East Lothian Council

| **REPORT TO:** | East Lothian Council |
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| **MEETING DATE:** | 11 December 2018 |
| **BY:** | Depute Chief Executive (Partnerships and Community Services ) |
| **SUBJECT:** | Local Governance Review – East Lothian Council Response for Agreement |

## 1    PURPOSE

1.1    To present for Council approval a response to the Local Governance Review currently being carried out by the Scottish Government and COSLA.  This response has been developed by a cross-party working group created by the Council from Elected Members.

## 2    RECOMMENDATIONS

2.1    It is recommended that the Council agree the terms of Appendix 1 as its response to the Local Governance Review.

## 3    BACKGROUND

3.1    The Council agreed in October this year to set up a cross-party working group to draft a response to the Local Governance Review.  The group comprised six elected members (two nominees from each of the three political groups on the Council): Councillors Akhtar, Bruce, Findlay, Gilbert, McMillan and Williamson.

3.2    The working group met four times.  It was assisted in its deliberations by Council officers including the Chief Executive and both Depute Chief Executives, and also by Professor James Mitchell of Edinburgh University.

3.3    The deadline for responses to the Review is 14 December.

## 4 POLICY IMPLICATIONS

4.1 This is an opportunity for the Council to contribute to a potentially far-reaching review looking at the way the public sector is organised across Scotland.

## 5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

## 6 RESOURCE IMPLICATIONS

6.1 Financial – none.

6.2 Personnel - none.

6.3 Other – none.

## 7 BACKGROUND PAPERS

7.1 Council report of 30 October 2018: "Local Governance Review" set out the background more fully, including relevant background papers:

https://www.eastlothian.gov.uk/download/meetings/id/20189/05_local_governance_review

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**EAST LOTHIAN COUNCIL RESPONSE TO THE LOCAL GOVERNANCE REVIEW**

**Introduction**

1.1 East Lothian Council welcomes the opportunity to contribute to this Review of Local Governance.  This exercise represents an opportunity for all of us in Scotland collectively to consider:
- how we can minimise inequalities within and between our communities;
- how we can strengthen the democratic framework for decisions that affect communities;
- how we can cater for different demographics – rural areas, urban areas, older people, younger people etc.
- how we can increase democratic engagement without placing an onerous burden on individuals.

1.2 This paper is the result of the deliberations of a cross-party working group set up by East Lothian Council to consider issues relevant to joint Scottish Government/ COSLA Review of Local Governance in Scotland.  The cross-party working group comprised six elected members of the Council – two from each political group – and met four times.  Professor James Mitchell of the University of Edinburgh, a former Christie Commission member and adviser to COSLA, provided input to one of those meetings.  [The content of this paper was approved by full Council on 11 December 2018.]

1.3 The joint Scottish Government/COSLA Review of Local Governance is seeking comments
- on how powers, responsibilities and resources are shared across national and local spheres of government and with communities in the context of significant change to the governance of Scotland over the last two decades;
- in recognition that outcomes for citizens and communities are best when decisions are taken at the right level of place;
- to explore what might be achieved, and highlight opportunities for positive change;
- to offer proposals for improved governance arrangements at the Council's "level of place", reflecting shared aspirations to tackle inequalities and drive inclusive growth.

1.4 In this context, the 4 pillars of the Christie Commission remain relevant[1]:
- Empowering individuals and communities;
- Collaboration between public service organisations
- Prioritising prevention, reducing inequalities and promoting equality;
- Improving public sector performance and being transparent and accountable.

**STRUCTURES**

2.1 It is vital that there should be a shared, clear vision, mission and purpose for public service, and that the forms of democratic representation should be the right ones to meet that vision.   We should first of all be looking for an understanding about what the different powers are, why they exist, where they sit and why they sit there.

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[1] https://www.gov.scot/publications/commission-future-delivery-public-services/

2.2 The driver going forward should be **outcomes for the health and wellbeing of our communities: we want the community to benefit from any changes**. Collectively we need to pay attention to performance management and continuous improvement, but also to have a proper focus on prevention and early intervention, acknowledging that these can be difficult to measure.

2.3 Whatever structures are created or tested, definitions are important. The concept of "spheres" of government is both interesting and welcome, but it is important that these spheres and the connections between them are well-defined and of an enabling character, in order to pull together to improve outcomes for citizens. This should include all our public services, and how they work to help deliver priorities at a local level.

