
4018	Street Naming and Numbering	(51)	(5,830)	(5,830)	(6,160)
<b>Sub Total</b>	<b>Net Controllable Expenditure</b>	<b>(25,126)</b>	<b>(32,110)</b>	<b>(43,430)</b>	<b>49,970</b>
<b>Sub Total</b>	<b>Departmental Support</b>	<b>108,166</b>	<b>156,890</b>	<b>156,890</b>	<b>148,130</b>
<b>Sub Total</b>	<b>Central Support</b>	<b>154,748</b>	<b>127,400</b>	<b>127,400</b>	<b>145,090</b>
<b>Sub Total</b>	<b>Capital Charges</b>	<b>1,481</b>	<b>16,390</b>	<b>16,390</b>	<b>16,390</b>
<b>Total</b>	<b>Planning and Development Board Total</b>	<b>239,268</b>	<b>268,570</b>	<b>257,250</b>	<b>359,580</b>

**NORTH WARWICKSHIRE BOROUGH COUNCIL  
EXECUTIVE BOARD SUMMARY  
SUMMARY OF GENERAL FUND REVENUE ESTIMATES**

<b>Code</b>	<b>Description</b>	<b>Actual 2021/22 £</b>	<b>Approved Budget 2022/2023 £</b>	<b>Revised Budget 2022/2023 £</b>	<b>Original Budget 2023/2024 £</b>
2000	Housing Strategic Service Review	5,296	-	-	-
2001	Outreach and Access to Services	55,630	2,300	2,300	-
2002	Corporate Communications	50,894	62,050	53,210	63,390
2003	Community Strategy	58,905	43,970	43,970	49,630
2007	Emergency Planning	7,720	6,160	3,050	6,260
2009	North Warwickshire Local Development Framework	224,505	276,560	217,560	288,410
5050	Support to Parishes	7,452	-	-	-
<b>Sub Total</b>	<b>Net Controllable Expenditure</b>	<b>410,402</b>	<b>391,040</b>	<b>320,090</b>	<b>407,690</b>
<b>Sub Total</b>	<b>Departmental Support</b>	<b>157,870</b>	<b>204,340</b>	<b>204,340</b>	<b>145,500</b>
<b>Sub Total</b>	<b>Central Support</b>	<b>149,531</b>	<b>167,230</b>	<b>167,230</b>	<b>102,140</b>
<b>Sub Total</b>	<b>Capital Charges</b>	<b>4,793</b>	<b>9,870</b>	<b>9,870</b>	<b>-</b>
<b>Total</b>	<b>EXECUTIVE BOARD TOTAL</b>	<b>722,595</b>	<b>772,480</b>	<b>701,530</b>	<b>655,330</b>

## SUMMARY OF REVENUE REQUIREMENTS

## Revised Budget

2022/2023 Gross Expenditure	2022/2023 Gross Income	2022/2023 Net Expenditure		2023/2024 Gross Expenditure	2023/2024 Gross Income	2023/2024 Net Expenditure
£	£	£		£	£	£
10,034,130	3,094,260	6,939,870	Community and Environment	10,770,750	3,236,250	7,534,500
925,030	667,780	257,250	Planning and Development	1,042,510	682,930	359,580
128,510	109,570	18,940	Licensing	145,650	100,360	45,290
12,890,100	9,891,080	2,999,020	Resources	12,782,000	9,751,770	3,030,230
721,530	20,000	701,530	Executive	658,390	3,060	655,330
12,637,560	12,637,560	-	Council Housing	13,589,210	13,589,210	-
88,290	-	88,290	Contingencies	277,600	-	277,600
377,970	688,700	(310,730)	Additional costs of pay award / additional vacancies	-	-	-
-	955,000	(955,000)	Use of Earmarked Reserves	-	-	-
-	-	-	Further reductions proposed	(341,010)	-	(341,010)
-	515,000	(515,000)	Interest on balances	-	1,160,000	(1,160,000)
-	936,260	(936,260)	Financing adjustment	-	806,420	(806,420)
<b>37,803,120</b>	<b>29,515,210</b>	<b>8,287,910</b>		<b>38,925,100</b>	<b>29,330,000</b>	<b>9,595,100</b>
97,290	-	97,290	Use of balances	-	712,390	(712,390)
<b>37,900,410</b>	<b>29,515,210</b>	<b>8,385,200</b>		<b>38,925,100</b>	<b>30,042,390</b>	<b>8,882,710</b>
1,130,856.51	-	1,130,856.51	Special items - Parish precepts	-	-	-
<b>39,031,266.51</b>	<b>29,515,210</b>	<b>9,516,056.51</b>		<b>38,925,100</b>	<b>30,042,390</b>	<b>8,882,710</b>
		(2,421,960)	Business Rates			(2,493,570)
		(157,890)	S31 Grant - Business Rate Multiplier			(339,580)
		(722,970)	New Homes Bonus			(518,900)
		(86,200)	Lower tier Grant			-
		(132,470)	Services Grant			(74,650)
		-	Funding Guarantee			(314,900)
		-	RSG			(80,840)
		(79,720)	(Surplus) / Deficit on Collection Fund			(74,140)
		<b>5,914,846.51</b>				<b>4,986,130</b>

**North Warwickshire Borough Council 2023/24**

**APPENDIX G**

	Band A disabled	Band A	Band B	Band C	Band D	Band E	Band F	Band G	Band H	Total
No. of dwellings		6,709.00	7,459.00	6,447.00	4,024.00	2,559.00	1,376.00	770.00	81.00	29,425.00
Plus additions		30.31	20.25	39.63	34.25	17.50	5.00	5.75	-	152.69
Less reductions		-	-	(1.00)	-	(1.75)	(1.75)	-	-	(4.50)
Less exemptions		(155.00)	(154.00)	(73.00)	(47.00)	(29.00)	(15.00)	(9.00)	-	(482.00)
Less orig. band for disabled		(30.00)	(53.00)	(56.00)	(47.00)	(33.00)	(18.00)	(16.00)	(3.00)	(256.00)
Plus new band for disabled	30.00	53.00	56.00	47.00	33.00	18.00	16.00	3.00	-	256.00
<b>(a) Chargeable dwellings</b>	<b>30.00</b>	<b>6,607.31</b>	<b>7,328.25</b>	<b>6,403.63</b>	<b>3,997.25</b>	<b>2,530.75</b>	<b>1,362.25</b>	<b>753.75</b>	<b>78.00</b>	<b>29,091.19</b>
25% discounts - Adjusted due to annexe disc	4.00	3,386.00	2,868.00	1,999.00	962.00	478.00	230.00	116.00	17.00	10,060.00
50% discounts - Adjusted due to annexe disc	1.00	15.00	7.00	6.00	4.00	4.00	5.00	5.00	7.00	54.00
Total discounts	6.00	2,510.00	2,338.00	1,828.00	805.00	460.00	230.00	125.00	29.00	8,330.00
<b>(b) Discount deduction</b>	<b>(1.50)</b>	<b>(854.00)</b>	<b>(720.50)</b>	<b>(502.75)</b>	<b>(242.50)</b>	<b>(121.50)</b>	<b>(60.00)</b>	<b>(31.50)</b>	<b>(7.75)</b>	<b>(2,542.00)</b>
Former A exemptions (25%)		4.00	5.00	4.00	2.00	-	2.00	1.00	-	18.00
Former C exemptions (2 weeks)		17.00	10.00	9.00	5.00	2.00	3.00	1.00	1.00	48.00
Total former exemptions (single equivalent)		1.65	1.63	1.35	0.69	0.08	0.62	0.29	0.04	6.31
Long Term Empty Premium		29.00	21.00	20.00	7.00	12.00	11.00	15.00	-	115.00
Council Tax Support	8.90	1,184.47	828.78	349.97	114.25	50.87	27.04	9.57	-	2,573.85
Band D equivalent	4.94	789.65	644.61	311.08	114.25	62.17	39.06	15.95	-	1,981.71
<b>(c) Adjustments</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>						
<b>(a)-(b)+(c) Net dwellings</b>	<b>19.60</b>	<b>4,581.69</b>	<b>5,787.84</b>	<b>5,559.56</b>	<b>3,643.31</b>	<b>2,364.30</b>	<b>1,280.09</b>	<b>719.89</b>	<b>70.21</b>	<b>24,026.49</b>
Band D equivalents	10.89	3,054.46	4,501.65	4,941.83	3,643.31	2,889.70	1,849.03	1,199.82	140.42	22,231.11
Total Band D		22,231.11								
Collection rate		98%								
Taxbase		21,786.83								

## SAVINGS INCLUDED WITHIN 2023/2024

Board	Description	2023/2024 £
C&E	Reduced gate fee for the disposal of recycling	146,230
C&E	Increase in Cesspool charges	20,000
C&E	Reduced subscriptions to voluntary organisations	18,480
Resources	Reduced vodaphone contract cost	3,500
Resources	Lease car savings	6,920
Corporate	Use of Volatility Reserve to fund the purchase of Refuse Vehicles in stead of borrowing	276,720
Corporate	Investment income from the Material Recycling Facility	45,000
	<b>Total Savings Included</b>	<b>516,850</b>

## SAVINGS PROPOSED FOR INCLUSION IN 2023/2024

Board	Description	2023/2024 £
C&E	Reduction in Community development / Policy support	140,000
C&E	Move to Digital communications	13,340
C&E	Set up of the LATCo	155,500
Resources	Reduced Mayoral budget	11,770
Resources	Stop the contribution to the LEP	20,400
	<b>Total Further Savings Proposed</b>	<b>341,010</b>

TOTAL POTENTIAL SAVINGS

857,860

## EARMARKED RESERVES

Purpose of Reserve	Balance March 2023 £000
<b>Revenue Reserves</b>	
<b>Business Rates</b> – a volatility reserve to cover fluctuations in the level of appeals and rating income	4,608
<b>External Grants Received</b> – Resources received towards specific projects, such as homelessness, welfare reform, neighbourhood plans, delivery of housing sites (local plan), community development and environmental sustainability, which will be spent in future years	1,165
<b>HRA Reimbursement to General Fund</b> – to compensate the General Fund for the loss of investment income	40
<b>Planned Work</b> - the Council has set priorities and initiatives where work is planned and may have been started, but has not yet been completed. Provision has been made from existing budgets to fund this work in future periods. This includes work on conservation, amenity cleaning, recycling promotion and Broadband UK.	245
<b>Approved growth not yet spent</b> – to cover Environmental Issues, HS2 and Health and Wellbeing.	41
<b>Invest to Save</b> – This reserve is to provide ‘pump priming’ for the initial costs that arise from new initiatives, which will ultimately reduce existing costs. Savings achieved will be used to repay the contribution from the Reserve, so that other services will have similar opportunities to implement new schemes.	64
<b>Other</b> – A number of other reserves are held to cover areas such as corporate communications and Sickness fund	83
<b>Contingencies</b> – to cover possible costs arising from non-recovery of VAT.	90
<b>Maintenance of Assets</b> – To cover future maintenance requirements on some council owned assets	149
<b>Training</b> – These funds have been set aside to provide resources for one off training requirements in the future, for both staff and members.	106
<b>Consultation</b> – for consultation with residents of the Borough and service users. The requirement to consult varies from year to year and the reserve allows fluctuations between years to be managed, without affecting other revenue expenditure.	22
<b>Insurance</b> – to cover costs arising from changes to excess levels	78
<b>Capital Reserves</b>	
<b>Equipment Replacement</b> – These funds are earmarked for the future replacement of leisure equipment, CCTV equipment, Play Area equipment, Refuse Freighters and the replacement of PC's.	156
<b>General Fund Capital</b> - Some funding has been set aside for capital spending.	2,860

## COUNCIL WIDE - RISK ANALYSIS

	<b>Likelihood</b>	<b>Provision</b>
Income Generation – decrease in fees and charges of 10%	High	500,000
Lower vacancies than expected (provision for vacancies = £200k)	Medium	100,000
Investment Income – loss of cash flow	Medium	170,000
Further Public Inquiries (potential £100k)	High	100,000
Housing Benefit – reduction in reimbursement	Low	43,000
Possibility of overspending the agreed budget by 1%	Medium	130,000
Housing Benefit – Local Authority error & overpayments (£278k)	Medium	90,000
Increased cost of maintaining mechanical equipment	Low	50,000
General Contingency		250,000
<b>Total</b>		<b>1,433,000</b>

**Likelihood of Risk**

High	100%
Medium	50%
Low	0 –10%

## ALTERNATIVE SCENARIOS – GENERAL BALANCES

## Best Case

	2023/24 £000	2024/25 £000	2025/26 £000	2026/27 £000
<b>Estimated use of balances</b>	<b>712</b>	<b>95</b>	<b>45</b>	<b>1</b>
1% increase in the tax base (new homes)	-	(50)	(100)	(150)
Sustained improvement in planning income	(100)	(100)	(100)	(100)
Improvement in leisure income	(50)	(100)	(100)	(100)
Additional surplus in the Collection Fund	-	(20)	(20)	(20)
Contingency provision for the additional refuse round not required in 23/24	(145)	-	-	-
Alternative to New Homes Bonus	-	(500)	(500)	(500)
<b>Potential Use of/ (Cont to) Balances</b>	<b>417</b>	<b>(675)</b>	<b>(775)</b>	<b>(869)</b>
<b>Potential Balances at Year End</b>	<b>1,827</b>	<b>2,502</b>	<b>3,277</b>	<b>4,146</b>

## Worst Case

	2023/24 £000	2024/25 £000	2025/26 £000	2026/27 £000
	<b>712</b>	<b>95</b>	<b>45</b>	<b>1</b>
Additional 0.5% on the pay award in 2023/24	61	63	65	67
Increase in planning appeals	100	100	100	100
Planning Income is not sustained	100	100	100	100
Improvement in leisure income is not achieved	50	50	50	50
Additional waste collection costs	100	100	100	100
Reduced recovery of housing benefits	40	40	40	40
S31 Grant for business rate multiplier is not maintained		353	360	367
2023/24 Funding Guarantee Grant is a one off		328	334	341
<b>Potential Use of/ (Cont to) Balances</b>	<b>1,163</b>	<b>1,229</b>	<b>1,194</b>	<b>1,166</b>
<b>Potential Balances at Year End</b>	<b>1,081</b>	<b>(148)</b>	<b>(1,342)</b>	<b>(2,508)</b>

**WORKFORCE BUDGET**

The Board estimates contain the effect of the following changes in employee numbers.

	<b>2022/23 Estimate (original) FTE</b>	<b>2023/24 Estimate FTE</b>
Monthly Paid	<b>319</b>	<b>320</b>
<b>Total</b>	<hr/> <b>319</b> <hr/>	<hr/> <b>320</b> <hr/>

## APPENDIX M

### REVISED MEDIUM TERM FINANCIAL FORECAST

	2022/23 Revised £000	2023/24 Estimate £000	2024/25 Estimate £000	2025/26 Estimate £000	2026/27 Estimate £000
<b>Net Service Expenditure</b>	<b>10,694</b>	<b>11,561</b>	<b>11,610</b>	<b>11,882</b>	<b>12,262</b>
Use of Earmarked Reserves	(955)	-	-	-	-
Investment Income	(515)	(1,160)	(823)	(644)	(620)
Financing Adjustment	(886)	(766)	(484)	(441)	(433)
e/m res - contribution from HRA	(50)	(40)	-	-	-
Requirement to reduce expenditure – 24/25	-	-	(1,500)	(1,500)	(1,500)
Requirement to reduce expenditure – 25/26	-	-	-	(250)	(250)
Requirement to reduce expenditure – 26/27	-	-	-	-	(150)
<b>Net Expenditure</b>	<b>8,288</b>	<b>9,595</b>	<b>8,803</b>	<b>9,047</b>	<b>9,309</b>
Council Tax	(4,784)	(4,986)	(5,210)	(5,444)	(5,689)
NDR – Baseline	(1,922)	(1,993)	(2,073)	(2,115)	(2,157)
NDR – Additional rates	(500)	(500)	(500)	(500)	(500)
Section 31 Grant – business rate multiplier	(158)	(340)	(353)	(360)	(367)
RSG	-	(81)	(84)	(86)	(87)
New Homes Bonus	(723)	(519)	-	-	-
Lower Tier Grant	(86)	-	-	-	-
Services Grant	(132)	(75)	(75)	(75)	(75)
Funding Guarantee Grant	-	(315)	(328)	(334)	(341)
Collection Fund (Surplus) / Deficit	(80)	(74)	(85)	(88)	(92)
<b>Use of / (Contribution to) Balances</b>	<b>(97)</b>	<b>712</b>	<b>95</b>	<b>45</b>	<b>1</b>
<b>Balances at the Year End</b>	<b>2,244</b>	<b>1,532</b>	<b>1,437</b>	<b>1,392</b>	<b>1,391</b>

## Agenda Item No 12

### Executive Board

13 February 2023

#### Report of Management Team and the Director of Leisure and Community Development

#### Leisure Facilities: Local Authority Trading Company

### 1 Summary

- 1.1 This report seeks the Board's consideration and approval of the legal arrangements and formal documentation that will govern the relationship between the Borough Council and its proposed wholly owned Leisure Facilities Local Authority Trading Company.

#### Recommendation to the Board

- a That the Board approves the Leisure Services Agreement (Contract), Member Agreement and Articles of Association that will govern the relationship between the Borough Council and its wholly owned Leisure Facilities Local Authority Trading Company and authorises the Chief Executive to finalise the content of the documentation in consultation with the Head of Legal Services and the Council's external legal advisors;
- b That, in accordance with the aforementioned documentation, the initial term of the Contract to be held between the Borough Council and the Leisure Facilities Local Authority Trading Company be set at five years;
- c That the Board approves the proposal to appoint the Chief Executive, the Interim Corporate Director – Streetscape and an Independent Director (Mr Richard Dobbs) to the Board of Directors of the Leisure Facilities Local Authority Trading Company; and,
- d The Chief Executive be authorised to formally establish the Leisure Facilities Local Authority Trading Company, in the name of North Warwickshire Leisure Limited.

### 2 Consultation

- 2.1 As the Authority's leisure facilities are of Borough-wide significance this report has been circulated to all Councillors for their consideration. Any comments received will be reported at the meeting.

- 2.2 Initial, informal discussions have been held with staff, including through the Joint Negotiating Forum, about the proposal to establish a Leisure Facilities Local Authority Trading Company. It will be necessary to undertake formal consultation with potentially affected staff as the process continues.

### **3 Introduction and Background**

- 3.1 As Members are aware, the Borough Council currently undertakes the in-house management of the following primary leisure facilities:

- Atherstone Leisure Complex (including Atherstone Memorial Hall and both indoor provision and an Artificial Grass Pitch through a Management Agreement with Queen Elizabeth School)
- Coleshill Leisure Centre (through a Joint Use Agreement with The Coleshill School)
- Polesworth Fitness Hub and associated outreach provision within community venues in Dordon and, through a short-term hire agreement, at The Polesworth School

- 3.2 At its meeting held on 14 March 2022, the Community and Environment Board approved the establishment and registration of a wholly owned Leisure Facilities Local Authority Trading Company (LATCo) to manage and operate these facilities and it delegated authority to the Chief Executive to set up the company, in consultation with the Chairman, Vice-chairman and Opposition Spokesperson for the Board. Subsequently, the following progress has been made in pursuance of this corporate commitment:

- March 2022: Resources Board approved the engagement external advisory support
- May 2022: Community and Environment Board approved, in principle, the Vision, Values and Strategic Objectives for the Leisure Facilities service, which will be shared by the Borough Council and the LATCo
- July 2022: Community and Environment Board formally approved the shared Vision, Values and Strategic Objectives for the service
- October 2022: Community and Environment Board adopted the required Service Specification (which will be part of the formal Contract Agreement) that will provide a framework for the activity to be delivered through the LATCo, but requested that a shorter, more workable version be produced
- October 2022: Executive Board approved a HM Treasury Green Book compliant Business Case to establish the wholly owned Leisure Facilities LATCo, which is an essential requirement before the company can start to operate. It additionally agreed that, in view of its simplicity, flexibility, limited liability for shareholder(s) and tax benefits, that the LATCo be established as a Company Limited by Guarantee (CLG)
- January 2023: Community and Environment Board approved the requested shortened version of the Service Specification

- 3.3 A number of important decisions remain to be taken, however, before the Trading Company can start to operate:
- Community and Environment Board will need to consider and approve the LATCo's Business Plan
  - Resources Board will need to approve the Lease / Licences to Occupy through which the LATCo can occupy the Borough Council's leisure facilities
  - Executive Board will need to approve the formal Leisure Services Agreement (Contract) and its initial term (length), the Member Agreement and the Articles of Association
  - Executive Board will also need to approve the LATCo Business Plan (after its consideration by the Community and Environment Board)
- 3.4 Additionally, and as previously reported to Members, there is a need to formally engage and consult with staff, not least because of the TUPE regulations, as well as considerable work to do to ensure the readiness of the service to move towards LATCo status.

#### 4 **Legal Arrangements and Formal Documentation**

4.1 The Borough Council is using the power contained in Section 1 of the Localism Act 2011 to establish the LATCo, which is a body that is free to operate as a commercial entity, but remains wholly owned by the parent authority. The same powers are being used to prepare the required Leisure Services Agreement (Contract), the Member Agreement and the company's Articles of Association. Copies of these documents are attached at Appendices B to D for the Board's consideration.

...

...

4.2 Additionally attached, at Appendix A, is a copy of the slides that were used to frame a workshop, open to all Councillors, held on 16 January 2023, at which representatives from the Authority's external advisors explained the structural arrangements and documents that will govern the relationship between the Borough Council and its wholly owned company. Copies of the slides were also sent to all Councillors on 17 January.

4.3 As can be within the slides, the external advisors explained the structural arrangements that will exist between the two parties and the distinctions between them (they will be separate legal entities), as well as the structure of the documentation itself. The key documents are as follows:

- **Leisure Services Agreement (Contract)**

The detailed document through which the company agrees to provide the Leisure Facilities service to the Borough Council, for a proposed initial period of five years, in return for a fee. The Contract divides responsibilities between the two parties (for example, in respect of the repair and maintenance of assets and equipment) and provides exit and termination procedures

- **Member Agreement**

Held between the parent (Borough Council) and subsidiary company to document the relationship, provide an outline of the business activities, consent matters and monitoring and reporting obligations

- **Articles of Association**

Effectively the Trading Company's constitution and how it will conduct itself. The Articles define the purpose of the company and how it will operate

- **Service Specification**

Already approved by the Community and Environment Board, and part of the formal Contract, the Service Specification sets out the parameters of operation, the Borough Council's requirements and expectations, as well as how performance will be managed and reported upon

- 4.4 Within their presentation, the external advisors also outlined how decisions would be made, both by the Borough Council and the LATCo, after the company had started to operate.

## 5 **Leisure Services Agreement (Contract)**

- 5.1 As identified, the Leisure Services Agreement is, in effect, the formal Contract that obliges the company to provide a Leisure Facilities service on behalf of the Borough Council and to do so in pursuance of the agreed Strategic Objectives and accordance with the previously approved Service Specification. The Agreement contains a number of significant provisions, some of which are as follows:

- **Contract Period:** Proposed to be for an initial period of five years, with provisions to extend this period by agreement between the parties
- **Contract Variations:** Allowing for the parties to vary or amend the Contract by agreement
- **Collaborative Working:** Requiring the company to act collaboratively and in a spirit of openness and co-operation with the Borough Council
- **Contract Manager:** Requiring the Authority to appoint a representative to act on behalf of the Borough Council in its dealings with the company – The Director of Leisure and Community Development
- **Provider's Representative:** Requiring the company to appoint a senior representative to act on its behalf in its dealings with the Borough Council – The Managing Director
- **TUPE, Staff and Pension Provisions:**
- **Assets and Maintenance:**

- Performance Monitoring, Reporting and Failure:
- Financial Provisions: Including the requirement for the Borough Council to pay a fee to the company in return for it delivering the specified service
- Policy Provisions: Requiring the company to comply with Borough Council policies
- Liabilities and Insurance:
- Dispute, Disruption and Termination Provisions:

## 6 Member Agreement

6.1 The appended Member Agreement is held between the Borough Council and the LATCo and it outlines the functions to be undertaken by the company on behalf of the Authority. Additionally, it details the following:

- Business Plan Arrangements: Including making it clear that the initial and subsequent Plans, and any variation thereof, will require the formal consent of the Borough Council
- Conduct of the LATCO's Affairs: Dealing with meetings, the appointment of a Managing Director, general company policies, systems and business affairs
- Monitoring and Reporting Arrangements:
- Council Consent Matters: Detailing those matters that the company shall not undertake without the prior written consent of the Borough Council

## 7 Articles of Association

7.1 The Articles of Association detail the nature of the company, explain its purpose and how it will undertake its activities. It identifies the liability of its "member" (the Borough Council) and documents its "objects". It makes it clear that the company is not established for profit and that property and income will not be distributed by way of profit to its members. The Articles identify that the company's Directors are responsible for the management of its business and detail how they will conduct themselves, exercise their powers and how they will make decisions. They also address the following:

- The Board: Proposed to have a Board of three Officer Directors (the Chief Executive, the Interim Corporate Director – Streetscape and an Independent Director [Mr Richard Dobbs])
- The Borough Council will need to monitor and hold the LATCo to account, in order to ensure that it delivers the outcomes required in the approved Service Specification. Conversely, the LATCo must be able to demonstrate a degree of independence from the Authority in order to benefit from "Eligible Body" status and thereby receive certain tax benefits. It is appropriate, therefore, for Councillors to undertake the "Shareholder" role within the Borough Council and not sit on the company's Board of Directors. Clearly, Councillors are in the best

position to hold the LATCo to account and it is suggested that this function is undertaken through the Community and Environment Board, given that it already performs this function in respect of the current service

- Appointment, Removal and Termination of Directors: Functions that will be undertaken by the Borough Council in its capacity as shareholder

## **8 Conclusion**

- 8.1 A number of matters remain to be considered by Councillors before the LATCo can formally be established and begin to trade. In this regard, work is progressing on the development of the LATCO's initial draft Business Plan, the required lease arrangements, the many and various operational considerations to be addressed by the current service in order to ensure that it is ready and prepared for the transition into the LATCo, as well as the need to formally engage and consult with staff.
- 8.2 The primary purpose of this report, however, is to seek approval of the formal contractual documentation appended to this report, to agree the initial term of the Contract to be held between the Borough Council and the LATCo, the name of the company and the identity of those people who will sit on its Board of Directors. The legal documents will substantially be in the form appended to the report, although a number of matters of detail require to be finalised in each case. It is, therefore, proposed that authority be given to the Chief Executive to finalise their content accordingly, after obtaining any additional advice necessary for that purpose.

## **9 Report Implications**

### **9.1 Finance and Value for Money Implications**

- 9.1.1 As identified within the approved Business Case, providing leisure services through a Trading Company would allow business rates savings of around £155,000 to be made within the service. The Borough Council currently picks up 40% of the cost of any awarded discretionary relief. If a full 20% of discretionary relief was granted, the cost to the Authority would be £12,400. If the Authority remains above its baseline funding level, then this would reduce the additional rates that the Council could retain. If the Borough Council was to fall below its baseline funding level, then it would be a direct cost.
- 9.1.2 Currently, the Borough Council could choose to treat its leisure services as being exempt from VAT and retain the additional income. This option has not been progressed, however, as it would take the Authority over its partial exemption limit for VAT and would mean that the VAT on all expenditure by every Borough Council service could not be reclaimed. This would lead to additional costs of around £90,000 per annum on revenue activity. Additional costs on capital expenditure would vary according to the Capital Programme. Whilst a Trading Company would also have VAT regulations with which to

comply and would be unable to recover all VAT on expenditure, the net impact would still be an approximate benefit of £55,000 per annum.

- 9.1.3 Other divisions currently provide services to the Leisure Facilities, with many support staff charging only a proportion of their time to the function. These staff would remain with the Borough Council. If the Trading Company buys services from the Authority, there will be limited impact on support services. If, however, the Trading Company was to obtain services elsewhere, the Council would either have to absorb the additional support costs or would need to streamline the relevant support services.

## 9.2 Safer Communities Implications

- 9.2.1 Leisure facilities contribute to community safety through the provision of well-managed indoor and outdoor leisure and recreation services that are safe by design and afford opportunities for positive activity.

## 9.3 Legal, Data Protection and Human Rights Implications

- 9.3.1 The Borough Council can rely upon Section 1 of the Localism Act 2011, which contains the “general power of competence”, in order to establish a LATCo, together with section 111 of the Local Government Act 1972. The Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 regulate how local authority companies must operate and set out various criteria that must continue to be met whilst such companies operate.

- 9.3.2 Although extensive work has been undertaken to date by Officers, the leisure consultant and external legal advisors to draft the Contract, Member Agreement and Articles of Association, it may be necessary to further amend these documents to ensure that their content properly facilitates the intended arrangement. These are not likely to significantly change the effect of the documents, but instead ensure that the relationship between the Borough Council and the LATCo operates as intended and complies with detailed legislation applying to companies. For that reason, the Head of Legal Services and the Council’s external advisors will continue to provide on-going advice to ensure that the final versions of the documents are fit for purpose.

- 9.3.3 There are no immediate data protection or human rights implications arising directly out of this report. The Borough Council, however, will enter into appropriate service level agreements in relation to the transfer to, and handling of data by, the LATCo to ensure compliance with all relevant legislation.

## 9.4 Environment, Climate Change and Health Implications

- 9.4.1 The provision of a sustainable, fit-for-purpose portfolio of well managed leisure facilities has a positive impact on the health and wellbeing of individuals and communities by providing opportunities for leisure and recreation activities and by contributing to an improved quality of life.

## **9.5 Human Resources Implications**

9.5.1 As previously identified, the Authority would need to ensure that any staff transferring from the Borough Council to the LATCo retain certain pension protections. In this regard, the transfer of the Leisure Facilities service into the company would result in the applicability of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Where this is the case, there are obligations to inform and consult with affected employees and those employees have the right to transfer with their existing employment contracts and continuity of service

## **9.6 Risk Management Implications**

9.6.1 The corporate risk management process identifies and scores risks associated with the provision, management and maintenance of leisure facilities. The process through which a LATCo will be established and the services transferred thereto will require the detailed assessment of risk at a number of key stages in order to ensure the maintenance of the best interests of both the Borough Council and the new company. This process will help to ensure that informed decisions can be made in respect of the most appropriate means by which to sustainably meet and manage the leisure-related needs of the local community.

## **9.7 Equality Implications**

9.7.1 It is intended that Local Authority Trading Company management and operation of the Authority's Leisure Facilities service would ensure continued equality of access to sustainable, good quality leisure opportunities.

## **9.8 Links to Council's Priorities**

9.8.1 The proposal to establish a wholly owned LATCo has direct and positive links to the corporate priorities in respect of:

- Safe, liveable, locally focused communities
- Prosperous and healthy
- Sustainable growth and protected rurality
- Efficient organisation

9.8.2 It is also intended that management of the Borough Council's Leisure Facilities service through a LATCo will contribute directly to the priorities of the Sustainable Community Strategy, namely:

- Raising aspirations, educational attainment and skill levels
- Developing healthier communities
- Improving access to services

The Contact Officer for this report is Simon Powell (719352).

## Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
1	Assistant Director (Leisure and Community Development)	Leisure Facilities, Green Space and Playing Pitch Strategies	February 2018
2	Chief Executive and Corporate Director - Resources	Executive Board: Trading Company	February 2021
3	Director of Leisure and Community Development	C&E Board: Leisure Facilities Local Authority Trading Company	March 2022
4	Director of Leisure and Community Development	C&E Board: Leisure Facilities Local Authority Trading Company	May 2022
5	Director of Leisure and Community Development	C&E Board: Leisure Facilities Local Authority Trading Company	July 2022
6	Director of Leisure and Community Development	C&E Board: Leisure Facilities Local Authority Trading Company	Oct 2022
7	Management Team and the Director of Leisure and Community Development	Executive Board: Leisure Facilities Local Authority Trading Company	Oct 2022
8	Director of Leisure and Community Development	C&E Board: Leisure Facilities Local Authority Trading Company	Jan 2023

# Leisure Facilities LATCo Member Briefing

North Warwickshire Borough Council

16 January 2023



North Warwickshire  
Borough Council

# Agenda



North Warwickshire  
Borough Council

1. Introduction
2. Overall Borough Council / LATCo Structure
3. Key Governance Documents
4. Decision Making
5. Practical Issues
6. Questions

# Introduction

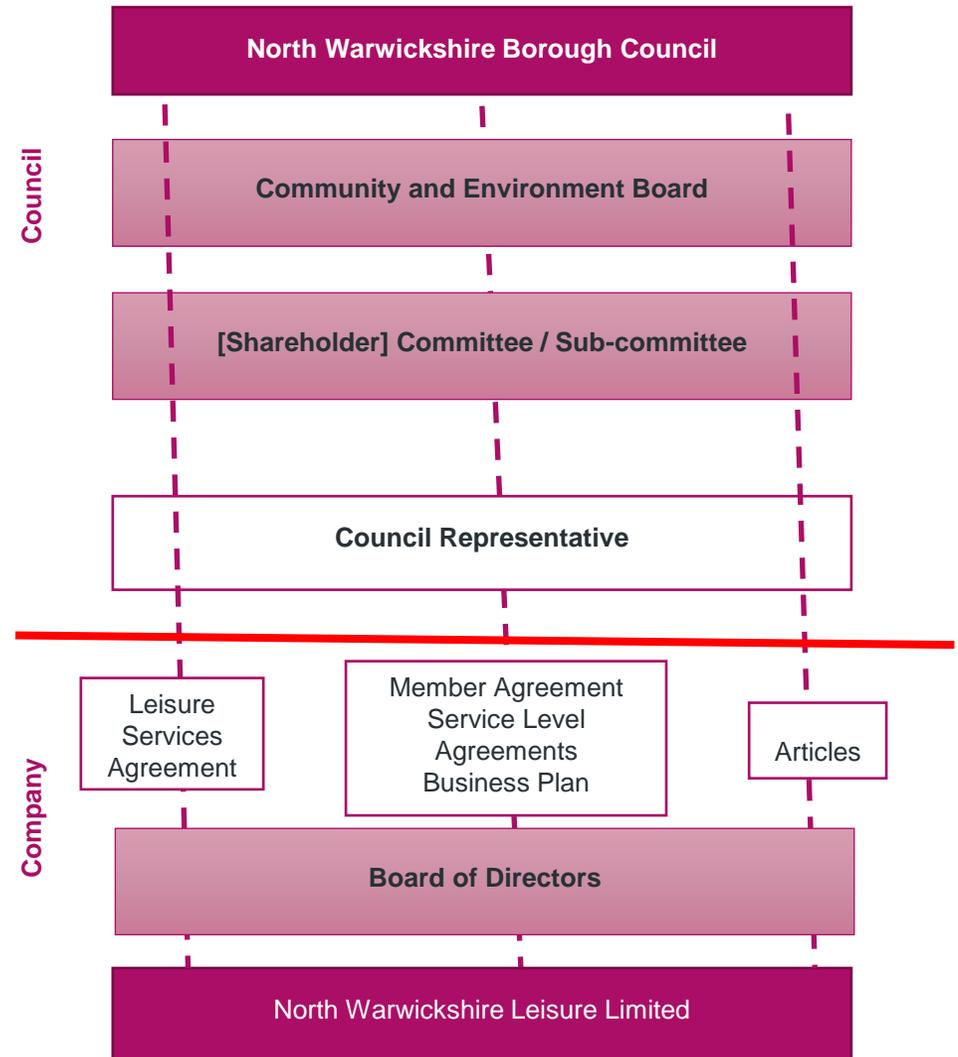
- **Background**
- **Decisions taken so far**



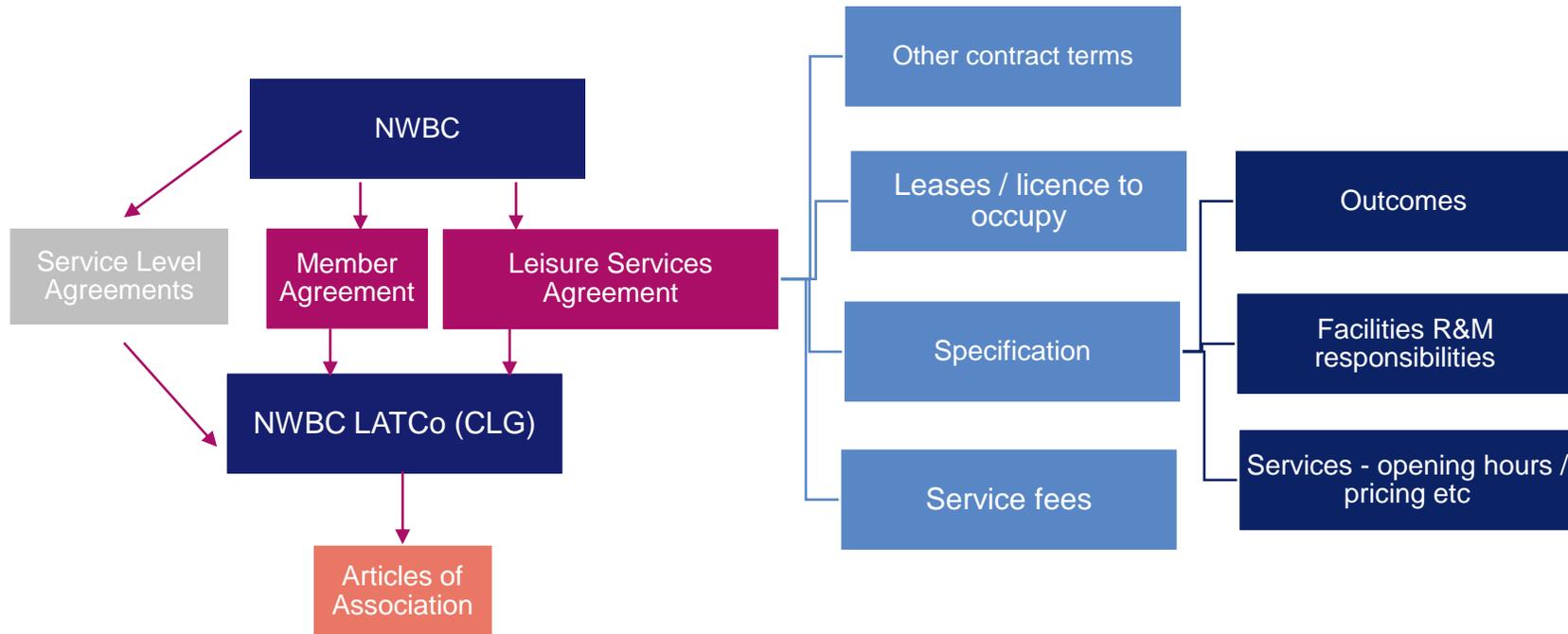
North Warwickshire  
Borough Council

# Structure

- Company Limited by Guarantee
- NPDO status
- Distinction between Council and Company
- Some overlap in personnel
- TUPE transfer of operational staff
- Certain Company decisions reserved for Council
- Membership of Shareholder Committee and public access



# Documentation Structure



# Key Documents



North Warwickshire  
Borough Council

- **Articles of Association (Executive Board)**
  - Company constitution – e.g. board meetings, member resolutions, distributions on wind up, limited liability, objects
  - Non profit distributing
  - Subject to certain Council controls – e.g. director appointments/removals, general meetings
- **Member Agreement (Executive Board)**
  - Agreement between Company and Council to document member/subsidiary relationship
  - Includes outline of business activities
  - Council consent matters (business plan, financial controls, capital matters, policies, Director matters, significant contracts)
  - Monitoring and reporting obligations



# Key Documents

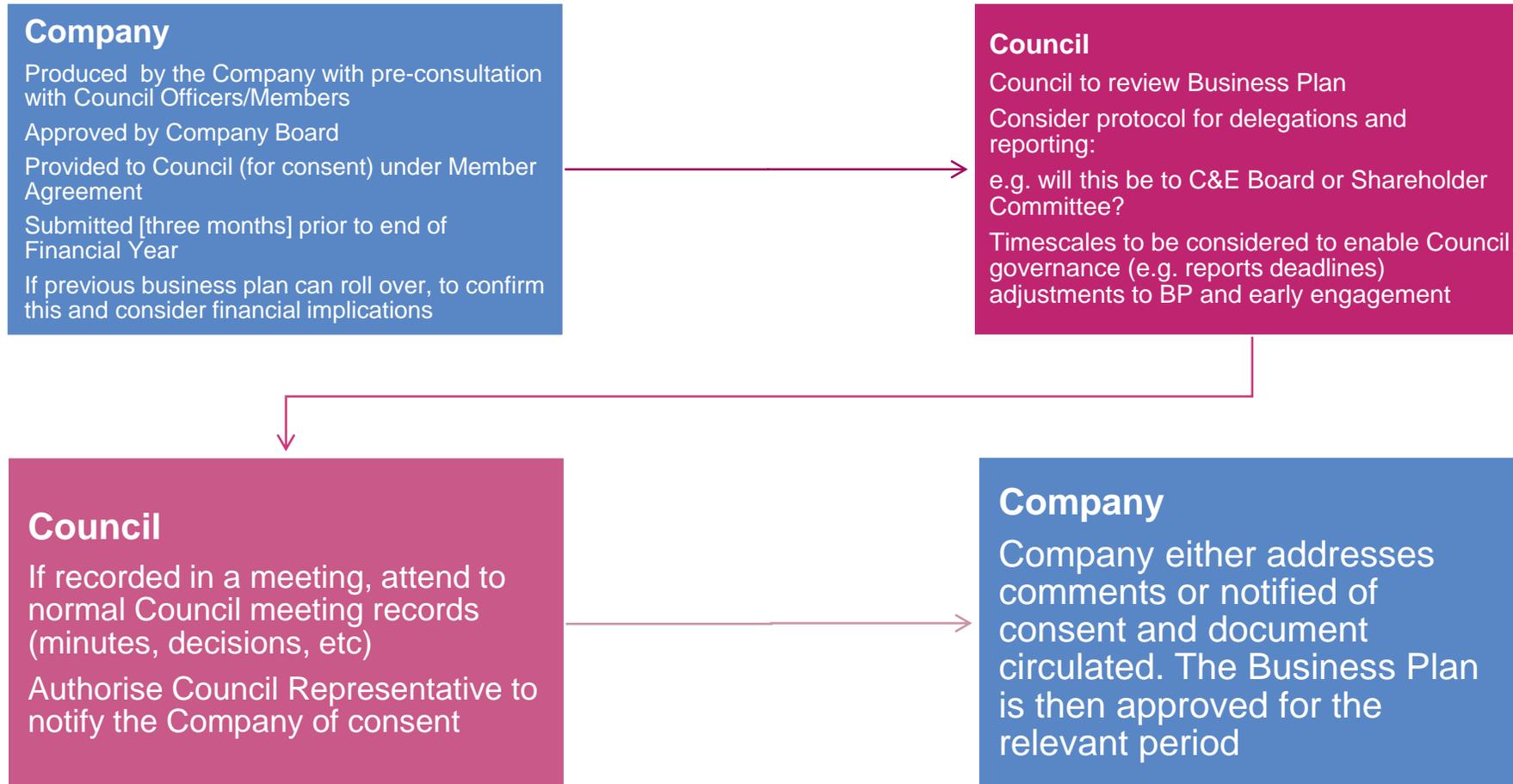
- **Leisure Services Agreement – Contract (Executive Board)**
  - Company will provide leisure management services to the Council for five years (plus optional extension) for a Fee
  - Divides responsibilities – e.g. R&M, lifecycle replacement, utilities, TUPE/pensions
  - Exit mechanism – returning assets, expiry/termination, TUPE/pensions, new provider
- **Specification**
  - Sets out the parameters of operation (opening hours / pricing policy / R&M obligations)
  - Performance management – outcomes and KPIs
- **Service Level Agreements**
  - Council will provide services to the Company for a Fee (for example HR / finance support)
  - Service specifications and specified fees
- **Leases/Land Interests (Resources Board)**
  - Company will have land interest in the Facilities



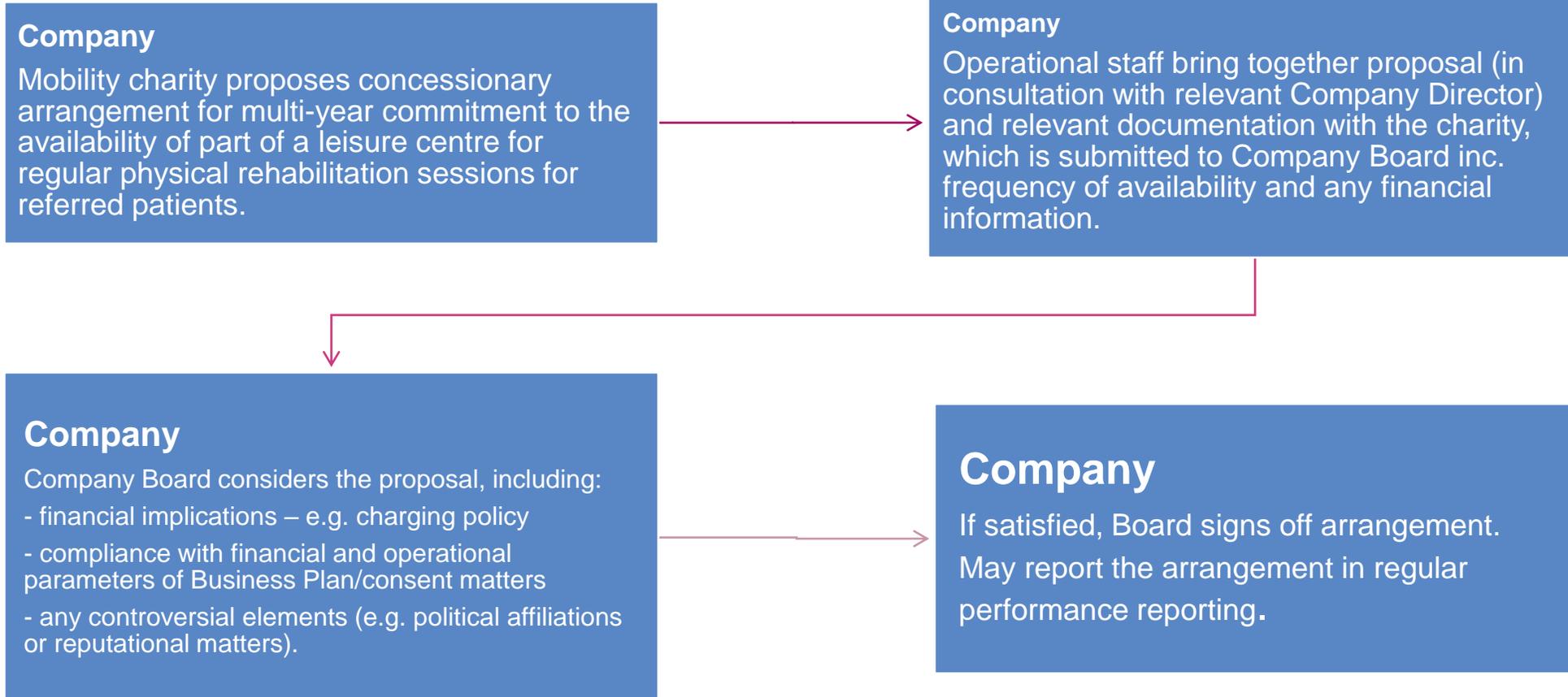
# Practical Issues

- Who is the **Member** and **what are they responsible for?**
  - Monitoring and oversight
  - Sign off the business plan and other defined consent matters
- Who are the **Directors** and **what is their role?**
  - Statutory directors responsible for the day to day management of the Company
  - Statutory position with key duties and liabilities
  - D&O insurance
- What is the role of the **LATCo?**
  - Deliver the outcomes of the service specification, within the business plan agreed with the Council
  - Make own decisions on how to deliver the outcomes (given the parameters of operation set out in the service specification)
  - ‘Fleet of foot’, commercial, but accepts trading risk
  - Will have its own internal governance
  - Can procure its own support services in the long run, but in short term has the option to use Council services via SLA.

# Making Decisions – Example - Business Plan Approval



# Making Decisions – Example – Room Letting Arrangement



# Questions

Any questions...