2.4 In thinking about structures, it is important to be able recognise where the different elements of public policy lie:
- who sets the strategy?
- who owns the processes?
- how is current capacity measured?
- how is the ability to change measured?
- how is change resourced and achieved?
- how does a decision reduce inequalities within and between communities?
- who funds the activity required?
- how do they get the money?
- how is this funding sustained over the lifespan of the activity?
- who benefits from the decision?
- how do we assess Risk and adverse impact: who prevents? who detects? who corrects?
- where are the public's voices in each decision?
- how transparent to the public is the process?
- where does accountability lie?

These are important considerations in terms of local governance, and it is important in particular that local government is not solely treated as the delivery arm of central government. Local government **is** Government.

2.5 Councils are acutely aware that "one size does not fit all" and this council would support an asymmetric approach, with different structures to serve different parts of Scotland, provided that these structures serve the demographic of the area to which they apply and that local people have a say in their creation. It is important that the specific requirements of people living in rural communities are recognised and catered for, including in city-region and suburban contexts – people in these rural communities must have an equal voice.

2.6 It is useful to reflect on levels of democratic representation and control for different functions. The first level of democratic representation can be very different in different public bodies such as councils and health boards. If a member of the public wants to approach an elected representative who has responsibility in relation to a council issue, their representative is very local to them. If they want to approach an elected representative who has responsibility for a health service issue, they would need to approach the Scottish Ministers. For services which have such a personal impact on members of the public, these services are treated very differently, especially since the abolition of local health councils. Particularly in relation to primary healthcare, it is not clear how the public have recourse in relation to structural issues such as the provision of GP surgeries and the services delivered there.

2.7 The role of a local authority member is both complex and diverse.  In coming to a view about structures, in the Council's opinion more work needs to be done in recognition of the current workload of councils' elected members in multi member wards.  Because of the many ways in which councils engage with local people, elected members have many responsibilities.  Our local elected members all have several schools to engage with in their ward, several community councils, a community and policing partnership, an area partnership, and more.  Added to their committee activity, their surgeries and their constituent casework, this represents a considerable burden of time, not least for those councillors who are also in employment.  The rural dimension also brings a requirement to cover longer distances to engage with small communities, hold surgeries, carry out site visits, and so on.

2.8 A research report carried out for the Local Government Boundary Commission for Scotland in 2017 reported that councillors spent an average of just over 36 hours per week on the councillor role.[2]  As part of the review of local governance, there should be a review of the operation of multi member wards and their implications for councillor workload, remuneration and resources available to councillors to carry out their roles.

2.9 It is well-attested that the level of democratic executive local representation, in terms of the ratio of elected representatives to population, is lower in Scotland than in other European countries.  Democracy is nevertheless alive and working well in some areas of public policy.  Councillors operate locally to their constituents; however they have less influence in some areas of public policy than members of the public perceive (and would hope for).

2.10  As an example to illustrate this point, East Lothian Council members are often approached about matters over which the Council has no jurisdiction: for example:
- difficulties in getting an appointment at the GP surgery;
- the length of railway station platforms;
- the provision of utilities such as gas and water;
- the provision of broadband;
- the operation of Universal Credit.

People often naturally want to speak to a local representative about these issues, and often assume the Council has more authority than is actually the case.  It is not always easy for constituents to access a more appropriate route for their concerns.  The lack of clarity about roles and responsibilities also leads to people sometimes approaching their MP or MSP about issues that are for the Council to resolve.

2.11  The time is ripe for further research on the impact of multi member wards, and remuneration should reflect an assessment of the role and workload of an elected member.  As this council argued in the recent local government boundary review, size of council does not necessarily reflect the workload of members - a smaller council has fewer members to sit on committees, committee members have to devote time to committee papers, briefing and training, so as to be able to make major decisions effectively as board members of multi-million pound enterprises.

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[2] *Research Report: Councillors' Roles and Workload* Richard Kerley and Neil McGarvey, 2017 publ. online by Local Government Boundary Commission for Scotland -
http://www.lgbc-scotland.gov.uk/includes/downloadfile.asp?file=/publications/research/councillor_research_report.pdf

2.12   Just as structures across Scotland might be asymmetric, arrangements for councillors might conceivably also be asymmetric, and local discretion should be built into arrangements.  The most recent boundary review was constrained not to increase the number of councillors in Scotland, which resulted in council areas like our own - with a growing population, a mix of urban and rural areas and scattered pockets of real deprivation - being effectively penalised.  Local government should be involved in setting the criteria for review.