North Warwickshire  
Borough Council



dated

20[ ]

**North Warwickshire Borough Council**

and

**North Warwickshire Leisure Limited**

**Leisure Services Agreement (Master Version)**

Trowers & Hamlins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ  
t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001  
www.trowers.com

draft dated [November 2022]

**trowers & hamlins**

## Contents

1	Definitions	1
2	Interpretation	10
3	Entirety of Contract	11
4	Contract Period	12
5	Contract Variation	12
6	Notices	13
7	Severance	13
8	Waiver	13
9	Assignment and sub-contracting	14
10	Parties' obligations	14
11	Force Majeure	14
12	Fraud	15
13	Collaborative working	15
14	No Agency	16
15	Contract Manager	16
16	Provider's Representative	16
17	The Services	17
18	Standards and continuous improvement	18
19	Utilities Benchmarking	18
20	Quality assurance	18
21	TUPE	19
22	Staff	22
23	Pensions	22
24	IT systems	30
25	Assets and Maintenance	30
26	Rights of access and inspection	34
27	Performance monitoring and reporting	34
28	Failure to perform and step in	34
29	Complaints	35
30	Whistleblowing	36
31	Business Continuity and Exit Plan	36
32	Inquiries, investigations and inspections	36
33	Fees	38
34	Value Added Tax	38
35	Recovery of sums due	38
36	Prevention of bribery & corruption	39
37	Equalities, Diversity and Inclusion	40
38	The Contracts (Rights Of Third Parties) Act	41

39	Health and Safety	41
40	Human rights	42
41	Propriety and financial controls	42
42	Data Protection	42
43	Intellectual Property	45
44	Confidentiality	47
45	Audit	48
46	Publicity	50
47	Branding principles	50
48	Records	50
49	Freedom of Information	50
50	Public contracts and public procurement	52
51	Liability	52
52	Insurance	53
53	Termination	54
54	Voluntary Termination	55
55	Termination on Provider Default	55
56	Termination on Council Default	55
57	Consequences of termination	56
58	Suspension	56
59	Handover	56
60	Disruption	57
61	Dispute	57
62	Law and jurisdiction	58
63	Change in law	58
	<b>Schedule 1 - Contract Manager and Provider's Representative</b>	<b>59</b>
	<b>Schedule 2 - Service Specifications</b>	<b>60</b>
	<b>Schedule 3 - KPIs</b>	<b>61</b>
	<b>Schedule 4 – Council SLA</b>	<b>62</b>
	<b>Schedule 5 - Variation Notice</b>	<b>63</b>
	<b>Schedule 6 – Records Management Policy</b>	<b>65</b>
	<b>Schedule 7 - Assets</b>	<b>66</b>
	<b>Schedule 8 – Strategic Objectives</b>	<b>67</b>
	<b>Schedule 9 – Council Contracts</b>	<b>68</b>
	<b>Schedule 10 – Fees</b>	<b>69</b>
	<b>Schedule 11 – Responsibility for Repairs, Maintenance and Replacement</b>	<b>70</b>
	<b>Schedule 12 – Utilities Benchmarking</b>	<b>71</b>
	<b>Schedule 13 – Deficit Outperformance</b>	<b>76</b>

# Leisure Services Agreement

dated [REDACTED]

## Parties

- (1) **North Warwickshire Borough Council** of Council House, South St, Atherstone CV9 1DE (the **Council**); and
- (2) **North Warwickshire Leisure Limited** (Company number [REDACTED]) whose registered office is at [Council House, South St, Atherstone CV9 1DE ] (the **Provider**).

## Introduction

- (A) The Council has incorporated the Provider, a wholly owned company, to carry out leisure management services for the Council at a number of leisure facilities.
- (B) The primary objective of the Provider is to deliver the leisure outcomes as outlined in the Services Specification attached at Schedule 1 of this Contract.
- (C) This contract is a services contract (as defined in the Public Contracts Regulations 2015) which the Council has awarded to the Provider in accordance with Regulation 12 of the Public Contracts Regulations 2015.
- (D) The Parties have agreed the terms and conditions for the provision of the Services by the Provider to the Council at the Facilities and these are set out in this Contract.

## Part A – Operative Provision

### 1 Definitions

1.1 The terms and expressions used in this Contract shall have the meanings set out below:

**Affiliate** means [to be inserted];

**Additional Asset** means any Asset acquired by the Provider after the Commencement Date;

**Administering Authority** means Warwickshire County Council of Shire Hall, Market Place, Warwick, CV34 4RL acting in its capacity as the administering authority of the Warwickshire County Council Pension Fund for the purposes of the LGPS Regulations;

**Approved Business Plan** means the Provider's plan for delivery of the business as set out in the Member Agreement in relation to the Provider;

**Assets** means all assets and rights (including, for the avoidance of doubt, any Additional Assets) to enable the Council or a New Provider to own, operate and maintain the Services in accordance with this Contract, including:

- (a) any land or buildings;
- (b) any equipment (including ICT Equipment);

- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and
- (f) any Intellectual Property Rights,

but excluding any assets and rights in respect of which the Council is, or is intended under this Contract to be, full legal and beneficial owner.

**[Atherstone Leisure Complex** means the property at [Atherstone Leisure Complex 12A Long Street, Atherstone, CV9 1AX] which includes all land and buildings under title number [ ];

**Borough** means the residents and administrative area of North Warwickshire Borough Council;

**Branding** means any trademarks, logos and other forms of branding pertaining to the Provider;

**Business Continuity Plan** means any plan prepared pursuant to Clause 31 (Business Continuity and Exit Plan), as may be amended from time to time;

**Business Day** means Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays;

**Change in Law** means the coming into effect after the date of this Contract of:

- (a) legislation, other than any Legislation which on the date of this Contract has been published;
  - i in a draft Bill as part of a Government Departmental Consultation Paper;
  - ii in a Bill;
  - iii in a draft statutory instrument;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

**Client** means a person or organisation who is a recipient of Third Party Services;

**Coleshill Leisure Centre** means the land and buildings at Packington Ln, Coleshill, Birmingham B46 3JE;

**Commencement Date** means [1] April 2023;

**Confidential Information** means any information (however it is conveyed or on whatever media it is stored) which has been designated as confidential by either Party in writing or orally, or which is of such nature that, or the circumstances of its disclosure to the other Party are such that, the other Party knows or should know that it is or may be confidential, including all such information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Legislation and schedules 2 and 3 inclusive;

**Consents** means all permissions, consents, approvals, certificates, permits, licences and authorisations required for the performance of any of the Provider's obligations under this Contract including any required registration with any Regulatory Body;

**Contract** means the main body of this agreement between the Parties including any attached schedules and appendices (whether or not referred to in the main body of the agreement) and any subsequent variations made from time to time by agreement between the Parties in accordance with its terms;

**Contract Documents** mean this Contract and the Financial Model;

**Contract Manager** means the person for the time being appointed by the Council and specified in schedule 1 as being authorised to administer the Contract on behalf of the Council or such person as may be nominated by the Contract Manager to act on his behalf;

**Contract Period** means (subject to the provisions for early termination) the period of duration of this Contract (including any extension) in accordance with clause 4;

**Contract Standard** means those standards set out in this Contract including schedules [2] (Service Specifications) and [3] (KPIs);

**Controller** has the meaning given in, and shall be interpreted in accordance with, the Data Protection Legislation;

**Council Assets** means the assets of the Council identified in the inventory in Part 2 of Schedule 7 (Assets);

**Council Contract** means any contract or arrangement listed in Schedule 9 (Council Contracts) and any other contract which the parties agree in writing shall be treated as a Council Contract;

**Council Contractor** means any third party contractor who is party to a Council Contract;

**Council Related Party** means:

- (a) an officer, agent, contractor, employee or sub-contractor (of any tier) of the Council acting in the course of his office or employment; and
- (b) any person visiting a leisure facility at the invitation (express or implied) of the Council,

but excluding in each case the Provider, any Provider Related Parties or any person on or at any of the leisure facilities at the express or implied invitation of the Provider;

**Council Services** means the services to be provided by the Council to the Provider as may be agreed by the Parties from time to time and which at the date of this Contract comprise:

- (a) Financial Services,
- (b) Human Resources,
- (c) Health and Safety,
- (d) IT,
- (e) Facilities Management
- (f) [ ];

**Council SLA** means the form of service level agreement appended at schedule 3 (Council SLA);

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation ((EU) 2016/679) (the **GDPR**); the UK GDPR (as such term is defined in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (such legislation being referred to in this Agreement as the UK GDPR), the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), along with any associated guidance and codes of practice, in each case as may be amended, updated or supplemented from time to time.

**Data Subject** has the meaning in, and shall be interpreted in accordance with, the Data Protection Legislation

**Default** means any failure by the Provider to carry out its obligations under this Contract;

**Direct Losses** means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt, excluding Indirect Losses;

**Discriminatory Change in Law** means a Change in Law, the terms of which apply expressly to:

- (a) the Services; and/or
- (b) the Provider and not to other persons;

**Dispute Resolution Procedure** means the procedure set out in clause 61;

**Elections** means such local, regional or national elections or referenda that the Council or its returning office is statutorily required to administer;

**Eligible Employees** means the Transferring Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date for so long as they are employed in connection with the provision of the Services or part of such Services;

**Emergency** means an event causing or, in the reasonable opinion of the Council, threatening to cause death or injury or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;

**Equalities Legislation** means all Legislation which makes unlawful discrimination on grounds of sex, sexual orientation, gender reassignment, age, disability, colour, race, ethnic or national origin or religion, marital status, part-time or temporary status in employment or otherwise under the Equality Act 2010 or statutory instruments or codes of practice issued pursuant to it as amended from time to time;

**Exit Plan** means the exit management plan prepared pursuant to Clause 31 (Business Continuity and Exit Plan), as may be amended from time to time;

**Facilities** means together the

- (a) Atherstone Leisure Complex;
- (b) Coleshill Leisure Centre; and
- (c) Polesworth Sports Centre;

**Financial Model** means [insert details];

**Force Majeure** means and includes the occurrence after the Commencement Date of:

- (d) war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack, industrial action by non-employees of the Provider on a national scale or industrial action by employees of the Council;
- (e) nuclear, chemical or biological contamination;
- (f) an act of God; or
- (g) flood, drought, tempest or other event beyond the reasonable control of either Party;

**Fund** means the Warwickshire County Council Pension Fund;

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and/or activity as the Provider under the same or similar circumstances;

**Guidance** means any applicable guidance or directions with which the Provider is bound to comply;

**ICT Equipment** means any information and communications technology equipment including (without limitation) software, hardware, computer systems and programs;

**Indirect Losses** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

**Initial Contribution Rate** means twenty point five per cent (20.5%) of the Eligible Employees Pensionable Pay as set out in the Business Plan set in accordance with the Member Agreement;

**Intellectual Property Rights** means patents, rights to inventions, trade marks, service marks, rights in designs (whether or not registered), applications for any of the foregoing, copyright and related rights, moral rights, database rights, trade or business names, rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), semiconductor topography rights, image rights, rights of personality and other similar rights, and all other intellectual property rights rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Key Performance Indicator (KPI)** means any or all of the key performance indicators set out in schedule 3 as the same may be revised by agreement of the Parties;

**Legislation means:**

- (a) any Act of Parliament;
- (b) any delegated or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;
- (d) rule of court or directives or requirements of any Regulatory Body or notice of any Regulatory Body;
- (e) in each case in the United Kingdom; and
- (f) any regulations, orders, bye-laws, regulatory policy, guidance or codes of practice of any local or statutory or Competent Authority (as the case may be) having jurisdiction

**LGPS Employee** means [an employee of the Provider who is a member of the Local Government Pension Scheme];

**Material Breach** means any or all of the following:

- (a) any Default which is not capable of remedy;

- (b) failure to comply with a Final Warning Notice under clause 28.4;
- (c) failure to meet any [Category A] KPI;
- (d) [Category B KPI trigger *eg. in any [●●] month period failure to meet x KPIs*];
- (e) breach of the requirements of clause 12 (Fraud) or clause 36 (Prevention of bribery & corruption);
- (f) failure to have in place the insurance cover required under clause 52;
- (g) non-compliance with the equal opportunity requirements of clause 37;
- (h) any action by the Provider and/or its Staff which in the reasonable opinion of the Council has or may cause significant harm to the reputation of the Council;
- (i) [any action by the Provider and/ or its Staff which in the reasonable opinion of the Council has or may cause a serious risk to the health or safety of persons or property or to the environment.]

**Member Agreement** means the member agreement entered into between the parties [on or about the date of this Agreement];

**Membership Data** means such data defined in paragraph [3.13] of the Service Specification;

**New Provider** means a contractor selected to provide services, similar to the Services or part thereof, whether upon appointment by the Provider or upon termination in part or in whole or expiry of this Contract and for the avoidance of doubt can include the Council;

**Notice** means any formal communication between the Parties as required by the Contract;

**Party** and **Parties** means a party to this Contract and **Parties** shall be construed accordingly;

**Pensionable Pay** shall have the same meaning as "Pensionable Pay" as defined in the LGPS Regulations;

**Personal Data** means personal data as defined in the Data Protection Legislation which is supplied to the Provider by (or on behalf of) the Council or obtained or otherwise Processed by (or on behalf of) the Provider in the course of performing or providing the Services and for the avoidance of doubt includes the Membership Data, any special categories of personal data and personal data relating to actual or potential criminal offences

**Polesworth Sports Centre** means the sports centre at Dordon Rd, Dordon, Tamworth B78 1QT owned by the Council under title number [REDACTED];

**Processor** has the definition in, and shall be interpreted in accordance with, the Data Protection Legislation

**Processing** has the definition in, and shall be interpreted in accordance with, the Data Protection Legislation, and the terms "Process" and "Processing" shall be construed accordingly;

**Procurement Requirements** means the Public Contracts Regulations 2015 together with any statutory modification or replacement regulations or Legislation on procurement by public bodies;

**Provider's Representative** means the person for the time being appointed by the Provider and specified in schedule 1 as being authorised to administer the Contract on behalf of the Provider or such person as may be nominated by the Provider's Representative to act on his behalf;

**Provider Related Party** means and of the following:

(a) an officer, servant, employee or agent of the Provider, or any Affiliate of the Provider and any officer, servant, employee or agent of such a person acting in that capacity;

(b) any contractor or sub-contractor of the Provider of any tier and any of their directors, officers, servants, employees or agents acting in that capacity;

**Public Sector Funding** means funding from any public sector source which is made available to specifically support the [Services];

**Public Sector Reorganisation** means any transfer of powers, functions, funding and/or areas between bodies constituted by statute or statutory instrument and/or creation or abolition of such bodies and any associated transfer of staff, property, rights and/or obligations;

**Qualifying Change in Law** means:

(a) a Discriminatory Change in Law; and/or

(b) a Specific Change in Law;

which was not foreseen at the date of this Contract;

**Quarter** means a consecutive period of three months ending on 31 March, 30 June, 30 September or 31 December;

**Records** means the Contract and all documents, data or other information relating to, produced, or received as part of or in connection with the Services and stored on whatever medium;

**Records Management Policy** means the Council's policy on record management at Schedule 6, as amended from time to time by notification to the Provider.

**Regulatory Bodies** means those government departments and regulatory, statutory and other entities, committees (which for the avoidance of doubt does not include any committees of the Council) and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Provider and **Regulatory Body** shall be construed accordingly;

**Relevant Employees** means all those employees subject to a Relevant Transfer on a Relevant Transfer Date;

**Relevant Transfer** means a transfer to which TUPE applies;

**Relevant Transfer Date** means a date on which the provision of the Services changes;

**Rolling Inventory** means the contents of Schedule 7 (Assets) as may be updated from time to time in accordance with clause 25 (Assets and Maintenance) and as a minimum every twelve (12) months to create a rolling and up to date inventory of all Assets used by the Provider in the operation of the Services;

**Schedule** means a schedule attached to this Contract;

**Services** means the services to be provided as specified in schedule 2;

**Service Specifications** means the documents comprising schedule 2 containing details of the services to be provided;

**Specific Change in Law** means any Change in Law which specifically refers to the provision of services the same as or similar to the Service or to the holding of shares in companies whose main business is providing services the same as or similar to the Services;

**Staff** means all persons employed or engaged by the Provider to perform the Contract together with any of the Provider's consultants, workers, agents and sub-contractors used in the performance of the Contract;

**Strategic Objectives** means the objectives set out in schedule 8 (Strategic Objectives) and such other long-term objectives agreed between the Provider and the Council from time to time, designed to guide the Provider's activities to deliver [leisure activities] within the Borough;

**Sub-Contractor** means a person to whom the Provider sub-contracts any of its obligations under this Contract;

**Surplus Share Mechanism** means the mechanism for sharing any surpluses between the Provider and the Council, as set out in Schedule 13

**Third Party Services** means any other services provided by the Provider which are not required under this Contract and/or the Approved Business Plan;

**Transferring Employees** means all those employees whose employment transfers to the Provider [or a Sub-Contractor] by operation of TUPE on the Commencement Date

**Transferring Employee** means an employee of the Council and of a sub-contractor of the Council (excluding, without limitation, any person engaged by the Council as an independent contractor) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the Council and the Provider, a contract of employment with someone other than the Council;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time);

**TUPE Information** means all information in respect of the employees assigned to the provision of the Services under this Contract whether employed by the Provider or otherwise which the Council and/or a prospective tenderer and/or a New Provider may reasonably require including but not limited to:

- (a) salaries, bonuses, overtime pay, holiday pay, sick pay and other benefits;
- (b) dates of birth;
- (c) details of continuous service;
- (d) hours of work;
- (e) individual terms and conditions of employment;
- (f) details of collective arrangements or other arrangements or understandings with any trade union, staff body or other representative body of such employees;
- (g) disciplinary records;
- (h) details of on-going disciplinary or grievance matters;
- (i) policies or other agreements or arrangements or understandings in respect of each of them and any variations agreed thereto;
- (j) details of any enhanced or contractual redundancy entitlements; and
- (k) any other materially relevant information (including without limitation details of the hardware, software and other equipment required to perform) relating to the provision of the Services;

**Value Added Tax** means Value Added Tax or any similar tax replacing it or performing a similar fiscal function;

**Variation** means a change to this Contract or to the Services, made in accordance with clause 5;

**Whistleblowing** means raising concerns about misconduct within an organisation or within an independent structure associated with it.

## 2 Interpretation

2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be mutually explanatory of one another. Should the Provider become aware of any ambiguities or discrepancies in or between any of the documents comprising the Contract, the Provider shall immediately inform the Contract Manager giving full details. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise

coming to the notice of the Contract Manager shall be resolved by the Contract Manager who shall issue to the Provider any appropriate instructions in writing.

2.2 In this Contract except where the context otherwise requires:

2.2.1 references to any statute or statutory provision shall be deemed to include any amendment, replacement or re-enactment of the same for the time being in force, and to include by-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, guidance, consents or permissions made under it, and any condition attaching to it;

2.2.2 any obligation on either Party not to do any act or thing shall be deemed to include an obligation not to permit or allow the doing of that act or thing;

2.2.3 clause and schedule headings are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer;

2.2.4 the expression **person** shall include any natural person, individual partnership, local authority or corporate or unincorporated body;

2.2.5 words importing gender include any other gender; words importing the singular include the plural and vice versa;

2.2.6 references to government departments or other organisations or bodies are deemed to include their successors;

2.2.7 references to clauses or schedules shall be to clauses and schedules of this Contract;

2.2.8 any reference to obtaining approval in this Contract shall be deemed to include a requirement that every such approval shall be in writing;

2.2.9 references to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;

2.2.10 words preceding **include, includes, including** and **included** shall be construed without limitation by the words which follow those words.

2.3 No review, comment or approval by the Council under the provisions of this Contract shall operate to exclude or limit the Provider's obligations and/or liabilities under this Contract and/or the Council's rights under this Contract.

### 3 **Entirety of Contract**

The Contract Documents represent the entire understanding between the Parties with regard to the supply of the Services and supersedes all representations, understandings and agreements, whether oral or written, made by the Council and/or the Provider.

## **Part B – General Provision**

#### 4 **Contract Period**

- 4.1 The Contract shall commence on the Commencement Date and shall continue for a period of five (5) years (subject to the provisions for early termination or extension) (the **Initial Contract Period**).
- 4.2 The Provider shall be under no liability in respect of the provision of the Services prior to the Commencement Date.
- 4.3 Prior to the expiry of the Contract Period (whether the Initial Contract Period or any Contract Period further extended pursuant to this clause 4.3) the parties may agree in writing to extend the Contract Period for a further specified period.
- 4.4 Either the Council or the Provider shall submit a written notification to the other Party of any request to extend the Contract Period pursuant to clause 4.3 not less than one (1) year prior to the expiry of the Contract Period.
- 4.5 The clauses in the Contract will apply throughout any such extended period including without limitation this clause 4.

#### 5 **Contract Variation**

- 5.1 This Contract may only be varied or modified if such Variation is in the form set out in schedule 5 (**Variation Notice**) and signed by the Contract Manager and the Provider's Representative.
- 5.2 If either Party wishes to vary this Contract then it shall serve on the other a Variation Notice which shall set out the nature of the Variation sought and the reasons for it.
- 5.3 When serving a Variation Notice or within 15 Business Days of having received a Variation Notice (as appropriate) the Provider shall deliver to the Council an analysis of the proposed Variation (a **Change Analysis**) setting out:
- 5.3.1 any impact on the provision of the Services and the achievement of the Strategic Objectives;
  - 5.3.2 any amendment required to this Contract;
  - 5.3.3 any impact on the Approved Business Plan and the steps that the Provider has taken or proposes to take to mitigate any such impact if this Contract is varied;
  - 5.3.4 any regulatory approvals which are required.
- 5.4 The Provider shall provide such further information as may be reasonably required by the Council to consider the Change Analysis within ten (10) Business Days days of receiving a request for such information from the Council.
- 5.5 The Council shall within twenty (20) Business Days of receipt of the Change Analysis notify the Provider whether or not it wishes to proceed with the Variation.
- 5.6 Where the Council requires formal approval of the Variation, this timescale in Clause 5.5 shall be extended to accommodate any approval process and the Council shall notify the Provider of any extended timescale required.

5.7 Any dispute in relation to a proposed Variation shall be determined in accordance with the provisions of clause 61 (Dispute).

## 6 Notices

6.1 Any Notice required by this Contract to be given by either Party to the other shall be:

6.1.1 in writing; and

6.1.2 issued by the Provider's Representative or the Contract Manager (as appropriate); and

6.1.3 served personally, or by sending it by registered post or recorded delivery to the Provider's Representative or the Contract Manager (as appropriate) at the address set out in schedule 1 (or such other address as may be notified pursuant to clause 15.3 or 16.3 (as appropriate)).

6.2 Any Notice served personally will be deemed to have been served on the day of delivery, any Notice sent by post will be deemed to have been served 48 hours after it was posted, save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

6.3 The Provider shall promptly inform the Council of any significant or substantial occurrence that adversely affects the Provider's performance of this Contract or the Council and the Council's ability to meet its statutory obligations. If the Provider is in any doubt as to whether the occurrence is such that this clause applies the Provider shall inform the Council of the occurrence.

## 7 Severance

7.1 If any provision of this Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the remaining provisions of this Contract shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality provided that either Party may seek the consent of the other to the termination of this Contract on such terms as may in all the circumstances be reasonable if the effect of the foregoing provision would be to defeat the original intention of the Parties.

## 8 Waiver

8.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

8.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 6.

8.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

## 9 **Assignment and sub-contracting**

9.1 The Provider shall not without the prior written consent of the Council:

9.1.1 assign all or any benefit, right or interest under this Contract; or

9.1.2 sub-contract the supply of the Services.

9.2 The Council shall be entitled to:

9.2.1 (with the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed) assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or

9.2.2 transfer, assign or novate its rights and obligations where required by law.

9.3 In the event of a Public Sector Reorganisation, the Provider shall enter into all such assignments and/or novations as the Council shall specify as necessary.

## 10 **Parties' obligations**

10.1 The Provider shall deliver the Services for the Contract Period to the Contract Standard in accordance with the terms and conditions of this Contract.

10.2 The Council and the Provider shall enter into a Council SLA in respect of any Council Services.

10.3 Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counter party and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any of its other capacities, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

## 11 **Force Majeure**

11.1 If a Party (the **Affected Party**) is materially prevented, hindered or delayed from performing any of its obligations under this Contract by reason of a Force Majeure event, such obligations of the Affected Party and any corresponding or related obligations of the other Party shall remain in effect but shall be suspended without liability for a period equal to the duration of the Force Majeure event, provided that:

11.1.1 within seven (7) Business Days after the start of the Force Majeure event the Affected Party notifies the other Party in writing of the act, event or circumstance relied on, the date on which such act, event or circumstance commenced and the effect of the Force Majeure event on the Affected Party's ability to perform its obligations under the Contract;

11.1.2 within five (5) Business Days after notice of the Force Majeure event is given pursuant to clause 11.1.1 the Parties shall discuss alternative service delivery options to mitigate the effects of the Force Majeure event;

- 11.1.3 The Affected Party shall use all reasonable endeavours to resolve the effects of the Force Majeure event as quickly as possible or if this is not possible to provide the other Party with a written solution and timescales for implementing the solution within three (3) Business Days following the discussions set out at clause 11.1.2;
- 11.1.4 the Affected Party makes all reasonable efforts to mitigate the effects of the Force Majeure event on the performance of its obligations under this Contract; and
- 11.1.5 the Affected Party provides written reports every five (5) Business Days to the other Party on its progress in providing the solution in accordance with Clause 11.1.3 and any mitigation action taken in accordance with Clause 11.1.4, and provides any information that the other Party may reasonably request relating to the Force Majeure event and its effects.
- 11.2 Immediately after the end of the Force Majeure event the Affected Party shall notify the other Party in writing that the Force Majeure event has ended and shall resume performance of its obligations under this Contract.
- 11.3 Subject to clause 11.5, neither Party shall be released from any of its obligations under this Contract as a result of a Force Majeure event, and this Contract shall remain in effect for the duration of a Force Majeure event.
- 11.4 Any industrial action occurring within the Provider's organisation, the inability of the Provider to recruit staff, or failure by any sub-contractor to provide services shall not be Force Majeure.
- 11.5 Either Party may terminate this Contract in its entirety or in part by written notice to take effect immediately if the event of Force Majeure persists for more than three months and the Parties have not agreed in writing that the Contract will continue, whether or not subject to alternative arrangements in respect of the event of Force Majeure.
- 12 **Fraud**
- 12.1 The Provider shall safeguard the Council's funding of this Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Provider's directors and suppliers.
- 12.2 The Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 12.3 The Council reserves the right to take whatever action it deems necessary in the event of either notification of, or a suspected fraud.
- 13 **Collaborative working**
- 13.1 The Provider will act collaboratively with a spirit of cooperation and openness in its dealings with the Council and any other Council owned vehicles including supporting the Council and contributing to projects, policy development, forward planning, information sharing, member and community forum engagement and consultation with regard to the Council's duties, responsibilities and objectives. For the avoidance of doubt this shall include an expectation on the Company to send duly authorised and informed

representatives of the Company to attend Council meetings where given reasonable notice of such meetings.

13.2 The Parties will work collaboratively and co-operatively with each other to assist in the management of the Council's services within both existing and future allocated budgets and asset planning.

13.3 The Provider will actively seek to work closely together in formal or other arrangements with other agencies, organisations and stakeholders working with the Council, or otherwise contributing to, involved in or affected by, the provision the Services.

13.4 Notwithstanding the generality of clause 13.3, at the direction of the Council, the Provider shall enter into terms of collaboration with any organisation that the Council instructs the Provider to provided that such collaboration is aimed at fulfilling the Council's duties, responsibilities and objectives.

#### 14 **No Agency**

14.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Provider.

14.2 Save as expressly provided otherwise in this Contract, the Provider shall not be, and shall not be deemed to be, an agent of the Council and the Provider shall not hold itself out as having authority or power to bind the Council in any way.

### **Part C – Provision of Services**

#### 15 **Contract Manager**

15.1 The Council shall appoint a Contract Manager to act on behalf of the Council for all purposes connected with this Contract. Details of the person are set out in schedule 1.

15.2 The Council shall throughout the Contract Period ensure that the Contract Manager (or duly appointed deputy) is available for consultation with the Provider at all reasonable times.

15.3 The Council shall promptly give notice in writing to the Provider of any change in the identity, address, email and telephone numbers of the Contract Manager. The Council shall give as much notice as reasonably possible to the Provider before changing its Contract Manager.

#### 16 **Provider's Representative**

16.1 The Provider shall appoint a senior and competent person with sufficient and relevant experience and qualifications as the Provider's Representative to act on behalf of the Provider for all purposes connected with this Contract. Details of the person are set out in Schedule 1.

16.2 The Provider shall throughout the Contract Period ensure that the Provider's Representative (or duly appointed deputy) is available to be contacted by the Council at all reasonable times including the provision of an out of office hours telephone number.

16.3 The Provider shall promptly give notice in writing to the Council of any change in the identity, address, email and telephone numbers of the Provider's Representative. The Provider shall give as much notice as reasonably possible to the Council before changing its Provider's Representative.

## 17 **The Services**

17.1 The Provider shall provide the Services to the Contract Standard during the Contract Period in accordance with the Contract and Good Industry Practice.

17.2 In providing the Services, the Provider shall comply with and take into account all applicable Legislation, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom.

17.3 The Provider shall as necessary from time to time at its own cost obtain, maintain and comply with any Consents and shall supply to the Council upon request a copy of any such Consent.

17.4 The Provider shall ensure that it has sufficient resource and expertise to provide the Services in a competent and timely manner according to demand and otherwise in accordance with this Agreement.

17.5 From time to time the Council may request the provision by the Provider of additional or ad hoc services at Provider cost which are related to or connected to the Services and which are not Services under this Contract, and the Provider shall where reasonably practicable comply with any such request.

### **Strategic Objectives**

17.6 The Council and the Provider expressly acknowledge and agree that they are entering into this Agreement with the intention of achieving the Strategic

17.7 The Provider shall seek to achieve the Strategic Objectives including without limitation having regard to the achievement of the Strategic Objectives in any decisions regarding the Services.

### **Council Contracts**

17.8 Assisted by the Provider, the Council shall use all reasonable efforts to arrange the novation of each Council Contract effective from the Commencement Date. Such novation shall be subject to the Council, the Provider and the Council Contractors agreeing the form of a novation agreement. The Provider shall assist the Council to obtain all requisite consents and approvals and reasonable co-operation from all applicable third parties to the Council Contracts.

17.9 After the novation of a Council Contract, the Council shall do nothing which would put the Provider in breach of its obligations in the Council Contract. Each party shall be liable for any breach of their respective obligations under each Council Contract as follows:

17.9.1 The Council shall indemnify the Provider against all Direct Losses suffered or incurred as a result of the Council's non-performance or defective or negligent

performance prior to the Commencement Date provided that the Provider has used reasonable endeavours to fully mitigate any losses suffered or incurred whilst the Provider manages a Council Contract on the Council's behalf; and/or

17.9.2 The Provider shall indemnify the Council against all Direct Losses suffered or incurred as a result of the non-performance or defective or negligent performance by it of the obligations under the Council Contracts after the novation of a Council Contract to the Provider.

17.10 Upon the termination or expiry of a Council Contract and for the remainder of the Contract Period, the Provider shall have responsibility for performing and delivering the services that were comprised within the Council Contract and such services shall form part of the Services.

## 18 **Standards and continuous improvement**

18.1 The Provider shall at all times ensure that the Services comply with all applicable Legislation.

18.2 The Provider shall assist the Council in complying with its duty to secure continuous improvement in respect of the Services whether under the best value duty in the Local Government Act 1999 or under any performance improvement regime applicable to local government from time to time during the Contract Period, including the provision of information or data, cooperation (including access to documents) in any inspections and attendance at any relevant meetings. As part of this requirement the Council may from time to time commission service reviews by external organisations. The Provider will work with the Council to develop the specifications for these reviews and undertake to respond to the recommendations where it can be reasonably expected to do so. Where there may be a significant cost implication, the Provider and the Council will work together to seek ways of funding the implementation of the recommendation.

18.3 Independently of clause 19.2, the Provider shall ensure that it has its own procedures in place to demonstrate continuous improvement in the Services and shall provide the Council with information relating to and resulting from such procedures as and when reasonably requested by the Council.

## 19 **Utilities Benchmarking**

The parties shall comply with the provisions set out in Schedule 12.

## 20 **Quality assurance**

20.1 The Provider shall satisfy [the service outcomes and quality standards] set out in the Service Specifications.

20.2 The Provider shall throughout the Contract Period demonstrate and maintain a properly documented system of outcomes focussed quality assurance which will be agreed with the Council as appropriate for the Services under consideration.

21 **TUPE**

21.1 **Relevant transfers**

- 21.1.1 With effect from the Commencement Date the Transferring Employees shall be transferred from the Council to the Provider in accordance with the provisions of TUPE, and such transfer shall constitute and have the effect of a Relevant Transfer.
- 21.1.2 Where the provider of the Services or any of them (save on termination or expiry of this Contract) changes pursuant to an act of the Provider, the change in the identity of such provider shall constitute and have the effect of a Relevant Transfer. The Provider shall and shall procure that the new provider of the relevant Services or any of them shall comply with all of its obligations under TUPE in respect of the Relevant Employees.
- 21.1.3 Where there is a change in the nature or scope of the Services, such change may constitute and have the effect of a Relevant Transfer, in which event the Provider shall comply with all of its obligations under TUPE in respect of the Relevant Employees.
- 21.1.4 The termination of the Provider's employment whether in whole or in part or expiry of this Contract whether in whole or in part may have the effect of a Relevant Transfer, and in such circumstances the Provider shall comply with its obligations under clause 21.6 below.

21.2 **Responsibilities on commencement**

- 21.2.1 [The Council shall discharge all obligations and liabilities in respect of the Transferring Employees which were in its employment at the relevant time up to but not including the Commencement Date].
- 21.2.2 The Provider shall with effect from and including the Commencement Date assume and discharge all obligations and liabilities in respect of the Transferring Employees.

21.3 **Indemnities**

- 21.3.1 [The Council will indemnify the Provider and keep the Provider indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct, indirect or consequential arising from or related to the Council's acts or omissions in relation to the Transferring Employees prior to the Commencement Date.]
- 21.3.2 The Provider will indemnify the Council and keep the Council indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct, indirect or consequential awarded against or incurred or paid by the Council as a result of or in connection with any claims arising from:
- (a) any act, fault or omission of the Provider in connection with the Transferring Employees or any representative thereof; or

- (b) any step or measure that the Provider envisages in relation to employees affected by this Contract.

## 21.4 **Employee records**

21.4.1 Subject to the requirements of the Data Protection Legislation the Provider shall maintain current, accurate and adequate records of:

- (a) all employees or other persons who are or who are to be engaged in connection with the provision of the Services. These records shall be kept at the appropriate location and shall include attendance records, records of grievances or other complaints made by or about employees or other persons engaged in connection with the provision of Services and records of all internal investigations, consultations, disciplinary proceedings and disciplinary sanctions and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Council at all reasonable times and a copy of these records shall be provided if so required,
- (b) all work carried out in the provision of the Services. These records shall be open for inspection by the Council at all reasonable times.

## 21.5 **Termination**

21.5.1 During the period of 12 months preceding the expiry of this Contract or immediately after the Council or the Provider has given notice to terminate the appointment of the Provider (whether in whole or part) the Provider shall:

- (a) promptly, at the request of the Council, fully and accurately disclose to the Council the TUPE Information and permit the Council to use the TUPE Information to inform any prospective tenderer and/or New Provider about the anticipated Relevant Employees;
- (b) if during the period between supplying the TUPE Information and the Relevant Transfer there is any material change in the information supplied or new information is discovered, promptly disclose to the Council the updated information; and
- (c) use all reasonable endeavours to co-operate with any other reasonable request made by the Council or any prospective tenderer concerning the TUPE Information.

21.5.2 During the period of 12 months prior to expiry of this Contract or following receipt of notice of termination of this Contract the Provider shall not

- (a) terminate the employment of any of the employees assigned to the provision of the Services for any reason whatsoever save where termination is lawful;
- (b) alter or change in any way any terms and conditions of employment of any of the employees assigned to the provision of the Services (whether with or without consent of the employees) other than changes agreed in

the normal course of the employer's business and in good faith or wage or salary awards which are in line with those offered generally for similar status individuals within the workforce of the employer or as required by law; and

- (c) recruit (except as a replacement for any employee whose employment is terminated and where the replacement is being recruited on terms which are not materially different from the terms of the employee being replaced) or assign any employee to provide the Services except with the Council's prior written consent; and
- (d) relocate or assign new duties to any of the employees providing the Services without the prior written consent of the Council.

## 21.6 **Obligations on Termination**

- 21.6.1 The Provider shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Relevant Transfer Date.
- 21.6.2 The Provider warrants that reasonable care will be used in the preparation of the TUPE Information and that reasonable efforts will be taken to ensure that it will be complete (insofar as it is reasonable for the Council to require such information to be provided) and accurate in all respects as at the date the information is provided. The Provider shall indemnify and keep indemnified the Council and any New Provider against any loss caused to the Council or any New Provider by any inaccuracy or incompleteness in such information or by any changes in the information which have not been communicated to the Council (whether relating to the number, identity or details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date.
- 21.6.3 The Provider shall indemnify and keep indemnified the Council and the New Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Council and/or any New Provider incurs arising from:
  - (a) any act or omission of the Provider or any Sub-Contractor in relation to the Relevant Employees or any representative thereof,
  - (b) any claim by an employee or former employee of the Provider or any Sub-Contractor who is not a Relevant Employee, and
  - (c) any representations made by the Provider or any Sub-Contractor in relation to employment by the Council and/or any New Provider.
- 21.6.4 The Council shall indemnify the Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Provider incurs arising from any act or omission of the Council in relation to the Relevant Employees.
- 21.6.5 In the event that the Provider enters into any sub-contract in connection with the Services, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to clauses 21.6.1 to 21.6.5 inclusive and shall

procure that each Sub-Contractor complies with such terms. ~~¶~~The Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractors to comply with such terms.

## 22 Staff

22.1 The Provider shall ensure the Staff are sufficiently trained, suitably qualified and experienced so that the Services throughout the Contract Period are provided in all respects to the Contract Standard.

22.2 The Provider shall ensure that the Staff providing the Services in accordance with the Contract shall at all times exercise due care and diligence in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services.

22.3 The Contract Manager acting reasonably shall be entitled to require the Provider to remove immediately from the provision of the Services a named member of the Staff. The Provider shall have the right to make representations to the Contract Manager concerning such person. After taking any representations into account, the Contract Manager shall be entitled to confirm, revoke or vary his decision.

22.4 The Provider shall bear the cost of or costs arising from any Notice, instruction or decision of the Council under this clause 22.

22.5 The Provider shall deliver to the Council no later than ten (10) Business Days following the end of each Quarter a written report for that Quarter in respect of its Staff monitoring absenteeism, Staff turnover, Staff vacancies, agency usage and mandatory training compliance.

## 23 Pensions

### 23.1 Provider to Become an Admission Body

Where the Provider or a Sub-Contractor employs any [Eligible Employees] from a [Relevant Transfer Date] and wishes to offer those [Eligible Employees] membership of the LGPS, the Provider shall procure that it and/or each relevant Sub-Contractor shall become an [Admission Body].

### 23.2 Provider Admission Agreement

23.2.1 The Provider (in its capacity as employer) and the Council (in its capacity as guarantor) shall no later than the Commencement Date execute the [Provider Admission Agreements] referred to in clause 23.1 and will procure that the [Administering Authority] executes each such [Provider Admission Agreement] in order for the Provider Admission Agreement to be effective on the Relevant Transfer Date.

23.2.2 The Authority shall procure that when the Provider or a Sub-Contractor enters into the Provider Admission Agreement pursuant to clause 23.1 the Provider or

Sub-Contractor shall be credited by the Administering Authority with a notional fund within the Fund at the Relevant Transfer Date (which for the avoidance of doubt shall not constitute an admission agreement fund for the purposes of Regulation 54 of the LGPS Regulations) (the **Notional Fund**). The amount of the Notional Fund shall be determined by an actuary appointed by the Administering Authority by reference to the aggregate of the benefits, whether immediate, prospective or contingent, payable under the LGPS immediately before the Relevant Transfer Date in relation to the Eligible Employees who are active members of the LGPS or join the LGPS on the Relevant Transfer Date and such Eligible Employees' spouses and dependants, by reference to the pensionable service in the LGPS up to the Relevant Transfer Date but making proper allowance for projected increases in the rate of pensionable salary of each such Eligible Employee to date of withdrawal, retirement or death and increases in pensions in payment using the demographic and actuarial assumptions which were adopted for the most recent funding valuation of the Fund.

- 23.2.3 Subject to clauses 23.2.5, 23.2.6(a) and 23.2.9, if at any time during the term of this Agreement the Administering Authority, pursuant to the Provider Admission Agreement or the LGPS Regulations, requires the Provider or any Sub-Contractor to pay employer contributions or payments to the Fund in an amount which in aggregate is more than five per cent (5%) in excess of the Initial Contribution Rate (the **Excess Amount**), the Excess Amount shall be paid by the Provider or the Sub-Contractor, as the case may be, and the Provider or any Sub-Contractor (as the case may be) shall be reimbursed in accordance with clause 23.2.9.
- 23.2.4 Subject to clauses 23.2.5, 23.2.8 and 23.2.10, if during the term of this Agreement, the Administering Authority, pursuant to the Provider Admission Agreement or the LGPS Regulations, requires the Provider or any Sub-Contractor to pay employer contributions or payments to the Fund in an amount which in aggregate which is more than five per cent (5%) below the Initial Contribution Rate (the **Shortfall Amount**), the Provider shall or shall procure that the Sub-Contractor shall reimburse the Council in accordance with clause 23.2.10.
- 23.2.5 Subject to clauses 23.2.5, 23.2.6 and 23.2.9, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the Provider Admission Agreement when the Provider Admission Agreement ceases to have effect and the Provider or any Sub-Contractor is required to pay any revised contribution or payment to the Fund representing any exit payment under Regulation 64 of the LGPS Regulations (the **Exit Contribution**), such contribution or payment shall be paid by the Provider or any Sub-Contractor (as the case may be) and the Provider or any Sub-Contractor (as the case may be) shall be reimbursed in accordance with clause 23.2.9.
- 23.2.6 The Provider shall and shall procure that any Sub-Contractors shall at all times be responsible for the following:

- (a) any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) LGPS Regulations or otherwise other than where the Council has entered into a contractual commitment to make the individual Eligible Employee redundant before the Relevant Transfer Date or on termination or expiry of this Agreement;
- (b) any payment of Fund benefits on the grounds of ill health or infirmity of mind or body and any associated costs unless such grounds of ill health or infirmity of mind or body were diagnosed by a recognised medical practitioner and the results were notified to the Council prior to the Relevant Transfer Date;
- (c) any employer contributions relating to the costs of flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Provider or any relevant Sub-Contractor;
- (d) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Provider or any relevant Sub-Contractors including without limitation under Regulation 31 LGPS Regulations or otherwise;
- (e) any increase to the employer contribution rate resulting from the award of pay increases by the Provider or relevant Sub-Contractors in respect of all or any of the Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation; and
- (f) to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Provider or any relevant Sub-Contractors where a member does not have an absolute entitlement to that benefit under the LGPS.

23.2.7 For the purposes of calculating the Exit Contribution or Excess Amount, any part of an Exit Contribution or Excess Amount, as the case may be, which is attributable to any matters for which the Provider or Sub-Contractors are responsible for under clause 23.2.6 shall be disregarded.

23.2.8 For the purpose of calculating the Shortfall Amount, any increase in the contributions or payments which are attributable to matters which are the Provider's or relevant Sub-Contractor's responsibility for under clause 23.2.6 shall be disregarded.

23.2.9 Where an Excess Amount or an Exit Contribution is paid by the Provider or any Sub-Contractor, the Provider shall, forthwith as the liability to make the payment arises, invoice the Council for payment of the Excess Amount or Exit Contribution and the Council shall make payment to the Provider or any Sub-Contractor of the required amount within twenty (20) Business Days of receipt of the invoice.

- 23.2.10 Where a Shortfall Amount is payable by the Provider or any Sub-Contractor, the Provider shall or shall procure that the Sub-Contractor, forthwith as the liability arises, notify the Council of the Shortfall Amount and shall make payment to the Council of the required amount within twenty (20) Business Days of the notification.
- 23.2.11 If there is a dispute about the amount of payments due under clauses 23.2.2, 23.2.4, or 23.2.5 the Provider and/or the Sub-Contractor, as the case may be, and the Council shall co-operate in good faith to reach agreement about the amounts due. If agreement cannot be reached about the amounts due then within 28 days of one party notifying the other that a dispute has arisen, the matter may be referred by either party to an independent actuary agreed by the parties or, failing such agreement within 14 days from the first nomination of an actuary by the Provider and/or the Sub-Contractor, as the case may be, or the Council to the other, the independent actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application of either the Provider and/or the Sub-Contractor, as the case may be. The independent actuary so appointed shall act as expert and not as arbitrator, his decision shall be final and binding on the parties in the absence of manifest error and his costs shall be split equally.
- 23.2.12 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under Regulation 64 of the LGPS Regulations and/or the terms of the Provider Admission Agreement when the Provider Admission Agreement ceases to have effect and the Administering Authority decides to pay any revised contribution or payment from the Fund representing any exit credit under regulation 64 of the LGPS Regulations (the **Exit Credit**), such contribution or payment shall be paid by the Administering Authority to the Provider or any Sub-Contractor (as the case may be) and the Authority shall be reimbursed in accordance with clause 30.2.13.
- 23.2.13 Where an Exit Credit is paid by the Administering Authority, the Provider shall or shall procure that the Sub-contractor shall, forthwith as the payment is received, make a payment to the Council of an amount equal to the Exit Credit.

### 23.3 **Indemnity for a Breach of the Provider Admission Agreement**

Without prejudice to the generality of this clause 23.3, the Provider hereby indemnifies the Council and/or any Future Provider and, in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Provider or any Sub-Contractor of the terms of the Provider Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused).

### 23.4 **Indemnity or Bond or Guarantee**

Without prejudice to the generality of the requirements of this clause 23, the Provider shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Provider Admission Agreements. Where for any reason it is not desirable for the Provider or Sub-Contractor to enter into an indemnity or bond, the Provider shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable secure a guarantee in a form

acceptable to the Administering Authority in accordance with the Provider Admission Agreement.

**23.5 Right of Set-Off**

The Council shall have a right to set off against any payments due to the Provider under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant Sub-Contractor (as applicable) under the Provider Admission Agreement.

**23.6 Provider Ceases to be an Admission Body**

If the Provider or any Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and:

23.6.1 the Provider or any relevant Sub-Contractor does not wish to offer those Eligible Employees membership of the LGPS; or

23.6.2 the Council, the Provider or any relevant Sub-Contractor are of the opinion that it is not possible to operate the provisions of clauses 23.1 to 23.5 inclusive; or

23.6.3 if for any reason after the Relevant Transfer Date the Provider or any relevant Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees,

then the provisions of clauses 23.1 to 23.5 inclusive shall not apply (without prejudice to any rights of the Council under those clauses) and the provisions of clause 23.7 shall apply.

**23.7 Provider Scheme**

23.7.1 The Provider shall or shall procure that any relevant Sub-Contractor shall not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be the 'Provider Scheme' for the purposes of this clause 23.7. Such pension scheme or schemes must be:

- (a) established within three (3) months prior to the Relevant Transfer Date or Cessation Date (as the case may be);
- (b) reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
- (c) registered within the meaning of the Finance Act 2004; and
- (d) certified by an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS.

23.7.2 The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees)

that it shall and shall procure that any relevant Sub-Contractor shall procure that:

- (a) the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Provider Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
- (b) the Provider Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;
- (c) on and from the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:
  - i three (3) months after the date on which the Eligible Employees are first able to join the Provider Scheme; and
  - ii the date on which the Eligible Employee joins the Provider Scheme,the Provider shall provide death benefits for and in respect of the Eligible Employees which are certified by an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS;
- (d) if the Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Sub-Contractor. The replacement scheme must comply with this clause 23.7 as if it were the Provider Scheme; and
- (e) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Provider Scheme shall undertake by deed to the Council and to the Administering Authority that they shall comply with the provisions of clauses 23.7.1(a) to 23.7.1(d), 23.8.1 23.8.2 and 23.8.4.

## 23.8 Undertaking from the Provider

The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

- 23.8.1 all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Provider or any relevant Sub-Contractor for the administration of the LGPS or concerning

any other matters raised in clause 23.7, or clause 23.8 shall be supplied to them as expeditiously as possible;

- 23.8.2 it shall not and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Provider or the relevant Sub-Contractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- 23.8.3 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in clauses 23.1 to 23.6 inclusive without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed);
- 23.8.4 it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Provider and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- 23.8.5 it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Provider Scheme immediately after ceasing to be so engaged.

## 23.9 **Discretionary Benefits**

- 23.9.1 Where the Provider or a Sub-Contractor is an Admission Body, the Provider shall and/or shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and
- 23.9.2 Where the award of benefits following expiry or termination is not permitted under the LGPS or the Provider and/or a Sub-Contractor is not an Admission Body, the Provider shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 23.9.3 Under clause 23.9.1 and 23.9.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not,

for whatever reason, possible, the Provider shall and/or shall procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

23.10 **Claims from Eligible Employees or Trade Unions**

The Provider hereby indemnifies the Council and/or any Future Provider and, in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

23.10.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement; or

23.10.2 arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of this clause 23 before the date of termination or expiry of this Agreement.

23.11 **Not used**

23.12 **Liability for Costs**

The costs of the Council necessarily and reasonably incurred in connection with the Provider Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with clause 23.7.1(d) shall be borne by the Provider.

23.13 **Transfer to another Employer**

Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Provider shall and shall procure that any relevant Sub-Contractor shall:

23.13.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

23.13.2 procure that the employer to which the Eligible Employees are transferred (the **New Employer**) complies with the provisions of this clause 23 provided that references to the **Sub-Contractor** will become references to the New Employer, references to **Relevant Transfer Date** will become references to the date of the transfer to the New Employer and references to **Eligible Employees** will become references to the Eligible Employees so transferred to the New Employer.