2.13   Tensions do exist between decisions taken centrally and local priorities and local ways of doing things.  For example, our local Community Planning Partnership arrangements do not allow elected members to influence the provision of GP services, Child and Adolescent Mental Health Services, the numbers and activities of Health Visitors in the area, or the availability of police officers.  Centralising education is a concern as we know that Councils can and do make the biggest difference in areas such as school improvement when we are working closest with our schools, parents and carers.

2.14   On some occasions, national policies cut across other stated national policy directions.  For example, the Scottish Court Administration/ Scottish Ministers' decision to close Haddington Sheriff Court cut across the national "town centre first" policy and arguably has had an impact on the administration of justice for the area, both in terms of ease of access and waiting times.

2.15   At present it is not clear how the new social security body will be part of our community planning.  It will be important for a link to be developed and clarified.  In East Lothian the Department for Work and Pensions and the Scottish Prison Service are both members of the local Community Planning Partnership.

2.16   We understand there is also a review of public health taking place separately to the Review of Local Governance.  This feeds a perception that central reviews still happen in "silos".  Certainly these discussions need to be joined up.  In health it does seem sensible that some things need to be provided in a centralised way, for economies of scale and effectiveness of specialisms: for example, cancer hospitals.  On the other hand, public health is an issue that is fundamental to the history and current activities of local government in this country: for example through waste collection and disposal, and protective services such as trading standards, local people benefit from local activity through the outcomes that arise from work on public health.

2.17   Structures and processes must be easy for the public and other stakeholders to understand and use, not only to give them the confidence that their voices can be heard, but also to ensure that their views are actually taken on board and ultimately so they can make their voices heard at the ballot box about their aspirations and how those aspirations are met.

2.18   East Lothian has good coverage of community councils, and we know this is not always the case in all other areas.   When a community council is suitably resourced, developed and empowered, it can play a strong part in governance in the local sphere – and there is work to be done in the local sphere to achieve this.  Community councils can and should play an important part in local life and the quality of local areas, working to represent the views of local people.

2.19   We would be interested in hearing more about the results of the review of community councils that we understand has been taking place under the auspices of What Works Scotland and the Scottish Community Development Centre.  In particular, is the level of community council powers and available funding on a par with the workload expected of community councillors?  It is essential that the current review of community councils should be aligned with the local governance review.

2.20   It would be worth assessing the effectiveness of previous attempts in Scotland to compensate for a perceived centralisation of power, through the creation of community councils and of decentralisation schemes under (respectively) the Local Government (Scotland) Act 1973 and the Local Government (Scotland) Act 1994.

2.21   It would also be worth linking to the effectiveness of community planning arrangements in Scotland as this is very pertinent to aspirations to work in partnership.  More local governance and collaboration could be particularly helpful in terms of issues that affect children and education, in particular for the governance of colleges and Skills Development Scotland.

2.22   Some services and collaborations need to be delivered at local level.  Even where a service could usefully be organised at regional level, this does not necessarily mean that a new regional body is needed.   Partnership approaches may work better – including partnering with private sector organisations - with appropriate safeguards for people living in areas covered by the "smaller" partners.  This could cover economy, infrastructure and health projects.

2.23   The power to partner specifically with other local authorities arguably needs more work to be properly accountable.  Opportunities to collaborate may have to involve migration towards common processes and shared governance structures to facilitate such collaboration and ensure its effectiveness.  However this should be led by local authorities. Partnership cannot be forced, it needs to be allowed to grow.  What is needed is leadership, at the right level.

2.24   Partnerships also need to be appropriate to the size and scale of the partners.  The danger with regionalisation is that it makes smaller partners subservient to the larger, defers more to the problems of the larger than those of the smaller, and tends to move accountability for decision-making further away from local people.

2.25   Local authorities play a key role in relation to economic development.  However, the delivery vehicles and structures in place nationally to achieve this are complex and overly bureaucratic.  A review is required to streamline and ensure transparency for inward investors, recognising the key role played by local government.

## 3.      Decentralisation of decision-making

3.1    In East Lothian we have structures in place at ward level to involve local voices in defining and delivering the right outcomes for their area.  It is important to recognise that democracy involves arrangements to hear local voices but also ultimately to make a decision, and it is the Council's position that decisions which involve public resources must be linked to public and democratic accountability for those resources.