23.14 **Pension Issues on Expiry or Termination**

The Provider shall (and shall procure that each relevant Sub-Contractor shall):

23.14.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of

the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);

23.14.2 promptly provide to the Council such documents and information mentioned in clause 23.14.1 which the Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement; and

23.14.3 fully co-operate (and procure that the trustees of the Provider Scheme shall fully co-operate) with the reasonable requests of the Council or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

#### 23.15 **Compliance with Part 1 Pensions Act 2008**

The Provider shall and shall procure that any relevant Sub-Contractor shall comply with the requirements from time to time under Part 1 Pensions Act 2008 to make a minimum level of contributions to the [National Employment Savings Trust] or other qualifying scheme.

#### 23.16 **Compliance with section 257 and 258 Pensions Act 2004**

The Provider shall and shall procure that any relevant Sub-Contractor shall comply with sections 257 and 258 Pensions Act 2004 in relation to any Relevant Employee (excluding, for the avoidance of doubt any Eligible Employees) who is on or immediately prior to the Relevant Transfer Date:

23.16.1 a member of or is entitled to be a member of their employer's occupational pension scheme; or

23.16.2 would have become eligible to be a member of their employer's occupational pension scheme had he served out the usual waiting period.

#### 24 **IT systems**

**[Note: clauses to be inserted once IT requirements settled]**

#### 25 **Assets and Maintenance**

25.1 The Provider shall be responsible for ensuring that it has at its disposal sufficient Assets, equipment and consumables to provide the Services in accordance with the requirements of this Contract, and shall maintain such Assets and Council Assets in accordance with the provisions of clause 25 (Maintenance).

25.2 With effect from the Commencement Date, and for the full term of this Contract, the Council shall make the Council Assets available to the Provider on the following basis:

a) the Council shall grant the Provider a right to use the Council Assets, and

b) the Council shall grant the Provider access to the Council Assets,

each to the extent necessary for the provision by the Provider of the Services.

- 25.3 The Provider acknowledges that the Council Assets are made available by the Council to the Provider on an "as is" basis and the Council excludes all representations or warranties as to the merchantability, condition, quality, suitability or fitness for any purpose of the Council Assets to the maximum extent permitted by law.
- 25.4 The Provider acknowledges that it has had the opportunity of inspecting the Council Assets to satisfy itself as to the condition of such assets and their suitability and sufficiency to perform the Services.
- 25.5 Insurance risk in the Council Assets (as are in the Provider's care and control) and the Assets shall rest with the Provider. The Provider shall make such notifications as may be necessary to its insurer to ensure that any necessary insurances remain valid and in effect and where it is able to (having used its reasonable endeavours) the Provider shall note the Council's interest in the Council Assets in any such policy.
- 25.6 Where the Provider acquires any Additional Assets or any replacement of any element of the existing Council Assets, the Provider shall:
- 25.6.1 first seek the written consent of the Council to such acquisition or replacement where the Additional Asset or replacement to be acquired has a value of £[●] or more;
  - 25.6.2 ensure that all such Additional Assets or replacements are of a standard which meets Good Industry Practice and are fit for the purpose of providing the Services in accordance with the terms of this Contract; and
  - 25.6.3 ensure that a description of the Additional Assets or replacements shall be added to the relevant part of the Rolling Inventory.
- 25.7 On expiry or termination of this Contract the Provider shall cease using such Council Assets and Assets as are then in the Provider's possession and shall return any such Council Assets and Assets to the Council together with all Membership Data at nil cost to the Council.
- 25.8 The Provider shall in the Rolling Inventory compile and maintain a complete, accurate and up-to-date register of the Assets and Council Assets which have a value of £250 or greater (indexed) (unless the Council requests that Assets and Council Assets of less than £250 (indexed) are also included on the Rolling Inventory). The Rolling Inventory shall as a minimum contain the following information (where relevant):
- 25.8.1 number of Assets and Council Assets;
  - 25.8.2 when the Asset or Council Asset is to be replaced or is due for replacement;
  - 25.8.3 name and description of the Asset or Council Asset and associated peripherals;
  - 25.8.4 location of the Asset or Council Asset;
  - 25.8.5 whether the Asset is the subject of an operating lease, finance lease or licence;
  - 25.8.6 identifier (serial number);

- 25.8.7 date the Asset was purchased, leased or licensed (as the case may be) and age of the asset;
- 25.8.8 original costs for the Assets;
- 25.8.9 the service or services for which the Council Assets or Asset will be used.
- 25.9 The Provider shall update the Rolling Inventory annually and provide a copy to the Council no later than twenty (20) Business Days after each anniversary of the Commencement Date. The Council may provide comments to the Provider on the Rolling Inventory within fifteen (15) Business Days of receipt of the Rolling Inventory and if such comments are not agreed by the parties within fifteen (15) Business Days of the Council issuing such comments, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Upon the parties agreeing the updated Rolling Inventory or the matter having been resolved as part of the Dispute Resolution Procedure, the updated Rolling Inventory shall be initialled in hard copy by both parties and an electronic version issued to the Council by the Provider.
- 25.10 Any proposal by the Provider to write off any Asset or Council Asset must be approved in writing by the Council.
- 25.11 The Provider shall be permitted to use Council Assets and Assets to provide services similar to the Services to other organisations provided that:
- 25.11.1 such use shall not adversely affect the delivery of the Services; and
- 25.11.2 the Council agrees in writing prior to the commencement of such use.
- 25.12 The Provider shall not use the Council's name, logo or trade marks on any of the Assets without the Council's prior written consent.
- 25.13 On expiry or termination of this Contract the Council shall have the right to purchase any Additional Assets from the Provider at a fair market value (taking into account depreciation).

### **Maintenance**

- 25.14 The Provider shall ensure on a continuing basis that at all times the Assets and (to the extent relevant) the Council Assets are maintained and refreshed at no additional cost to the Council to ensure:
- 25.14.1 the Services are performed to the Contract Standard from the Commencement Date until the end of the Contract Period; and
- 25.14.2 the Assets and (to the extent relevant) the Council Assets which are required by the Council or any New Provider are handed back to the Council or the New Provider (as the Council shall direct) at the end of the Contract Period in a condition complying with the requirements of this clause 25 (Maintenance) and the Contract Standard.
- 25.15 If any [programmed] works [to the Atherstone Leisure Complex] are required which would incur expenditure above £10,000, the Council is not required to undertake such works.

The Council will meet with the Provider to agree the impact on the Services and the Approved Business Plan and the steps to mitigate any such impact.

- 25.16 If the Council reasonably believes that the Provider is in breach of its obligations under clause 25.14 then it may carry out (or procure) a survey of the Assets and Council Assets conducted by suitably qualified independent surveyor (not being an employee of the Council) to assess whether the Assets and Council Assets have been and are being maintained and refreshed by the Provider in accordance with its obligations under clause 25.14.
- 25.17 The Council shall notify the Provider in writing a minimum of ten (10) Business Days in advance of the date on which it wishes to carry out the survey. The Council shall consider in good faith any reasonable request by the Provider for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Provider (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Provider's ability to provide the Services.
- 25.18 When carrying out any survey the Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Provider. The Provider shall give the Council, or any third party acting on its behalf, free of charge any reasonable assistance required by the Council during the carrying out of any survey.
- 25.19 If the survey shows that the Provider has not complied or is not complying with its obligations under clause 3 the Council shall:
- 25.19.1 notify the Provider of the rectification and/or maintenance work which is required to bring the condition of the Assets and Council Assets to the standard they would have been in if the Provider had complied with or was complying with its obligations under clause 25.14;
  - 25.19.2 specify a reasonable period within which the Provider must carry out such rectification and/or maintenance work and/or technology refresh work; and
  - 25.19.3 be entitled to be reimbursed by the Provider for the cost of the survey.
- 25.20 If the Provider has been notified under clause 25.19.1 that rectification and/or maintenance work is required, the Provider shall carry out such rectification and/or maintenance work and/or technology refresh work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense. If the Provider fails to carry out such rectification, maintenance work and/or refresh work within the specified period the Council shall be entitled to carry out such work itself or engage a third party to do so and be entitled to be reimbursed by the Provider for the reasonable cost of such work. The Provider shall provide all reasonable assistance to the Council and any third party engaged by the Council to facilitate the carrying out of the rectification, maintenance or refresh work.
- 25.21 The parties shall comply with their respective responsibilities for repairs, maintenance and replacement of the Assets as set out in Schedule 11.

26 **Rights of access and inspection**

- 26.1 The Provider shall allow officers of the Council to have reasonable access to the Provider's premises, Records and Staff (including providing such information and assistance as the Council may reasonably request) to enable the Council to inspect and review the Services generally, to meet its statutory duties and/or in the event that the Council has any concerns regarding the compliance with the Contract and any relevant statutory provisions.
- 26.2 Any information made available to the Council under clause 26.1 shall be treated as Confidential Information.
- 26.3 The Provider will allow the Council to use the Provider's premises for the purpose of Elections provided reasonable prior notice has been given to the Provider and subject to the Services Specification, the Council agrees to pay for the use of the relevant parts of the Provider's premises for such purposes, with terms to be agreed between the parties, acting reasonably.
- 26.4 [The Provider will also allow the Council to use the Provider's premises in the case of an Emergency provided reasonable prior notice (taking into account the nature of the Emergency) has been given to the Provider and subject to the Services Specification, the Council agrees to pay for the use of the relevant parts of the Provider's premises for such purposes, with terms to be agreed between the parties, acting reasonably.]

27 **Performance monitoring and reporting**

- 27.1 The Provider shall comply with the performance monitoring arrangements set out in the Service Specification including (without limitation) providing such reports and attending such performance monitoring meetings as required in paragraphs 3, 4 and 5 of the Service Specification.

28 **Failure to perform and step in**

- 28.1 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such Default is capable of remedy, then the Council shall acting reasonably instruct the Provider to remedy the Default and the Provider shall at its own cost and expense remedy such Default within such reasonable period of time as the Council may direct.
- 28.2 Where a Default is capable of remedy, the Provider shall send the Council a remedy plan (**Remedy Plan**) within 2 Business Days of the Default taking place setting out the steps for remedying the Default and the timescales for doing so.
- 28.3 If a particular Default has continued for more than twenty-one (21) days or occurred 3 or more times in any six (6) month period or has not been remedied in accordance with the timescales in the Remedy Plan then the Council may serve a notice on the Provider:
- 28.3.1 specifying that it is a formal warning notice;
  - 28.3.2 giving reasonable details of the Default, and

28.3.3 stating that the Default is a Default which, if it recurs frequently or continues, may result in termination of this Contract.

28.4 If, following service of a warning notice under clause 28.3 the Default specified has continued beyond fourteen (14) days or recurred 2 or more times within the six (6) month period after the date of service, then the Council may serve another notice (a **Final Warning Notice**) on the Provider:

28.4.1 specifying that it is a Final Warning Notice;

28.4.2 stating that the Default specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice, and

28.4.3 stating that if the Default continues for more than seven (7) days or recurs 2 or more times within the six (6) month period after the date of service of the Final Warning Notice, this Contract may be terminated by the Council.

### **Step-in**

28.5 In the event that the Council is of the reasonable opinion that it needs to take action in connection with the Services:

28.5.1 following a Material Breach by the Provider; and/or

28.5.2 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

28.5.3 to discharge a statutory duty; and/or

28.5.4 pursuant to Schedule 5;

then the Council may, without prejudice to its rights under clauses 53 and 55, without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract and the Provider shall give all reasonable assistance to the Council as it may require including granting or obtaining licences or permissions for systems and data required to deliver the Services and providing access to the Provider's Staff.

28.6 The Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party pursuant to this clause 28.

## **29 Complaints**

29.1 The Provider must have a process in place to log and fully respond to any complaints, MP enquiries, member casework and petitions or any complimentary feedback received with regard to the Services, within the deadlines set by the Council (the **Provider's Log**).

29.2 The Provider's Log and response times shall be in line with the Customer Service Policy as described in the Service Specification.

29.3 The Provider will report the data obtained by the Provider's Log to the Council by means of [a quarterly] report (to be provided no later than ten (10) Business Days following the end of each [Quarter]) or more frequently if requested by the Council.

29.4 All complaints should be dealt with and resolved appropriately to the satisfaction of the Council by the Provider and any serious complaint, MP enquiry or member casework issue that cannot be resolved shall be notified to the Council as soon as reasonably practicable so that the Parties can co-operate and endeavour to satisfy the complainant.

## 30 **Whistleblowing**

30.1 The Provider shall ensure that it has a Whistleblowing procedure which shall specify a named senior manager responsible for ensuring the independence and probity of the whistleblowing process.

30.2 The Provider confirms that the Council is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 (as amended) and declares that any Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Provider further declares that any provision in any contract (including any contract of employment) purporting to preclude a member of its Staff from making a protected disclosure is void.

## 31 **Business Continuity and Exit Plan**

31.1 The Provider shall use its best endeavours to assist the Council in meeting its statutory obligations and to support the Council in the emergency provision of services to its community in the case of a disaster.

31.2 The Provider shall prepare a Business Continuity Plan and an Exit Plan and agree this with the Council within [6] months of entering into this Contract.

31.3 The Parties shall comply with the provisions of the Business Continuity Plan and the Exit Plan and the Provider shall ensure that it is able to implement Business Continuity Plan and the Exit Plan at any time in accordance with their terms.

31.4 The Provider shall review, update and test the Business Continuity Plan and the Exit Plan on a regular basis (and in any event not less than once in every twelve (12) month period and within six (6) months before the expiry of this Contract). The Council may require the Provider to conduct additional reviews and tests of the Business Continuity Plan and Exit Plan where the Council (acting reasonably) considers it necessary.

31.5 Following each review or test of the Business Continuity Plan or the Exit Plan, the Provider shall send to the Council a written report summarising the results of the review and/or test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of the reviews and/or tests.

## 32 **Inquiries, investigations and inspections**

32.1 The Provider shall at all times during the Contract Period and for a period of six (6) years (or such longer period as required by Legislation) afterwards fully co-operate with any inquiry, investigation or inspection (whether routine or specific) which in any way concerns,

affects or relates to the Services, or this Contract. Such inquiry, investigation or inspection may include, inter alia:

- 32.1.1 the Council's Executive Board, service boards and sub-committees undertaking their respective functions;
- 32.1.2 an investigation by the Council into a complaint about the acts or omissions of the Provider and/or its Staff made under the Equalities Legislation;
- 32.1.3 any Regulatory Body;
- 32.1.4 the Council's auditors (whether internal or external);
- 32.1.5 the Local Government Ombudsman;
- 32.1.6 an investigation by the Council into an accident or incident or complaint about health and safety failures; and/or
- 32.1.7 an investigation by the Council into alleged fraud.

32.2 Such co-operation shall include the following:

- 32.2.1 providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the subject or service under investigation;
- 32.2.2 providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Provider in the performance of this Contract;
- 32.2.3 providing access to the Staff (of whatever seniority) involved in this Contract (including managerial or supervisory staff) or who may be the subject of, or be named in, any inquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- 32.2.4 maintaining the confidentiality of the inquiry or investigation when requested to do so;
- 32.2.5 making such explanations (whether written or oral) as may be necessary for the inquiry or investigation to be satisfied that the terms and conditions of this Contract, the Council's standing orders and financial regulations and statutory provisions relating to this Contract are being complied with;
- 32.2.6 at all times and without notice allow access to the Local Government Ombudsman, Regulatory Body or to any investigating officer appointed by the Local Government Ombudsman or Regulatory Body, in connection with any complaint, investigation or inspection relating to this Contract or the Services. This shall extend to the Provider's premises, its Staff and to all documentation and information relating to this Contract to which the Provider and its Staff have access.

32.3 The Provider shall, if requested by the Council, co-operate with the Council, at its own expense, in connection with any legal proceedings, enforcing authority investigations, arbitration, court proceedings or ombudsman inquiries in which the Council may become involved, arising from breaches of the Council's duties due to the alleged acts or omissions of the Provider and/or its Staff.

#### **Part D – Financial provisions**

##### **33 Fees**

33.1 Subject to clause 33.2 and notwithstanding any fees or charges the Provider may receive from third parties in respect of the Services, the Provider's compliance with the terms of this Contract shall be at its own cost.

33.2 Subject to clause 33.4, in return for the Provider delivering the Services the Council shall pay the Provider the fees as set out in [Schedule 10] quarterly in advance.

33.3 Parties will comply with the Deficit Outperformance mechanism set out in Schedule 13.

33.4 The Council shall pay to the Provider any Public Sector Funding received by the Council in accordance with the terms on which it is made available and the Provider shall comply with such terms.

##### **34 Value Added Tax**

34.1 Value Added Tax (**VAT**), where applicable, shall be shown separately on all invoices at the appropriate rate in force at the time of the relevant supply.

34.2 The Council and the Provider agree to pay to the other any VAT properly chargeable.

##### **35 Recovery of sums due**

35.1 Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due to the Provider under the Contract or under any other agreement or contract between the Provider and the Council. Where the Council withholds any disputed monies which subsequently turn out to be rightfully due to the Provider, the Council shall pay interest to the Provider at the rate of **[2]%** above base rate from the date the payment was due to the date upon which the payment was made.

35.2 Any overpayment by the Council to the Provider shall be recoverable by the Council and vice versa.

35.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has obtained the prior written approval of the Council to such deduction.

## Part E – Statutory Obligations and Regulations

### 36 Prevention of bribery & corruption

- 36.1 The Provider, whether acting by any person engaged by the Provider or acting on its behalf (whether with or without the knowledge of the Provider), shall:
- 36.1.1 not offer or give, or agree to give, to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Contract or any other contract with the Council or any other public body and comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and under Section 117 of the Local Government Act 1972 (the **Relevant Requirements**);
  - 36.1.2 not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 36.1.3 comply with the Council's anti-bribery and anti-corruption policies in force from time to time and if none then to comply with the relevant industry body latest guidance applicable from time to time (the **Relevant Policies**).
  - 36.1.4 maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 36.1.1 and will enforce them where appropriate;
  - 36.1.5 promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Contract;
  - 36.1.6 within 12 months of the date of this Contract, and annually thereafter, certify to the Council in writing signed by an officer of the Provider, compliance with this clause 36 by the Provider and all persons associated with it. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 36.2 The Provider shall ensure that any person associated with the Provider who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this clause 36 (the **Relevant Terms**). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms.
- 36.3 For the purpose of this clause 36, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act) and Section 8 of that Act respectively. For the purposes of this clause 36 a person associated with the Provider includes but is not limited to any subcontractor of the Provider.

36.4 The Provider warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

36.5 If the Provider, its Staff or anyone acting on the Provider's behalf (whether or not with the knowledge of the Provider), engages in conduct prohibited by clauses 36.1 or 36.2, the Council may:

36.5.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and

36.5.2 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of those clauses.

36.6 In exercising its rights or remedies under this clause, the Council shall:

36.6.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

36.6.2 give all due consideration, where appropriate, to action other than termination of the Contract.

## 37 **Equalities, Diversity and Inclusion**

37.1 The Provider shall have and maintain an equality and diversity policy that complies with all applicable Legislation, is in line with best industry practice, consistent with the Council's values and promotes an inclusive society, opposing all forms of intolerance and prejudicial discrimination, whether intentional, institutional or unintentional.

37.2 In the performance of its obligations under this Contract (including but not limited to those in relation to the provision of the Services), the Provider shall (and shall procure that its Staff shall):

37.2.1 not unlawfully discriminate within the meaning and scope of any Legislation relating to discrimination in employment in relation to any protected characteristic as defined in the Equality Act 2010;

37.2.2 comply with all applicable Equalities Legislation and the Council's equality and diversity policy as provided to the Provider from time to time;

37.2.3 comply with the equality and diversity policy maintained pursuant to clause 37.1.

37.3 The Provider shall provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this clause 37.

37.4 The Provider acknowledges that the Council has duties under section 149 of the Equality Act 2006 and any regulations issued pursuant to section 153 of that Act (the **Public Sector Equality Duty**) and the Provider:

- 37.4.1 shall not and shall procure that its Staff shall not through their conduct or practices cause the Council to be in breach of its Public Sector Equality Duty, and
- 37.4.2 shall comply and shall procure the compliance of its Staff with any request or instruction from the Council to enable it to comply with its Public Sector Equality Duty.
- 37.5 Insofar as the delivery of the Services constitutes the exercise of a public function, the Provider shall in the exercise of that function comply with the Public Sector Equality Duty and shall have due regard to the need to:
- 37.5.1 eliminate discrimination (whether direct or indirect), harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- 37.5.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- 37.5.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 37.6 The Provider shall, and shall procure that its Staff shall, notify the Contract Manager in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider or any Staff under any Equalities Legislation.

### 38 **The Contracts (Rights Of Third Parties) Act**

No person who is not a Party to the Contract shall have any right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

### 39 **Health and Safety**

- 39.1 In relation to the Staff, the Provider shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice pertaining to the health and safety of employees and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract and shall require that any sub-contractors likewise comply.
- 39.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc 1974) is made available to the Council on request.
- 39.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Services and the acts of its Staff. The Provider shall notify the Council in writing if any method or practice set out in the Service Specifications shall be or shall become an unsafe method of practice.
- 39.4 The Council reserves the right to suspend the provision of the Services in whole or in part (to the extent reasonable) without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work

etc Act 1974 or any other health and safety Legislation and/or the provisions of this clause 39.

39.5 The Provider shall inform the Contract Manager immediately of any fatality and, within twenty four (24) hours, of any major injury or reportable dangerous occurrence that occurs in the performance of its obligations under this Contract.

#### 40 **Human rights**

40.1 The Provider shall comply with the European Convention on Human Rights and the Human Rights Act 1998 (**HRA**) as if it were a "Public Authority" within the meaning of the legislation.

40.2 The Provider shall indemnify the Council against any liability, loss, claim or proceedings arising out of any violation of the HRA by the Provider in the course of the provision of the Services under this Contract.

#### 41 **Propriety and financial controls**

The Provider, as a local authority controlled company as set out in Part V of the Local Government and Housing Act 1989 shall comply with the propriety controls set out in the Local Authorities (Companies) Order 1995.

### **Part F – Information**

#### 42 **Data Protection**

42.1 In relation to all Personal Data that is Processed in connection with the Services, the Provider shall, and shall procure that any Sub-Contractor that may Process Personal Data shall, at all times comply with the Data Protection Legislation and not by act or omission cause the Authority to breach the Data Protection Legislation.

42.2 The parties acknowledge that the factual arrangements between them dictate the role of each (or any) party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Council and the Provider shall act as Controllers individually (and in common from time to time) of any Personal Data Processed in connection with the Agreement.

42.3 The parties do not envisage that either party will Process any Personal Data for or on behalf of the other party as a Processor or as joint Controllers, under or in connection with this Agreement. Where and to the extent that in undertaking the obligations in connection with this Agreement, the Provider anticipates that either party will Process the Personal Data for and on behalf of the other party as a Processor, or as joint Controller, it shall:

42.3.1 notify the Authority immediately; and

42.3.2 agree a variation to this Agreement to incorporate appropriate provisions in accordance with articles 28 or 26 of the GDPR as appropriate, or as otherwise required by the Data Protection Legislation.

42.4 The Provider shall (and shall procure that any Sub-Contractor shall) in connection with the Processing undertaken in connection with the Agreement:

- 42.4.1 only Process the Personal Data for the purposes set out in this Agreement and not for any incompatible purposes;
- 42.4.2 maintain valid and up to date records of Processing and records of consents (where consent is the relevant lawful processing ground, including suppression and consent withdrawal lists) which as a minimum meet the requirements of the Data Protection Legislation, including but not limited to articles 7 and 30 of the GDPR;
- 42.4.3 maintain valid and up to date registrations and notifications under the Data Protection Legislation with a competent supervisory authority;
- 42.4.4 ensure that it is not prevented or restricted from disclosing, permitting access or transferring any Personal Data to the Authority;
- 42.4.5 ensure appropriate fair processing notices have been provided to Data Subjects (and/or, as applicable, consents obtained), in relation to any Personal Data Processed ensuring they:
  - (a) comply with the Data Protection Legislation; and
  - (b) are sufficient in scope to allow the Authority to lawfully Process the Personal Data for the purposes and rights envisaged by this Agreement including in relation to:
    - i any data sharing or access by the Authority from time-to-time; and
    - ii any exit or transition provisions under this Agreement, including the use of Personal Data for direct marketing by the Authority or any New Provider;
- 42.4.6 provide copies of all fair processing notices and consents on demand and take such steps as the Authority reasonably instructs to ensure that the Authority is able to lawfully Process the Personal Data;
- 42.4.7 implement reasonable measures to ensure that any Personal Data made available to the Authority is accurate, adequate and not excessive, implementing procedures to ensure the principles of privacy by design and default under the GDPR are upheld;
- 42.4.8 ensure that appropriate operational and technical measures are in place and suitably maintained, reviewed and refreshed to safeguard against any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, corruption or unavailability of the Personal Data Processed (a "**Personal Data Breach Incident**") ;
- 42.4.9 promptly and independently:
  - (a) respond to any request to exercise any Data Subject rights, any correspondence or complaints from or on behalf of a Data Subject, third party or supervisory authority;

- (b) and in any event within twenty-four (24) hours, notify the Authority upon becoming aware of any actual or suspected Personal Data Breach Incident and shall in particular:
    - i implement any measures necessary to restore the security of compromised Personal Data, investigate and mitigate the impacts of the incident and its cause(s);
    - ii if requested, promptly provide the Authority with a report containing details about the nature, extent and impact, of the Personal Data Breach Incident; and proposed mitigation steps; and
    - iii not refer to the Authority in any statement in relation to the Personal Data Breach Incident without the Authority's prior written consent;
- 42.4.10 take reasonable steps to ensure the reliability, integrity and appropriate training in the Data Protection Legislation and the terms of this Agreement of any personnel or approved Sub-Contractor who have access to the Personal Data;
- 42.4.11 not transfer or permit the Processing of any Personal Data outside the United Kingdom except as approved by the Authority in writing (such approval shall not be unreasonably withheld, but may be subject to conditions to ensure compliance with Data Protection Legislation prior to the transfers and Processing taking place);
- 42.4.12 not transfer or permit the Processing of any Personal Data to or by a third party, unless expressly authorised by the Authority, which may be subject to conditions, including, but without prejudice to Clause 9:
  - (a) due diligence being undertaken by the Provider in respect of the proposed third party's data protection practices to the Authority's reasonable satisfaction;
  - (b) the Provider ensuring that appropriate contractual terms which comply with the Data Protection Legislation shall be agreed with an approved third party; and
  - (c) the Provider remaining liable to the Authority for any act or omission of the third party's Processing operations;
- 42.4.13 hold the Personal Data confidentially and separately from any other personal data Processed by the Provider;
- 42.4.14 not do anything or omit to do anything in relation to the Personal Data which shall damage the reputation of the Authority with any party;
- 42.4.15 permit the Authority access free of charge during normal business hours on reasonable notice to conduct compliance monitoring of the Provider of its obligations set out in this Clause 42;
- 42.4.16 shall indemnify on demand and keep indemnified the Authority against any Direct and Indirect Losses incurred by, awarded against or agreed to be paid by

the Authority to the extent arising from the Provider's failure to comply with the Data Protection Legislation or this Clause 43.

42.5 Any material breach of this Clause 43 shall entitle the Authority to terminate this Agreement with immediate effect.

42.6 On expiry or earlier termination of the Agreement, the Provider shall ensure that any Personal Data is:

42.6.1 at the Authority's direction either provided to the Authority or a nominated replacement; and

42.6.2 any remaining copies are securely destroyed, unless the Provider notifies the Authority of a legal or regulatory duty to retain the Personal Data, and the Authority provides written consent for the ongoing retention of the Personal Data.

### 43 **Intellectual Property**

43.1 The Provider acknowledges and agrees that all right, title and interest in or to any Intellectual Property Rights arising at any time in relation to the Records or otherwise arising in the course of the Provider supplying the Services shall in each case vest automatically in the Council.

43.2 Notwithstanding clause 43.1, if and to the extent that the Provider obtains or acquires any right, title or interest in or to any Intellectual Property Rights arising at any time in relation to the Records or otherwise arising in the course of the Provider supplying the Services:

43.2.1 the Provider hereby assigns (insofar as permissible by law) and agrees to assign by way of future assignment to the Council absolutely with full title guarantee all right, title and interest, throughout the world, in and to:

(a) all such Intellectual Property Rights in each case for the whole term of such rights together with any and all reversions, extensions or renewals of such rights;

(b) all other rights of whatever nature that are created in the future, to which the Provider may at any time become entitled by virtue of any of the laws in force in any part of the world, in and to the aforesaid Intellectual Property Rights; and

(c) all related rights and powers arising or accrued, including the right to sue for damages (and retain any damages recovered) and other remedies for any infringement of any of the rights listed above in this clause 43.2.1 and to defend any claim pertaining to such rights;

(together the **Assigned Rights**);

43.2.2 the Provider shall, with effect from the creation of the Assigned Rights and until such time as the assignment set out at clause 43.2.1 above is complete, hold the legal title to them on trust for the Council; and

- 43.2.3 the Provider shall, at its own expense, execute all such documents, instruments and agreements and do all such acts and things, both during and after the term of the Contract, as the Council may consider necessary or desirable to vest the Assigned Rights in the Council.
- 43.3 The Provider agrees and undertakes to the Council:
- 43.3.1 to disclose to the Council promptly on their creation and with full written details, any and all: inventions or potential inventions which may be capable of protection by means of a patent and/or any similar or equivalent right or forms of protection; discoveries; scientific, mathematical, technological, technical or business theories, methods or schemes; information and ideas pertaining to any business opportunity; works embodying Intellectual Property Rights which may be capable of protection by means of any registered Intellectual Property Right; in each case, wholly or partially arising in the course of the Provider supplying the Services and which are or may be capable of exploitation or of further development or exploitation or which are or may be otherwise of actual or potential commercial value to the Council;
- 43.3.2 forthwith at the request of the Council, and in any event upon the termination or expiry of the Contract, to give to the Council full written details of, and to disclose to the Council all documents and materials in any form whatever (and all copies or abstracts of them, and in each case whether physical or electronic) which record or relate to, any Intellectual Property Rights created in the course of the Provider supplying the Services, or which may enable or assist the Council to exploit such Intellectual Property Rights to its best advantage, which are in the Provider's possession, custody or power, and:
- (a) deliver up to the Council all such documents and materials and copies and abstracts and all electronic devices and other media upon which any of them may be stored, and
- (b) in the case of documents and materials and copies and abstracts which are stored electronically, comply with all requests by the Council to cause or procure them to be deleted permanently;
- 43.3.3 except insofar as is necessary in the ordinary course of performance of the Services in accordance with the Contract (or otherwise as expressly permitted by the Council in writing), to keep confidential any such Intellectual Property Rights; and
- 43.3.4 not to register or attempt to register any Intellectual Property Rights created in the course of the Provider supplying the Services unless requested to do so in writing by the Council.
- 43.4 The Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with any breach by the Provider of the terms of this clause 43.

43.5 The Provider shall, forthwith on demand by the Council, provide the Council with a written absolute waiver, from all employees, officers or agents of the Provider who are authors of any Records, of any and all moral rights arising under the Copyright, Designs and Patents Act 1988 as they may have in relation to the Records and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world.

44 **Confidentiality**

44.1 Each Party:

44.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

44.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

44.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other under or in connection with the Contract:

44.2.1 is given only to such of the Staff or the staff of the Council and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract; and

44.2.2 is treated as confidential and not disclosed (without prior approval) or used by any Staff or staff of the Council or such professional advisors or consultants otherwise than for the purposes of the Contract.

44.3 Each Party shall refrain from using any Confidential Information it receives from the other otherwise than for the purposes of the Contract.

44.4 The provisions of clauses 44.1 to 44.3 shall not apply to any Confidential Information received by one Party from the other:

44.4.1 which is or becomes public knowledge (otherwise than by breach of this clause);

44.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

44.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

44.4.4 which is independently developed without access to the Confidential Information; or

44.4.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 pursuant to clause 49.

- 44.5 Nothing in this clause shall prevent the Council disclosing any Confidential Information:
- 44.5.1 for the purpose of the examination and certification of the Council's accounts; or
  - 44.5.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
  - 44.5.3 to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or
  - 44.5.4 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 44.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

## 45 **Audit**

### 45.1 **Records of Costs**

45.2 The Provider shall:

- 45.2.1 at all times maintain a full record of particulars of the costs of performing the Services, including those relating to design, implementation, transition, maintenance, management, operation and finance;
- 45.2.2 when requested by the Council, provide a written summary of any of the costs referred to in clause 44.2.1, including details of any funds held by the Provider specially to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Provider of its obligations under this Contract; and
- 45.2.3 provide such facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause.

### 45.3 **Books of Account**

Compliance with clause 44 shall require the Provider to keep (and where appropriate to procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to this Contract and the entries made in such books shall be kept up-to-date at all times and shall include all such matters and things which are

usually entered in books of account in the United Kingdom kept by reputable persons or companies engaged in concerns of a similar nature so as to enable the preparation from time to time of true and fair accounts for the Services, including showing in detail:

- 45.3.1 administrative overheads;
- 45.3.2 payments made to Sub-Contractors and other third parties;
- 45.3.3 capital and revenue expenditure;
- 45.3.4 all fees, payments, charges and other income received by the Provider;
- 45.3.5 base budget information;
- 45.3.6 such other items as the Council may reasonably require,

and the Provider shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items in clauses 44.3.1 to 44.3.6 available for inspection by the Council (and any expert) upon reasonable notice, and shall present a written report of these to the Council as and when requested.

#### 45.4 **Maintenance of Records**

The Provider shall maintain or procure that the following are maintained:-

- 45.4.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
- 45.4.2 full records of all maintenance procedures carried out during the term of this Contract; and
- 45.4.3 reports and management information in relation to the performance and management of the Services in accordance with the requirements in the Service Specifications including data required by the Council for measuring KPIs or otherwise measuring performance under the Contract,

and the Provider shall have the items referred to in clauses 44.4.1 to 44.4.3 above available for inspection by the Council upon reasonable notice, and shall present a report of them to the Council as and when requested.

45.5 The Council may appoint an auditor or inspector to conduct an audit of any information relating to this Contract (including this Clause 44) and the Provider shall allow such auditor or inspector the same access as is granted to the Council under the provisions of this Contract.

45.6 The Provider shall keep and maintain until [six] years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records and its premises as may be required by the Council in connection with the Contract.

46 **Publicity**

46.1 Except with the approval of the Council, such approval not to be unreasonably withheld or delayed the Provider shall not make any press announcement or publicise this Contract or any part thereof in any way. The Provider may refer to this Contract in its general marketing and in submission and presentations for contracts.

46.2 The Provider shall take reasonable steps to ensure the observance of the provision of clause 46.1 by all of its Staff.

46.3 The provision of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

47 **Branding principles**

Any Branding shall be in accordance with principles which shall be agreed between the Council and the Provider within 6 months following the Commencement Date (as the same may be amended from time to time by the agreement of the Parties).

48 **Records**

48.1 The Provider shall maintain current and accurate Records of all work carried out in the provision of the Services and shall ensure that these Records shall be available for inspection by an authorised representative of the Council at all reasonable times.

48.2 The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of Records irrespective of the storage media which are under the Provider's control as part of the Services. Such safeguards shall include an obligation on the Provider to ensure that access to Records is only obtained by such Council staff as may be specifically designated by the Contract Manager.

48.3 If any Records are:

48.3.1 accidentally or wilfully destroyed, otherwise than by the Council or on the authorisation of the Council, or;

48.3.2 altered without authorisation,

in the event that the Provider does not put in hand a method for reinstatement or replacement of such Records within seven days of receipt of a Notice from the Council then without prejudice to the Council's other rights at law, the Provider shall reimburse the Council's reasonable costs in restoring such Records.

48.4 Immediately upon expiry or termination of this Contract for any reason whatsoever the Provider shall adhere to the Records Management Policy.

49 **Freedom of Information**

49.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 and must assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.

- 49.2 The Provider shall upon receipt of any request for information in relation to this Contract received by the Provider or any sub-contractors:
- 49.2.1 transfer the request for information to the Council as soon as practicable after receipt and in any event within five Business Days of receiving a request for information;
  - 49.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires no more than 15 Business Days (or such other period as the Council may specify) of the Council requesting that information; and
  - 49.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations 2004.
  - 49.2.4 Prior to the information being sent to the Council, provide all appropriate exemptions under FOIA and undertake public interest tests (as necessary).
- 49.3 The Council will be ultimately responsible for determining at its absolute discretion whether any information:
- 49.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004; and
  - 49.3.2 is to be disclosed in response to a request for information, and in no event will the Provider respond directly to a request for information.
- 49.4 The Provider acknowledges that the Council may, acting in accordance with the Ministry of Justice Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under Section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose information in relation to this Contract.
- 49.5 The Provider must ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and must permit the Council to inspect such records as requested from time to time.
- 49.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 49.4.
- 49.7 The Council shall to the extent practicable seek the views of the Provider where information is requested under FOIA or the Environmental Information Regulations 2004 which is reasonably likely to affect the commercial interest of the Provider and shall take into account the representations of the Provider in deciding on release or withholding of the information but this clause shall not fetter the discretion of the Council or its obligation to have regard to the public interest.

50 **Public contracts and public procurement**

50.1 The Provider shall on [each anniversary of the Commencement Date] provide to the Council the following information:

50.1.1 details of any Third Party Service;

50.1.2 the average total turnover of the Provider since its incorporation or (where it is more than 3 years since the Provider's incorporation) for the previous 3 years;

50.1.3 the proportion of that turnover attributable to Third Party Services;

50.1.4 the anticipated turnover of the Provider for the forthcoming year and the proportion of that turnover anticipated to be attributable to Third Party Services.

50.2 The Provider shall promptly notify the Council in the event that it becomes aware that its actual turnover is likely to differ from any information provided pursuant to clauses 50.1.3 and 50.1.4.

50.3 In the event that the proportion of the Provider's turnover attributable to or anticipated to be attributable to Third Party Services is 20% or more the Council shall be entitled to serve Notice on the Provider terminating this Contract.

50.4 The Provider shall comply with all applicable Procurement Requirements and shall establish and maintain a governance process for overseeing all procurement activity to ensure such compliance and evidence the same to the Council upon request.

50.5 Subject to clause 50.4, all procurement of works, equipment, goods and services by the Provider shall be based on value for money.

50.6 In accordance with the [Public Services (Social Value) Act 2012] the Provider shall consider how any proposed procurement activity might improve the economic, social and environmental well-being of the Borough and shall seek to secure the Strategic Objectives and in particular in relation to [ ] in the Borough.

**Part G – Liability and Insurance**

51 **Liability**

51.1 Subject to clause 51.4, the Provider shall be responsible for, and shall release and indemnify the Council on demand from and against all liability for Direct Losses arising from:

51.1.1 death or personal injury;

51.1.2 loss of or damage to property (including property belonging to the Council or for which it is responsible) [but excluding the land, buildings, plant, equipment and other assets which are the responsibility of the Provider to provide under this Contract]; and

51.1.3 third party actions, claims and/or demands other than those which are the subject of the indemnity in clause 51.2,

which may arise out of, or in consequence of:

- 51.1.4 the operation or maintenance of the leisure facilities; or
- 51.1.5 the performance or non-performance by the Provider of its obligations under this Contract; or
- 51.1.6 the presence on the Council's property of the Provider or a Provider Related Party or any person on or at any of the leisure facilities at the express or implied invitation of the Provider; or
- 51.1.7 the presence on the land or buildings forming part of the leisure facilities of the Provider or a Provider Related Party or any person on or at any of the leisure facilities at the express or implied invitation of the Provider.

51.2 Subject to clause 51.4, the Provider shall be responsible for, and shall release and indemnify the Council or any Council Related Party, on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in clause 51.1.3) brought against the Council or any Council Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Provider of its obligations under this Contract to the extent that there are no other remedies available to the Council under this Contract.

51.3 An indemnity by either party under any provision of this Contract shall be without limitation to any indemnity by that party under any other provision of this Contract.

51.4 The parties' total liability (including the indemnities set out in this clause 51) in each contract year to each other arising under or in connection with this Contract that arises from tort (negligence), breach of statutory duty or otherwise arising under or in connection with this Contract shall be limited to the fees paid under this Contract for that contract year.

## 52 **Insurance**

52.1 Subject to the provisions of clause 52.3 the Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all potential liabilities pursuant to this Contract which may be incurred by the Provider or the Council arising out of the Provider's performance of the Contract, including but not limited to the following:

52.1.1 public liability insurance cover for an amount of not less than £10 million (or such other sum as may be reasonably required by the Council from time to time) in respect of any one claim or series of claims arising from any one cause in a single calendar year;

52.1.2 contents insurance cover for an amount of not less than £10 million (or such other sum as may be reasonably required by the Council from time to time) in respect of any one claim or series of claims arising from any one cause in a single calendar year; and

52.1.3 employer's liability insurance cover for an amount of not less than £10 million (or such other sum as may be reasonably required by the Council from time to

time) for claims arising from any one claim or series of claims arising from any one cause in a single calendar year.

52.2 The Provider shall supply to the Council forthwith and upon each renewal date of any relevant policy referred to in clause 52.1 a certificate from its insurers or brokers demonstrating that appropriate cover is in place.

52.3 If the Provider fails to take out and maintain the insurances required by this Contract or the Parties agree that the Council shall effect any of the insurances required by the terms of this Contract whether or not in joint names then the Council may itself insure against any risk and to a level which in its reasonable opinion is required by the terms of this Contract and a sum or sums equivalent to the amount paid or payable by the Council in respect of premiums therefore may be deducted by the Council from any monies due or to become due to the Provider under this Contract or such amount may be recoverable by the Council from the Provider as a debt.

## **Part H – Dispute, Disruption and Termination**

### **53 Termination**

53.1 Subject to the provisions of clause 11 the Council may terminate the Contract by Notice in writing with immediate effect if (other than by the act or omission of the Council):

53.1.1 the Provider ceases or threatens to cease to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets that in the reasonable opinion of the Council would adversely affect the delivery of the Services; or

53.1.2 the Provider fails to obtain or retain any consent, licence or permission (or such consent, licence or permission is varied, restricted or suspended) and the Council reasonably considers that the effect thereof will or may be to have a material adverse effect on the provision of the Services; or

53.1.3 the Provider passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

53.1.4 where the Provider is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

53.1.5 any similar event occurs under the law of any other jurisdiction within the United Kingdom.

53.2 The Provider shall notify the Council immediately if any of the events listed in clause 53.1 occur.

54 **Voluntary Termination**

54.1 The Council may terminate this Contract at any time on or before the end of the Term by complying with its obligations under clause 54.2.

54.2 If the Council wishes to terminate this Contract under this clause 54, it must give written Notice to the Provider stating:

54.2.1 that the Council is terminating this Contract under this clause 54;

54.2.2 that this Contract will terminate on the date specified in the notice, which must be a minimum of [12 months] after the date of receipt of the notice; and

54.2.3 whether the Council has chosen to exercise its option under clause 54.3.

54.3 On termination, the Council shall have the option to require the Provider to transfer its rights, title and interest in and to the Assets to the Council or as directed by the Council.

54.4 This Contract will terminate on the date specified in the notice issued in accordance with clause 54.2.

55 **Termination on Provider Default**

55.1 The Council may terminate the Contract by written Notice to the Provider with immediate effect if the Provider commits a Material Breach and if:

55.1.1 the Provider has not remedied the Material Breach to the satisfaction of the Council within the timeframe specified by the Council in a written Notice specifying the Material Breach and requesting it to be remedied (which timeframe shall be determined by the Council acting reasonably); or

55.1.2 the Material Breach is not capable of remedy.

56 **Termination on Council Default**

56.1 If there is:

56.1.1 A failure by the Council to make payment(s) of an amount of money exceeding (in aggregate) three months' of the [management fees] (from time to time) that are due and payable by the Council under this Contract within 20 Business Days of service of a formal written demand by the Provider, where the amount fell due and payable one (or more) months prior to the date of service of the written demand; or

56.1.2 a breach by the Council of its obligations under this Contract which substantially frustrates or renders it impossible for the Provider to perform its obligations under this Contract for a continuous period of three months,

and the Provider wishes to terminate this Contract, the Provider must serve a termination notice on the Council within 30 Business Days of becoming aware of the events in clause 56.1.

56.2 The termination notice must specify the type of default under clause 56.1 which has occurred entitling the Provider to terminate.

56.3 This Contract will terminate on the day falling 30 Business Days after the date the Council receives the termination notice, unless the Council rectifies the default within 20 Business Days of receipt of the notice.

## 57 **Consequences of termination**

57.1 If the Council terminates this Contract or terminates the provision of any part of this Contract under clause 50.3 (Termination for Teckal compliance) or clause 53 (Termination for Insolvency) or clause 55 Termination on Provider Default), the Council shall:

57.1.1 be entitled to employ and pay a New Provider to provide and complete the provision of the Services or any part thereof; and

57.1.2 be entitled to recover from the Provider the costs incurred in making those other arrangements including any additional expenditure incurred by the Council.

57.2 Where this Contract is terminated under clause 50.3 or clause 53 or clause 55, no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making alternative arrangements.

57.3 On termination of this Contract pursuant to clause 54.1 (Voluntary Termination), 55.1 (Termination on Provider Default) or 56.1 (Termination on Council Default) the Council shall pay the Provider an amount equal to the aggregate of (without double counting):

57.3.1 the breakage costs of any contracts which the Company cannot novate to the Council; and

57.3.2 the reasonable costs involved in winding up the Company.

57.4 Termination of this Contract for any reason (including expiry) shall not affect any rights or liabilities of either Party that have accrued prior to the date of termination.

57.5 The clauses of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## 58 **Suspension**

If the Secretary of State exercises his functions under sections 15(6) and/or 15(5) of the Local Government Act 1999 (to the extent either of these affects the Council's rights under this Agreement) then until such time as the Secretary of State (or his nominee) ceases to exercise the relevant statutory function of the Council or withdraws any direction made to it (as the case may be)(the **Suspension Period**) neither Party shall seek to vary or terminate this Contract.

## 59 **Handover**

59.1 The Provider shall not charge the Council or any New Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this clause 59.

- 59.2 At the end of the Contract Period (and howsoever arising) the Provider shall forthwith deliver to the Council upon request all the Council's property (including but not limited to materials, documents, information) relating to the Contract and the financial information maintained pursuant to clause 45.
- 59.3 The Provider shall use all reasonable endeavours to transfer all data relating to the Services (including requests for Services to be undertaken which have not been completed) in accordance with any format reasonably specified by the Council or a New Provider.
- 59.4 The Provider shall secure pension protection for each LGPS Employee in accordance with the provisions of the Best Value Authorities Staff Transfers (Pensions) Direction 2007. Save on expiry or termination of this Contract, if the employment of any LGPS Employee transfers to another employer (by way of a transfer under TUPE) the Provider shall consult with and inform those LGPS Employees of the pension provisions relating to that transfer.
- 59.5 At the end of the Contract Period (howsoever arising) and for a period of six months after the Contract Period the Provider shall co-operate free of charge with the Council and any New Provider appointed by the Council to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

## 60 **Disruption**

- 60.1 The Provider shall give the maximum possible advance warning of prospective industrial action by the Staff or other industrial disputes likely to adversely affect the performance of this Contract.
- 60.2 In the event that:
- 60.2.1 industrial action is taken by any Staff such as that the provision of the Services are, in the reasonable opinion of the Council, materially disrupted; or
- 60.2.2 action is taken by the Provider so as to prevent its Staff from providing the Services,

the Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Provider for any difference in resultant cost or terminate this Contract by Notice in writing to the Provider.

- 60.3 In the event that industrial action is taken by Staff of the Council the Provider shall make every attempt to ensure that its Staff continue to provide the Services.

## 61 **Dispute**

- 61.1 If there is a dispute between either Party concerning the interpretation or operation of this Contract then either Party may notify the other that it wishes the dispute to be referred to a meeting of the Contract Manager and the Provider's Representative to resolve, negotiating on the basis of good faith.
- 61.2 If after [5] Business Days (or such longer period as both of the Parties may agree) of the date of the Notice referred to in clause 61.1 the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of a

[Strategic Director] of the Council and the [Managing Director] of the Provider, to resolve, negotiating on the basis of good faith.

61.3 If after ten (10) Business Days (or such longer period as both of the Parties may agree) of the date of the Notice referred to in clause 61.2 the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to the Council Chief Executive to resolve the issue. The Council Chief Executive may determine that the Parties shall attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure 2014 (the **Model Procedure**) or such later edition as may be in force from time to time. The Council Chief Executive's determination or referral shall be final.

61.4 The use of the dispute resolution procedures set out in this clause 61 shall not delay or take precedence over the provisions for termination set out in clauses 53 and/or 55.

## **Part I – General**

### **62 Law and jurisdiction**

Subject to clause 61 the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract and the legal relationship established by this Contract (including non-contractual disputes and claims).

### **63 Change in law**

The Provider shall take all steps necessary to ensure that the Services are performed in accordance with the terms of this Contract following any Change in Law.

#### **63.1 Qualifying Change in Law**

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

63.1.1 any necessary change in the Services;

63.1.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

63.1.3 any impact on the Approved Business Plan and the steps that the Provider has taken to mitigate any such impact,

in each case giving in full detail the procedure for implementing the change in the Services.

63.2 Both parties shall act reasonably in agreeing changes to the [Services][and/or the Fee] in response to a Qualifying Change in Law.

Schedule 1

Contract Manager and Provider's Representative

<b>Council Representative</b>	<b>Provider Representative</b>
Name:	Name:
Position:	Position:
Telephone:	Telephone:
Email:	Email:

**Schedule 2**  
**Service Specifications**

**Schedule 3**

**KPIs**

**[Max to advise on KPIs or other Performance management aspects]**

**Schedule 4**

**Council SLA**

**[Front end contract to be produced by T&H. Individual service specifications to be prepared by the Council]**

## Schedule 5

### Variation Notice

<b>Ref No:</b>			<b>Date Raised</b>		<b>Date required</b>	
<b>Version No:</b>						

<b>Originator – name</b>	<b>Location</b>
<b>Email address</b>	<b>Tel. Number</b>

<b>Contact – name</b>	<b>Location</b>
<b>Email address</b>	<b>Tel. Number</b>

<b>High Level Description</b>	
-------------------------------	--

<b>Describe the request</b>	<i>Describe the proposal as clearly as possible, include critical dates or desired implementation timeframe, the reasons for the change and implications if the change is not made.</i>

<b>Change Analysis</b>	
<b>Potential Services affected and impact</b>	
<b>Details of any amendment required to Contract (if applicable)</b>	
<b>Details of any cost savings/increases (if applicable)</b>	
<b>Regulatory approvals required (if applicable)</b>	

### Authority to proceed

<b>Authorised by:</b>	
<b>Contract Manager (on behalf of North Warwickshire Borough Council)</b>	

<b>Authorised by:</b>	
<b>Provider's Representative (on behalf of [LATCo Limited])</b>	

**Schedule 6**

**Records Management Policy**

**[Council to confirm]**

**Schedule 7**

**Assets**

**[Asset register]**

## Schedule 8

### Strategic Objectives of the Provider

- 1 To provide residents with great value leisure service provision and choices that meet and, where possible, exceed the needs and expectations of customers and the community
- 2 To provide a service that will adapt to the changing needs of the community and the wider social, economic, local, national and global environment
- 3 To ensure the company remains responsive to the Borough Council and its communities through regular engagement and collaborative work
- 4 To provide positive leisure experiences for children and young people and pathways to enable them to be active through life
- 5 To increase opportunities for ageing populations to be physically, mentally and socially active as they grow older
- 6 To find ways to promote an inclusive and accessible leisure environment
- 7 To provide services that enable people to effectively improve their physical, social and mental health and wellbeing and enable people to better manage their health
- 8 To develop opportunities for our communities to participate in a wide range of active environments
- 9 To ensure that the facilities are maintained to an optimal standard, including through the management of health and safety and staff knowledge and training
- 10 To ensure that services operate commercially, are well marketed and financially viable

**Schedule 9**

**Council Contracts**

**[insert contracts to be novated. Council to consider contracts and contact suppliers.]**

**Schedule 10**

**Fees**

## Schedule 11

### Responsibility for Repairs, Maintenance and Replacement

Refer to the Service Specification including (without limitation) paragraph 4 Lifecycle Replacement Responsibility Matrix as set out in Appendix 6 of the Service Specification.

## Schedule 12

### Utilities Benchmarking

#### Part 1 – Definitions

<b>"Actual Utility Cost"</b>	means, the actual cost of the Benchmarked Utilities actually consumed or used at each Facility using the Target Consumption Level for the relevant Facility
<b>"Base Utility Cost"</b>	means the cost of the Benchmarked Utilities projected to be consumed or used at each Facility and included within Table 1 of this Schedule, as may be rebased at each Cost Benchmarking Date
<b>"Benchmarked Utilities"</b>	the provision of gas and electricity at the —Facilities and Benchmarked Utility shall be construed accordingly
<b>"Cost Benchmarking Date"</b>	Means the date which is two (2) years after the Commencement Date and thereafter on each second (2 <sup>nd</sup> ) anniversary of the last Cost Benchmarking Date or, if earlier, the Termination Date or the Expiry Date
<b>"Cost Benchmarking Period"</b>	means the period between successive Cost Benchmarking Dates
<b>"Cost Benchmarking Procedure"</b>	means the procedure to establish the Cost Figure as set out and described in Part 2 of this Schedule
<b>"Cost Benchmarking Proposal"</b>	means the proposal produced pursuant to paragraph 1.4 of this Schedule

<b>"Cost Figure"</b>	<p>means:</p> <p>A – B</p> <p>where:</p> <p>A = the Actual Utility Cost of the Benchmarked Utilities at the Target Consumption Levels (or the actual consumption levels, if lower) since the last Cost Benchmarking Date and</p> <p>B = for the first Cost Benchmarking Procedure, the Base Utility Cost at the Target Consumption Levels and for each Cost Benchmarking Procedure thereafter, the updated Base Utility Cost at the Target Consumption Levels (or the actual consumption levels, if lower) agreed or determined at the previous Cost Benchmarking Procedure</p> <p>provided that the Cost Figure in respect of each Benchmarked Utility shall be deemed £0 for any value between 0 - 5% (whether positive or negative) above or below the value of B. For any value above +5% or below -5% the Cost Figure shall ignore the first 0 – 5% (whether positive or negative).</p>
<b>CPI</b>	<p>the index published in Table 1 of the monthly Statistical Bulletin "Consumer price indices" published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with Clause 61 (Dispute) of this Agreement</p>
<b>"Requesting Party"</b>	<p>has the meaning given to it in paragraph 1.4 of Part 2</p>
<b>"Target Consumption Level"</b>	<p>means the target consumption levels of Benchmarked Utilities at the as shown in Table 1 of this Schedule 12;</p>

## **Part 2 – Utilities Tariff Benchmarking**

## 1 Utility Tariff Benchmarking

- 1.1 In respect of Benchmarked Utilities, a Cost Benchmarking Procedure may be carried out to determine the Cost Figure in accordance with this Schedule on each Cost Benchmarking Date.
- 1.2 If either party wishes to submit a Benchmarked Utility to a Cost Benchmarking Procedure it must issue a notice in writing to that effect to the other party no later than ten (10) Business Days before a Cost Benchmarking Date.
- 1.3 [If, in between Cost Benchmarking Dates, either party believes that extraordinary fluctuations in the utility market have resulted in the requirement for a Cost Benchmarking Procedure, it may issue a notice in writing to that effect to the other party. Both parties must meet (but with no obligation to act) within ten (10) Business Days of the date of the notice to discuss the extraordinary utility market fluctuations and the possibility of agreeing a Cost Benchmarking Procedure away from the Cost Benchmarking Date at each party's discretion. For the avoidance of doubt, the Cost Benchmarking Procedure will not take place other than in accordance with this paragraph 1 unless both parties are not in written agreement that it should do so.]
- 1.4 Within two (2) months of the Cost Benchmarking Date, the party requesting the Cost Benchmarking Procedure (the "**Requesting Party**") shall carry out at its own cost a benchmarking procedure with a view to establishing the information set out in paragraph 1.5 and the Cost Figure and shall by the end of the same two (2) month period, deliver to the other party (the "**Receiving Party**") its proposals for the Cost Figure (the "**Cost Benchmarking Proposal**").
- 1.5 The Cost Benchmarking Proposal shall be in a report containing agreed information on a per Facility basis in order for the parties to establish the Cost Figure. This shall include (without exclusion) Base Utility Cost (index linked), Actual Utility Cost for the relevant period and supporting evidence including:
- 1.5.1 invoices paid;
  - 1.5.2 efficiency steps taken by the Provider;
  - 1.5.3 tendering for Benchmarked Utilities;
  - 1.5.4 details of tariff changes of a number (to be agreed between the parties acting reasonably) of natural gas and electricity suppliers; and
  - 1.5.5 any other evidence reasonably required by the Council in order to inform any changes to the Fees.
- 1.6 Following delivery of the Cost Benchmarking Proposal the parties shall meet within one (1) month to discuss the Cost Benchmarking Proposal and to agree the Cost Figure taking into account:
- 1.6.1 Any above CPI change relating to price movement;
  - 1.6.2 Utility prices paid by the Authority; and

- 1.6.3 Actual consumption levels at the Facilities in comparison to the Target Consumption Levels.
- 1.7 For the avoidance of doubt, the impact of changes to the unit cost of the Benchmarked Utilities only shall be considered by the parties and not consumption levels. The consumption levels applied to such unit costs will be the actual consumption levels up to but no greater than the relevant Target Consumption Levels. For the avoidance of doubt, subject to the other terms of this Agreement, where the Benchmarked Utility consumption level is above the relevant Target Consumption Level, any cost associated with such excess shall be met by the Provider.
- 1.8 When the Cost Figure is agreed or determined pursuant to the disputes procedure set out in clause 61, the Fee shall be adjusted by the relevant portion (if any) of the Cost Figure and such adjustment shall be effective from the relevant Cost Benchmarking Date, and, as appropriate, backdated to such date. For the avoidance of doubt, the Annual Payment:
- 1.8.1 shall be increased where the Cost Figure is positive; or
- 1.8.2 shall be decreased where the Cost Figure is negative.
- 1.9 If the Council's Benchmarked Utilities supplier is found to be cheaper then the Council may require the Provider:
- 1.9.1 (subject to existing contractual commitments and Procurement Requirements) to use the Council's supplier; or
- 1.9.2 (subject to existing contractual commitments) to competitively tender its suppliers of Benchmarked Utilities in accordance with Procurement Requirements.
- 2 The following Table 1 shall apply for each relevant year of the Contract Period for the Facilities.

**Table 1 - Target Consumption Levels**

Benchmarked Utility	Facility	Target Consumption Level Per Annum	Unit of Measurement	Base Benchmarking Utility Cost Per Unit (£)*	Total Base Utility Cost at Target Consumption Level (£)

<b>Benchmarked Utility</b>	<b>Facility</b>	<b>Target Consumption Level Per Annum</b>	<b>Unit of Measurement</b>	<b>Base Benchmarking Utility Cost Per Unit (£)*</b>	<b>Total Base Utility Cost at Target Consumption Level (£)</b>

## Schedule 13

### Deficit Outperformance

1 This Schedule shall be applied to calculate any outperformance of the Provider in relation to the Financial Model and how the parties shall account for such outperformance between them.

2 Within three (3) months of the end of each Contract Year following the Commencement Date the Provider shall provide to the Council a calculation of the **Deficit Outperformance** for the previous Contract Year. Subject to the calculation being audited by the Provider's auditors if an audited calculation cannot be provided within the required timescale. The calculation shall be in the form of a statement and certificate signed by the Provider's auditors or another registered auditor (the "**Deficit Outperformance Statement**") confirming the figures for Income and Expenditure and presented in the same format as the Provider's Financial Model and setting out details of any Operating Surplus.

3 The Deficit Outperformance for each Contract Year, as set out in each Deficit Outperformance Statement, shall be calculated in accordance with the formula:

$$\mathbf{DO = I - E}$$

DO means the Deficit Outperformance for the relevant Contract Year

I means Income

E means Expenditure

**Expenditure** means the amount of direct costs and expenditure actually paid (or incurred but not paid) by the Provider during the relevant Contract Year in respect of the Services and any Third Party Services;

**Income** means the actual operating income of the Provider from all sources in the operation of the Facilities (for the avoidance of doubt including any Fees actually received by the Contractor in respect of the Services or any Third Party Services in respect of the relevant Contract Year) but excluding any sums received in respect of a previous Contract Year;

4 Where the Deficit Outperformance Statement shows a positive Deficit Outperformance, such figure shall be divided between the parties according to the following table.

Provider's share of the Operating Surplus	Authority's share of the Operating Surplus
50%	50%

5 Any dispute between the parties regarding the Deficit Outperformance Statement shall be dealt with in accordance with the Disputes procedure set out in clause 61.

6 Following determination of the Deficit Outperformance, the Council's share of any Deficit Outperformance shall be used at the discretion of the Council.

- 7 The Provider shall pay the Council's share of the Deficit Outperformance to the Council within thirty (30) Business Days of agreement or determination.

IN WITNESS of which this Contract has been duly executed by the Parties.

**[Note: please provide the appropriate execution clauses]**

**On behalf of the Council**

executed as a deed by affixing **THE COMMON SEAL of NORTH WARWICKSHIRE BOROUGH COUNCIL** )

) *[Common seal of the Council]*

in the presence of )

[Authorised signatory]

[Authorised signatory]

**On behalf of the Provider:**

executed as a deed by )  
**North Warwickshire Leisure Limited** )  
acting by: ..... )  
a director in the presence of:

.....

Director

Witness signature:.....

Name:.....

Address:.....

.....



**dated**

**2023**

**North Warwickshire Borough Council**

and

**North Warwickshire Leisure Limited**

**Member Agreement**

in respect of North Warwickshire Leisure Limited

Trowers & Hamlin LLP  
3 Bunhill Row  
London  
EC1Y 8YZ  
t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001  
[www.trowers.com](http://www.trowers.com)

**trowers & hamlin**

## Contents

1	Definitions and Interpretation	1
2	Business	3
3	Conduct of the Company's Affairs	4
4	Covenants	5
5	Termination	6
6	Monitoring and Reporting	6
7	Confidentiality	7
8	[Delegated Authority	8
9	No Partnership	9
10	Contracts (Rights of Third Parties) Act 1999	9
11	Waiver	9
12	Variation	9
13	Invalidity	9
14	Entire Agreement	9
15	Status of this Agreement	10
16	Consents	10
17	Communications	10
18	Counterparts	11
19	Governing Law and Jurisdiction	11
	Schedule 1 - Council Consent Matters	13
	Schedule 2 - First Business Plan	16
	Schedule 3 - Company Covenants	17

# Member Agreement

dated 2023

## Parties

- (1) **North Warwickshire Borough Council** of Council House, South St, Atherstone CV9 1DE (the **Council**); and
- (2) **North Warwickshire Leisure Limited** (company number [REDACTED]) whose registered office is at [Council House, South St, Atherstone CV9 1DE ] (the **Company**).

## Introduction

- (A) The Company was incorporated in England and Wales as a private company limited by guarantee on [REDACTED] under the Companies Act 2006.
- (B) The Company has been incorporated by the Council pursuant to the general power of competence in the Localism Act 2011 and all other powers thereto enabling.
- (C) This Agreement sets out the terms upon which the Council will participate in the Company as its sole member.

## Agreed Terms

### 1 Definitions and Interpretation

1.1 In this Agreement:

**Articles** means the articles of association of the Company;

**Business** means the business of the Company as set out in clause 2;

**Business Day** means a day (other than a Saturday, Sunday or a day upon which the Council is not open for ordinary business) on which the banks in the City of London are open for retail business;

**Business Plan** means the Company's plan for delivery of the Business as set out in Schedule 2 as updated or amended in accordance with clause **Error! Reference source not found.**;

**Council Consent** means consent of the Council which is required for the Council Consent Matters in accordance with clause 3.7;

**Council Consent Matters** means those matters listed in Schedule 1;

**Council Representative** has the meaning set out in clause 3.8;

**Delegations** has the meaning given to it in clause 8.1;

**Director** means a director of the Company;

**Environmental Information Regulations** means the Environmental Information Regulations 2004;

**Finance Documents** means the funding agreement (if any) which may be entered into by the Council and the Company relating to the provision of funding for the Business from the Council;

**Financial Model** means the financial model set out in the Business Plan, as amended from time to time with Council Consent;

**FOIA** means the Freedom of Information Act 2000;

**Information** has the meaning given to it under section 84 of the FOIA;

**Policies** mean the Remuneration and Expenses Policy and [REDACTED];

**[DN: are there any other key policies (e.g. management, procurement) which the Council expects the Company to have from inception which we can include here?]**  
**Yes, need to list!!**

**Remuneration and Expenses Policy** means a policy adopted by the Company (following receipt of Council Consent) and amended from time to time in relation to the remuneration (including salary, bonus, the provision of benefits-in-kind, reimbursement of expenses or otherwise) of employees (if any), officers and consultants;

**[DN: please note that it is usual for a wholly owned subsidiary to adopt a Council approved policy in relation to remuneration and expenses and to require Council Consent to any changes to such policy.]** **Agreed**

**Request for Information** has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environmental Information Regulations; and

**United Kingdom** means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

1.2 A reference to a statutory provision includes a reference to:

1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement);

1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement); and

1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate);

- 1.3.2 a statutory or regulatory body shall include its successors and any substituted body;
  - 1.3.3 an individual includes, where appropriate, his personal representatives;
  - 1.3.4 the singular includes the plural and vice versa; and
  - 1.3.5 one gender includes all genders.
- 1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.
- 1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.
- 1.6 In construing this Agreement, the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 1.7 Where a provision of this Agreement imposes an obligation, cost or liability on the Parties, that obligation, cost or liability shall be construed as being against those Parties jointly and severally, and where a provision of this Agreement gives a claim, benefit or right to the Parties, that claim, benefit or right attaches to those Parties jointly.
- 1.8 Where a consent and/or permission is required under this Agreement from one party to the other that consent and/or permission shall not be unreasonably withheld or delayed.

## 2 **Business**

- 2.1 The Business of the Company shall be to:
- 2.1.1 Provide sustainable, accessible and high-quality leisure, sports and cultural facilities and services.
  - 2.1.2 Liaise and co-operate with interested groups within the community to develop and deliver these services.
  - 2.1.3 Promote and enter into partnerships or arrangements to improve or extend the facilities and services offered.
  - 2.1.4 Explore avenues of funding, finance and resources for such services as well as other revenue generating activities and measures to maximise the viability and sustainability of the company.
  - 2.1.5 Increase and improve physical and mental health and wellbeing through a range of outcomes, including reduced obesity, reduced anti-social behaviour and narrowing the health inequality gap.
  - 2.1.6 Take advantage of viable opportunities to increase jobs, strengthening the local economy and enable children, young people and adults to learn and be ready to work.

- 2.2 The first Business Plan of the Company is set out in Schedule 2 to this Agreement. The Company shall not carry out any business activities without this first being approved by the Council. The Company shall send a revised version of the then current Business Plan to the Council [by the end of November with regards to the following financial year (or such longer period as the Council shall determine in its sole discretion)] and invite the Council to provide comments on the proposed Business Plan or to provide Council Consent. The Council will respond to the Company on the proposed Business Plan as soon as reasonably practicable (and in any event by the end of February of the financial year) following receipt. Subject to the receipt of Council Consent before the end of the relevant accounting period, the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Council Consent.
- 2.3 Each Business Plan shall be substantially in the format of the first Business Plan (unless otherwise stipulated by the Council).
- 2.4 Notwithstanding any other provision of this clause 2.4, following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan for the relevant Accounting Period[s]. For any period when a proposed Business Plan presented under clause **Error! Reference source not found.** has not been approved and adopted by the Directors in accordance with this Agreement the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 3 Conduct of the Company's Affairs**
- 3.1 Meetings of the Directors shall be held no fewer than four times in every year and at not longer than three monthly intervals.
- 3.2 With the exception of those matters requiring Council Consent pursuant to clause 3.7, the management of the Company shall be vested in the Directors.
- 3.3 The Directors may appoint a [managing director] on such terms as they may think fit, who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to them by the Directors. The Directors may only remove such [managing director] with Council Consent, and appoint a replacement on such terms as they may think fit providing that no such appointment shall be made without Council Consent.
- 3.4 Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to (a) the Business Plan, (b) those matters requiring Council Consent pursuant to clause 3.7 and (c) any other provisions of this Agreement or any other agreement entered into between the Council and the Company. In particular, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and powers) that, at all times during the term of this Agreement, the Company shall:

- 3.4.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with both the Business Plan and good business practices; and
- 3.4.2 transact all its business on arm's length terms, save where the Council has consented to the Company acting otherwise.
- 3.5 Any surpluses generated from providing services to both the Council and any third parties shall be applied solely in promoting the Company's objects.
- 3.6 If the Company requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, the Company will obtain and maintain the same in full force and effect.
- 3.7 The Company shall ensure that none of the Council Consent Matters shall be carried out without the prior consent in writing of the Council.
- 3.8 The Council shall authorise a Council officer (the **Council Representative**) to notify the Company of the Council's decision on any matter requiring Council Consent. Notification in writing by the Council Representative to the Company shall be conclusive of a decision of the Council on a Council Consent Matter.
- 3.9 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company with any designated officers of the Council at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a member of the Company. Any information secured as a consequence of such discussions and examinations shall be kept confidential by the Council in accordance with the terms of clause 7.
- 3.10 The Company agrees with the Council that it will:
- 3.10.1 maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company;
  - 3.10.2 report to the Council three times per year in May, October and January (or such periods as the Council may require) and at all general meetings on:
    - (a) the Company's progress on the objectives contained in the Business Plan; and
    - (b) any matters which may adversely impact on the Company's performance against the same;
  - 3.10.3 otherwise keep the Council informed of the progress of the Company's business and affairs and in particular will ensure that the Council is given such information and such access to the officers, employees and premises of the Company as it may reasonably require, in accordance with the provisions of clause 6.

3.11 The Company shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

#### 4 **Covenants**

The Company covenants to the Council in as set out in Schedule 3.

#### 5 **Termination**

5.1 This Agreement shall terminate upon:

5.1.1 the written agreement of the Council and the Company; or

5.1.2 when a resolution is passed by the Council or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors and/or [the parent] in accordance with the articles;

5.1.3 the Company ceasing to carry on its business; or

5.1.4 the Council giving notice to the Company following the Company being convicted of a criminal offence; or

5.1.5 the Council as sole member of the Company giving not less than [90] days written notice to the Company of the date on which all or part of this Agreement will terminate,

***[DN: a 90 day termination notice period is common in this type of agreement but please confirm that this suits the Council?]***

but shall cease and determine in respect of the Council (without prejudice to the Council's accrued rights, obligations or liabilities) upon the cessation of the Council's membership of the Company.

#### 6 **Monitoring and Reporting**

6.1 The Company shall (so far as practicable and subject always to meeting any obligations under company law) align its accounting practices with the Council.

6.2 The Company shall, within 5 Business Days of a written request by the Council to do so, provide [the Council] with some or all of the following information:

***[DN: to be aligned with the Council's preference for how the reporting arrangements will work.]***

6.2.1 monthly financial reports including management accounts, profit and loss, balance sheet, cash flow and forecast;

6.2.2 unaudited accounts within one month of the end of the Financial Year;

6.2.3 annual audited accounts three months after the end of that Financial Year;

6.2.4 copies of Board meeting minutes;

6.2.5 explanations and data (in the format specified by the Council) needed for its own accounting purposes and to enable production of group accounts; and

6.2.6 any other information reasonably required by the Council.

6.3 The Company must maintain complete and accurate accounting and other financial records giving a true and fair view of the business and affairs of the Company.

6.4 The Council and its authorised representative(s) shall have the right, on giving to the Company reasonable notice, and during normal business hours, to inspect the accounts, books and all financial and all other records of the Company.

6.5 The accounting reference date for the Company shall be aligned with the Council's accounting reference date in each year.

## 7 **Confidentiality**

7.1 The Council and the Company mutually undertake that they shall not at any time during this agreement disclose to any person any confidential information concerning (as appropriate) the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 7.2.

7.2 The Council and the Company may disclose each other's confidential information:

7.2.1 to their employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. The Council and the Company shall ensure that their employees, officers, representatives or advisers to whom they disclose the other party's confidential information comply with this clause 7; and

7.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.3 The Council and the Company acknowledge that each is subject to the requirements of the FOIA and the Environmental Information Regulations and shall each facilitate the other's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 7.4 and 7.7.

7.4 If either the Council or the Company (each a **Recipient**, as the case may be) receives a Request for Information in relation to Information that the other is holding and which the Recipient does not hold itself, the Recipient shall refer to the other party such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the other party shall:

7.4.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and

7.4.2 provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for

compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

7.5 Following notification under clause 7.4, and up until such time as the other party has provided the Recipient with all the Information specified in clause 7.4, the other party may make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:

7.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

7.5.2 whether Information is to be disclosed in response to a Request for Information; and

7.5.3 in no event shall the other party respond directly to a Request for Information unless the Request for Information is addressed to it.

7.6 The Council and the Company acknowledge that (notwithstanding the provisions of clause 7.1) the Recipient may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other party:

7.6.1 in certain circumstances without consulting with the other party; or

7.6.2 following consultation with the other party and having taken their views into account.

7.7 The Council and the Company shall each transfer to the other any Request for Information which it receives but is addressed to the other as soon as practicable and in any event within three Business Days of receiving it.

7.8 The Council and the Company acknowledge that any lists provided which list or outline Confidential Information are of indicative value only and that a Recipient may nevertheless be obliged to disclose Confidential Information in accordance with clause 7.6

## 8 **[Delegated Authority]**

8.1 The Council has, at the date of this agreement, delegated authority to the [ ] authority for providing any Council Consent requested pursuant to this Agreement (the **Delegations**).

8.2 If and to the extent that the Delegations are withdrawn from the [ ] in relation to Council Consent Matters then the Council shall notify the Company of such alternative arrangements for the approval of Council Consent Matters.

***[DN: this is an important consideration for the Council, which we can discuss further. It is at the Council's discretion as to how it wishes to carry out its Member Role. There have been a range of different approaches to the Shareholder/ Member Role within local authority trading companies. These range from full delegation to a***

***single officer (often the Section 151 officer) through to the establishment of shareholder committee made up of a politically balanced number of Council Members. Please let us know how you wish to proceed with this?]***

9 **No Partnership**

Nothing in this Agreement gives rise to a partnership between the Council and the Company or constitutes one as the agent of the other.

10 **Contracts (Rights of Third Parties) Act 1999**

10.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

10.2 The Council and the Company may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

11 **Waiver**

11.1 The rights of each of the Council and the Company in respect of a breach of this Agreement shall not be affected by completing, by rescinding, or failing to rescind, this Agreement, or by failing to exercise, or delaying in exercising, a right or remedy, or by anything else, except a specific authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

11.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

11.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

12 **Variation**

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Council and the Company.

13 **Invalidity**

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Council and the Company agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

14 **Entire Agreement**

14.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Council and the Company (whether written or oral) relating to its subject matter and contains the entire agreement between the Council and the Company relating to its subject matter.



or to such other person, address, or email as the Company or the Council may specify by notice in writing to the other.

17.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

17.2.1 if delivered personally, when left at the address referred to in clause 17.1;

17.2.2 if sent by mail, other than airmail, two Business Days after posting it;

17.2.3 if sent by email, when sent provided there has been no communication by the recipient to the senders that the email has not been received,

17.2.4 provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

## 18 **Counterparts**

18.1 This Agreement may be executed in a number of counterparts and by the Council and the Company on different counterparts, but shall not be effective until each party has executed at least one counterpart.

18.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

## 19 **Governing Law and Jurisdiction**

19.1 This Agreement and the rights and obligations of the Council and the Company shall be governed by and construed in accordance with the laws of England.

19.2 The Council and the Company irrevocably submit to the exclusive jurisdiction of the courts of England in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject matter or formation (including non-contractual disputes or claims).

**In witness** whereof the parties have executed this Agreement as a deed.

The **Common Seal** of )  
**North Warwickshire Borough Council** )  
was hereunto )  
affixed in the presence of: )

.....  
Authorised Signatory

executed as a deed by )  
**North Warwickshire Leisure Limited** )  
acting by: )  
a director in the presence of: )

.....  
Director

Witness signature

Name

Address

## Schedule 1

### Council Consent Matters

***[DN: The Council should review these matters to ensure you are happy with the scope and consider whether there are any additional matters that require Council Consent.]***

The Company shall not, unless it has Council Consent do some or all of the following:

- 1 vary in any respect its articles of association including (without limitation) any rights of the member;
- 2 permit the admission of any person as a member of the Company other than the Council in accordance with the terms of this Agreement;
- 3 issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital;
- 4 make any borrowing other than under the Finance Documents;
- 5 adopt or amend its Business Plan;
- 6 pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent);
- 7 engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business;
- 8 form any subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not);
- 9 close down any business operation, or dispose of or dilute its interest in any of its subsidiaries for the time being, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan;
- 10 amalgamate or merge with any other company or business undertaking;
- 11 alter its name or registered office;
- 12 enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors whether or not any other person shall be party to such transaction or arrangement;
- 13 enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms;
- 14 create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part other than:
  - 14.1 pursuant to the Finance Documents;

- 14.2 liens arising in the ordinary course of business;
- 14.3 any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business;
- 15 change either:
- 15.1 its statutory auditors;
- 15.2 its financial year end;
- 16 make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom;
- 17 make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading);
- 18 give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan;
- 19 factor or assign any of its book debts;
- 20 establish or amend any bonus or other incentive scheme of any nature for directors, officers or employees;
- 21 establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family;
- 22 appoint (including setting terms of appointment), remove or dismiss any Director;
- 23 employ (including setting terms of employment) or dismiss the managing director;
- 24 agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer or consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) is in accordance with the Company's current Remuneration or Expenses Policy or Business Plan;
- 25 institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business or where the value of such claim is reasonably believed by the Company to be less than £[ ] ) instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan;

***[DN: the de minimis debt recovery claim threshold where proceedings can be settled without Council consent is for discussion – we usually see figures between***

**£25,000 – 50,000 though in the case of a leisure LATCo you may consider that debts of that size would be irregular.]**

26 make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan;

27 enter into any contract which would mean that the aggregate value of its current contracts exceeds by [10%] of the value set out in the current Business Plan;

**[DN: This provides for a 10% leeway in the business plan without council consent, some councils prefer a specified monetary value (e.g. £50,000). Please advise what approach you would like to take]**

28 adopt or amend the:

28.1 Financial Model; or

28.2 Policies.

**[DN: We assume that Council Consent will be required for amendments to all Company policies but please confirm?]**

**Schedule 2**  
**First Business Plan**

DRAFT

**Schedule 3  
Company Covenants**

The Company covenants with the Council as follows:

- 1 To comply with the Policies.
- 2 To appoint the Council's auditors as its statutory auditors and maintain the Council's financial year end as the Company's financial year end.

DRAFT



**North Warwickshire Leisure Limited**

**Articles of Association**

Trowers & Hamlins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ

t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001  
[www.trowers.com](http://www.trowers.com)

**trowers & hamlins**

Company number:

Private company limited by Guarantee

## Articles of association

of

## North Warwickshire Leisure Limited

---

### 1 Model articles not to apply

The model articles of association for private companies limited by guarantee contained in Schedule 2 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles shall not apply to the company. References to **the articles** shall be to the following articles of association as amended from time.

### 2 Defined terms

2.1 In the articles, unless the context requires otherwise:

**articles** means the company's articles of association;

**board** means the board of directors of the company from time to time;

**bankruptcy** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

**chair** has the meaning given in article 17;

**chair of the meeting** has the meaning given in article 033.3;

**Companies Acts** means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;

**Company Secretary** means the secretary of the company, if any, appointed in accordance with article 28 or any other person appointed to perform the duties of the secretary of the company, including a joint, assistant or deputy secretary;

**director** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**document** includes, unless otherwise specified, any document sent or supplied in electronic form;

**electronic form** has the meaning given in section 1168 of the Companies Act 2006;

**Interested Director** has the meaning given to it in article 20 and 'Interested Directors' shall be construed accordingly;

**member** has the meaning given in section 112 of the Companies Act 2006;

**ordinary resolution** has the meaning given in section 282 of the Companies Act 2006;

**Parent** means North Warwickshire Borough Council or any successor body thereto;

**participate**, in relation to a directors' meeting, has the meaning given in article 15;

**proxy notice** has the meaning given in article 39;

**special resolution** has the meaning given in section 283 of the Companies Act 2006;

**subsidiary** has the meaning given in section 1159 of the Companies Act 2006;

**writing** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise; and

**working day** means any day, which is not a Saturday, Sunday or a statutory or public holiday and 'working days' shall be construed accordingly.

2.2 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

### 3 **Liability of members**

The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for:

3.1 payment of the company's debts and liabilities contracted before he ceases to be a member;

3.2 payment of the costs, charges and expenses of winding up; and

3.3 adjustment of the rights of the contributories among themselves.

### 4 **Objects**

The company's objects are to:

4.1 Provide sustainable, accessible and high-quality leisure, sports and cultural facilities and services.

4.2 Liaise and co-operate with interested groups within the community to develop and deliver these services.

4.3 Promote and enter into partnerships or arrangements to improve or extend the facilities and services offered.

4.4 Explore avenues of funding, finance and resources for such services as well as other revenue generating activities and measures to maximise the viability and sustainability of the company.

4.5 Increase and improve physical and mental health and wellbeing through a range of outcomes, including reduced obesity, reduced anti-social behaviour and narrowing the health inequality gap.

4.6 Take advantage of viable opportunities to increase jobs, strengthening the local economy and enable children, young people and adults to learn and be ready to work.

## 5 Powers

The company has power to do anything lawful in pursuit of its objects.

## 6 Not for Profit

The company is not established or conducted for private gain, any profits or assets are used principally to further its objects.

## 7 No distribution to Members

7.1 The property and income of the company must be applied towards the promotion of its objects and cannot be used for the direct or indirect private benefit of members of the company. No part of such property and income may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to members of the company.

7.2 Nothing in this article 7 prevents any payment in good faith by the company:

7.2.1 of reasonable remuneration to any member who is an officer or employee of the company or to any officer or employee of a member who otherwise provides any services to the company **provided that** no sum shall be paid to a director who is an elected member of the Parent;

7.2.2 of interest on money lent by any member of the company at a reasonable and proper rate per annum on arm's length terms representing no more than a market rate of interest;

7.2.3 of reasonable rent or licence fee for premises demised or let by any member of the company on incorporation of the company or at any other time;

7.2.4 to any director of expenses under article 27 **provided that** no sum shall be paid to a director who is an elected member of the Parent; or

7.2.5 of any premium in respect of any such insurance as is permitted by article 49.

7.3 If upon the winding-up or dissolution of the company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed to the member of the company generally, but shall be given or transferred to:

7.3.1 a body or bodies having objects similar to the objects of the company and which shall prohibit the distribution of its or their income and property to an extent at least as great as is imposed on the company by virtue of this article 7;

7.3.2 North Warwickshire Borough Council to be held and used for similar purposes;

7.3.3 if and so far as effect cannot be given to the provisions of 7.3.1 and 7.3.2, then to body or bodies the objects of which are the promotion of charity and anything incidental or conducive thereto;

such body or bodies to be determined by the members of the company at or before the time of dissolution (whether or not a recipient body is a member of the company).

***[DN: we have included that any distribution on wind up shall be for the benefit of the Council or a body with compatible objects or if such a body cannot be found then a more general charitable entity.]***

## **8 Directors' general authority**

Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

## **9 Members' reserve power**

9.1 The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

9.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

## **10 Directors may delegate**

10.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:

10.1.1 to such person (including an officer or employee of the Parent but not an elected member of the Parent) or committee;

10.1.2 by such means (including by power of attorney);

10.1.3 to such an extent;

10.1.4 in relation to such matters or territories; and

10.1.5 on such terms and conditions,

as they think fit.

10.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated, with or without conditions or limitations as to how that further power of delegation may be exercised.

10.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

## **11 Committees**

11.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

11.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

11.3 For the avoidance of doubt the reference to committees in this Article 11 is to a committee formed of Directors or Officers of the Company and not to a Committee appointed by the Parent or Member under the Local Government Act 1972 or other statutory provision applying to local authorities.

## 12 **Directors to take decisions collectively**

12.1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 13.

12.2 If:

12.2.1 the company only has one director, and

12.2.2 no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

## 13 **Unanimous decisions**

13.1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

13.2 Such a decision may take the form of a resolution in writing, which may consist of several copies each signed by one or more eligible directors or to which the eligible directors have otherwise indicated agreement in writing.

13.3 References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

13.4 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

## 14 **Calling a directors' meeting**

14.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the Company Secretary (if any) to give such notice.

14.2 Notice of any directors' meeting must indicate:

14.2.1 its proposed date and time;

14.2.2 where it is to take place; and

14.2.3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

- 14.3 Notice of a directors' meeting must be given to each director, such notice must be in writing.
- 14.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting. A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to that director at any time before or after the date on which the meeting is held by notifying the company in writing to that effect. Where a director gives notice of waiver after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 15 **Participation in directors' meetings**
- 15.1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
- 15.1.1 the meeting has been called and takes place in accordance with the articles, and
- 15.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 15.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 15.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 16 **Quorum for directors' meetings**
- 16.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 16.2 The quorum for the transaction of business of the directors shall be [three (3)] unless the number of directors is fewer than [three] in which case the quorum shall be all directors of the company.
- 16.3 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to request that the Parent appoints such number of further directors as are required to make up the board.
- 17 **Chairing of directors' meetings**
- 17.1 The board shall appoint a director to chair their meetings.
- 17.2 The person so appointed for the time being is known as the chair.
- 17.3 The Parent may require the directors to terminate the chair's appointment at any time upon giving written notice to the company.
- 17.4 If the chair is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

## 18 **Casting vote**

18.1 If the numbers of votes for and against a proposal are equal, the chair or other director chairing the meeting has a casting vote.

18.2 But this does not apply if, in accordance with the articles, the chair or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

## 19 **Conflicts of interest**

19.1 If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, then provided that the director has disclosed his interest in such actual or proposed transaction or arrangement with the company in accordance with the Companies Acts or the provisions of these articles and received authorisation in accordance with articles 20.1 and 20.4, he may be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the company for any benefit which he derives under or in consequence of any such transaction or arrangement.

19.2 For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

19.3 Subject to 19.4, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chair whose ruling in relation to any director other than the chair is to be final and conclusive.

19.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chair, the question is to be decided by a decision of the directors at that meeting, for which purpose the chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

## 20 **Authorisation of directors' conflicts of interest**

20.1 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time, the directors shall have the power to authorise any relationship, situation or other matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the Companies Act 2006 (a **Conflict Situation**). Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

20.2 For the purposes of sections 175 and 180(4) of the Companies Act 2006 and for all other purposes, it is acknowledged that a director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been (or being party to an agreement or arrangement or understanding or circumstances under which he may become) an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise involved with or interested in, any of the Parent, the company, its subsidiaries, any of its members or any subsidiary of any of its members.

- 20.3 No director shall be in breach of the duty to avoid conflicts of interest in section 175 of the Companies Act 2006 as a result of, and no authorisation is required in respect of, any Conflict Situation envisaged by article 20.2 having arisen or existing in relation to him.
- 20.4 Authorisation of a matter under this article 20 shall be effective only if:
- 20.4.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;
  - 20.4.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other Interested Director (together, the **Interested Directors**); and
  - 20.4.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted and a record is kept which records the decision made and authorisation granted.
- 20.5 Unless otherwise determined by the directors (excluding the Interested Directors), any authorisation of a matter under this article 20 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 20.6 Any authorisation of a matter under this article 20 shall be on such terms and/or conditions as the directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the Interested Directors) pursuant to any such authorisation.
- 20.7 If a director receives or has received any information otherwise than by virtue of his position as a director of the company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 20.7.1 disclose any such information to the company, the directors or any other director or employee of the company; or
  - 20.7.2 use or apply any such information in connection with the performance of his duties as a director;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the Companies Act 2006, this article 20.7 shall apply only if such situation or relationship has been authorised by the directors under this article 20.
- 20.8 A director shall not, save as otherwise agreed by that director, be accountable to the company for any benefit which that director (or a person connected with him) derives from any matter authorised by the directors under this article and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

21 **Records of decisions to be kept**

21.1 The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the meeting, appointment and/or decision recorded (as applicable), of:

21.1.1 all proceedings at meetings of the directors and of committees of the board including the names of the directors present at each such meeting;

21.1.2 all appointments of officers made by the board; and

21.1.3 every unanimous or majority decision taken by the directors.

22 **Directors' discretion to make further rules**

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

23 **The board**

Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is **[three]**.

24 **Appointment and removal of directors**

24.1 Notwithstanding any other provision of these articles, the Parent may at any time and from time to time:

24.1.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); and/or

24.1.2 remove any director from office.

24.2 Every such appointment or removal shall be effected by notice in writing to the company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of the Parent.

25 **Termination of director's appointment**

A person shall be ineligible for appointment to the board and if already appointed ceases to be a director as soon as:

25.1 that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

25.2 that person has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated;

25.3 a bankruptcy order is made against that person;

- 25.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 25.5 a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- 25.6 notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms'
- 25.7 that person is an employee of any member of the company and ceases to be employed as such for any reason;
- 25.8 that person is a removed by the Parent by a notice in writing to the company; or
- 25.9 that person is or becomes a person disqualified from elected membership of a local authority.

26 **Directors' remuneration**

Directors may undertake any services for the company that the directors decide and be remunerated in accordance with the company's policy thereby provided that no sum shall be paid to a director who is an elected member of the Parent.

27 **Directors' expenses**

The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:

- 27.1 meetings of directors or committees of directors; or
- 27.2 general meetings;
- 27.3 separate meetings of the holders of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company **provided that** no sum shall be paid to a director who is an elected member of the Parent.

28 **Company secretary**

The directors may appoint a Company Secretary for such term, at such remuneration and upon such conditions as they think fit. Any Company Secretary may be removed or replaced by the directors.

29 **Applications for membership**

No person (other than the Parent) shall become a member of the company unless:

- 29.1 that person has completed an application for membership in a form approved by the Parent, and

29.2 the Parent has approved the application.

### 30 **Termination of membership**

30.1 A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.

30.2 Membership is not transferable.

30.3 A person's membership terminates when that person dies or ceases to exist.

### 31 **Attendance and speaking at general meetings**

31.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

31.2 A person is able to exercise the right to vote at a general meeting when:

31.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

31.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

31.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

31.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

31.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### 32 **Quorum for general meetings**

No business other than the appointment of the chair of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum. A duly appointed representative of the Parent shall constitute a quorum.

### 33 **Chairing general meetings**

33.1 If the directors have appointed a chair, the chair shall chair general meetings if present and willing to do so.

33.2 If the directors have not appointed a chair, or if the chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

33.2.1 the directors present, or

33.2.2 (if no directors are present), the meeting,

must appoint a director or member to chair the meeting, and the appointment of the chair of the meeting must be the first business of the meeting.

33.3 The person chairing a meeting in accordance with this article is referred to as "the chair of the meeting".

#### 34 **Attendance and speaking by directors and non-members**

34.1 Directors may attend and speak at general meetings, whether or not they are members.

34.2 The chair of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.

#### 35 **Adjournment**

35.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chair of the meeting must adjourn it.

35.2 The chair of the meeting may adjourn a general meeting at which a quorum is present if:

35.2.1 the meeting consents to an adjournment, or

35.2.2 it appears to the chair of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

35.3 The chair of the meeting must adjourn a general meeting if directed to do so by the meeting.

35.4 When adjourning a general meeting, the chair of the meeting must:

35.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

35.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

35.5 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given:

35.5.1 to the same persons to whom notice of the company's general meetings is required to be given; and

35.5.2 containing the same information which such notice is required to contain.

35.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

#### 36 **Voting: general**

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

37        **Errors and disputes**

37.1        No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

37.2        Any such objection must be referred to the chair of the meeting whose decision is final.

38        **Poll votes**

38.1        A poll on a resolution may be demanded:

38.1.1        in advance of the general meeting where it is to be put to the vote, or

38.1.2        at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

38.2        A poll may be demanded by:

38.2.1        the chair of the meeting;

38.2.2        the directors;

38.2.3        any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation.

38.3        A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made. Polls must be taken immediately and in such manner as the chair of the meeting directs.

39        **Content of proxy notices**

39.1        Proxies may only validly be appointed by a notice in writing (a **proxy notice**) which:

39.1.1        states the name and address of the member appointing the proxy;

39.1.2        identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

39.1.3        is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and

39.1.4        is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

39.2        The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

39.3        Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

39.4        Unless a proxy notice indicates otherwise, it must be treated as:

39.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

39.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

#### **40 Delivery of proxy notices**

40.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

40.2 An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

40.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

40.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

#### **41 Proxies and corporate representatives**

The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

#### **42 Amendments to resolutions**

42.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

42.1.1 notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chair of the meeting may determine), and

42.1.2 the proposed amendment does not, in the reasonable opinion of the chair of the meeting, materially alter the scope of the resolution.

42.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

42.2.1 the chair of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

42.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

42.3 If the chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chair's error does not invalidate the vote on that resolution.

#### 43 **Written resolutions and decisions of the Parent**

43.1 A proposed written resolution of the members of the company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).

43.2 If the Parent makes a decision which is required to be taken in a general meeting or by means of a written resolution, that decision shall be valid and effectual as if agreed by the company in general meeting. Any decision taken by the Parent pursuant to this article 43.2 shall be recorded in writing and delivered by the Parent to the company for entry in the company's minute book.

#### 44 **Means of communication to be used**

44.1 Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

44.2 Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

44.3 A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

44.4 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

44.4.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);

44.4.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;

44.4.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and

44.4.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

44.5 For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

44.6 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Companies Act 2006.

#### 45 **Company seals**

45.1 Any common seal may only be used by the authority of the directors.

45.2 The directors may decide by what means and in what form any common seal is to be used.

45.3 Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

45.4 For the purposes of this article, an authorised person is:

45.4.1 any director of the company;

45.4.2 the company secretary (if any); or

45.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

#### 46 **No right to inspect accounts and other records**

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

#### 47 **Provision for employees on cessation of business**

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

#### 48 **Indemnity**

48.1 The company may indemnify any relevant officer out of the assets of the company from and against any loss, liability or expense incurred by him or them in relation to the company (including any liability incurred in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)) provided that this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the Companies Act 2006. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as

permitted by the Companies Act 2006 and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled.

48.2 To the extent permitted by, and subject to the restrictions in, the Companies Act 2006 and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the Companies Act 2006, or to enable him to avoid incurring such expenditure.

48.3 Without prejudice to the provisions of article 49, the directors may exercise all the powers of the company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the company.

48.4 In these articles:

48.4.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate;

48.4.2 relevant officer means any current or former director, secretary or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)), other than any person (whether an officer or not) engaged by the company (or associated company) as an auditor, to the extent he acts as an auditor.

## 49 **Insurance**

49.1 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

49.2 In this article:

49.2.1 a "relevant director" means any director or former director of the company or an associated company;

49.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and

49.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

**Agenda Item No 13**

**Executive Board**

**13 February 2023**

**Report of the Chief Executive**

**Constitutional and Delegation  
Matters**

**1 Summary**

- 1.1.1 The purpose of this report is to seek approval for some limited constitutional and delegation changes.

**Recommendation to the Council**

**That the delegations and changes to the constitution set out in the report are agreed.**

**2 Consultation**

- 2.1 None given the nature of the matters involved.

**3 Introduction**

- 3.1 Members will recall that during the discussion regarding the report of the Member Remuneration Panel at its last meeting, the Board expressed a wish to clarify the use of the term 'Deputy Leader' within the constitution.
- 3.2 At present, the term is defined within the constitution as meaning the Chairmen of the Resources, Community and Environment and Planning and Development Boards, whereas in current practice the Deputy Leader of the Council is the Deputy Leader of the largest political group, in this case the Vice Chairman of the Executive Board.
- 3.3 Given the discussion at the last Board, this report suggests a recommendation to full Council to make that change to the definition of Deputy Leader.
- 3.4 As Members will also be aware, the Council has received an indicative allocation of £1.9m in respect of the UK Shared Prosperity Fund and had its investment plan approved by Government before Christmas. The investment plan suggested draft governance similar to the arrangements for the LEADER project. Part of this includes a decision making Panel of Members and it is

suggested that this consists of 3 Councillors, politically balanced which at present would mean 2 Conservatives and 1 Labour. The Board is asked to seek Council approval for this delegation in respect of spending allocations for the UK Shared Prosperity Fund.

The Contact Officer for this report is Steve Maxey (719438).

**Agenda Item No 14**

**Executive Board**

**13 February 2023**

**Report of the  
Chief Executive**

**Exclusion of the Public and Press**

**Recommendation to the Board**

**To consider, in accordance with Section 100A(4) of the Local Government Act 1972, whether it is in the public interest that the public and press be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by Schedule 12A to the Act.**

**Agenda Item No 14**

**Senior Management Recruitment Process** – Report of the Chief Executive

Paragraph 1 – by reason of information relating to any individual.

**Agenda Item No 15**

**Confidential Extract of the Minutes of the meeting of the Executive Board held on 21 November 2022.**

Paragraph 1 – by reason of information relating to any individual.

**Agenda Item No 16**

**Confidential Extract of the Minutes of the meeting of the Senior Management Recruitment Sub-Committee held on 21 November 2022.**

Paragraph 1 – by reason of information relating to any individual.

In relation to the item listed above members should only exclude the public if the public interest in doing so outweighs the public interest in disclosing the information, giving their reasons as to why that is the case.

The Contact Officer for this report is Julie Holland (719237).