3.2    The governance around community empowerment must include its effectiveness in tackling inequalities.

3.3    One area where there is a well-defined place for local representation is in development planning.  This is an area where participative democracy can be challenging.  Communities may well want to be more involved in place-making, but some decisions are made at national and regional level which preclude their meaningful involvement.  For example, communities feel they have little say over the numbers of new dwellings to be accepted into their area under the regional planning process.  The strategic importance of planning for new homes and for the economic success of the nation and the city region is such a priority that these decisions are currently made

elsewhere. However, a right of representation to national and strategic plan processes is encompassed in statutory processes.

3.4     We should collectively explore the potential for local authorities to be able to make a broader range of byelaws to regulate activity in a local area and strengthen the democratic framework for decisions that affect communities.  The Scotland Act 1998 devolved everything to the Scottish Parliament apart from a few named issues which were reserved to Westminster.  Are there any analogues here for devolution to local level?

## 4.  Fiscal Issues

4.1     At present, local authorities' ability to act in the best interests of their communities is constrained by the way they are resourced.  Their funding in real terms has fallen markedly faster over recent years than the Scottish Government's budget.  According to a report by the Scottish Parliament's Information Centre, between 2013-14 and 2017-18 there was a 7.1% fall in the total local government revenue settlement, compared to an overall fall in the Scottish Government budget of 1.8% (figures in real terms, 2018-19 prices).[3]  The COSLA paper "Fair Funding for Essential Services 2019/20" makes a strong case for better investment in local government.[4]

4.2      Council Tax, representing a secondary income stream for councils at best, was frozen for a period of nine years ending 2016, and increases were subsequently capped at three per cent.  While capping is unarguably a lever currently available to central government, it does curtail the ability of councils to deliver on their democratic mandate.  Engagement with our residents tells us that there is some appetite for raising Council Tax if it means better local services.

4.3     To allow local democratic bodies to do more to improve community wellbeing, they need adequate resources.  The imposition of reductions in core government grant support, together with the removal of discretion on local taxation, dilutes the democratic accountability and effectiveness of local government.  With the right enabling powers, leadership and ownership, councils could make even more of a difference in issues that concern their area.

4.4     Consideration should also be given to other income generation and a holistic review nationally of the legal and policy constrictions around commercial trading by councils to support service delivery.

4.5     Local government is too often called on to deliver policy initiatives which have been decided centrally and for which full funding is not forthcoming.  At the same time, other areas of funding are ring-fenced by central government for specific policy objectives.  Although for many public services, Scottish councils are willing and proper service providers, it is absolutely critical that they are properly funded to deliver existing and new services.

4.6     In terms of minimising inequalities between our communities, the way that some funding is distributed in line with figures from the Scottish Index of Multiple Deprivation fails to address issues in areas of more dispersed population.  As an illustration, figures in the recent South East Improvement Collaborative Improvement Plan show that only 4.1% of East Lothian children are in SIMD deciles 1 and 2 (the most deprived) compared to 20.5% in City of Edinburgh – while, in the

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[3] https://digitalpublications.parliament.scot/ResearchBriefings/Report/2018/5/21/Local-Government-Finance--facts-and-figures-2013-14-to-2018-19

[4] http://www.cosla.gov.uk/system/files/private/fairfundingforessentialservices2019-20.pdf

same document, 12.3% of East Lothian children are defined as living in poverty compared to 14.4% in Edinburgh.

4.7 A primary objective of the Scottish Government's Integration Policy was to secure a genuine shift in the balance of care that would result in increased levels of community based care, alleviating pressure and cost on the Acute Sector. Although primarily driven in pursuit of improved health outcomes for citizens, achievement of this objective would also require adequate transfer of resources from Health to Local Government – to date, although there is evidence of increased levels of community-based care and improvements on delayed discharge figures, there is little evidence of any meaningful resource following this significant shift in service obligation.

4.8 There are concerns over the number of national policy-led direction changes that compromise local government service provision. A good example is the Deposit Return Scheme which, although it appears to carry benefits for litter management, significantly threatens the financial stability of kerbside collection services which were themselves implemented in line with the Scottish Household Waste Charter developed in consultation with Scottish Government and Local Authority Networks and approved only a few years ago.

4.9 Because the responsibility for decisions about funding is not clear cut, there is a need to reform fiscal arrangements for local government. We would want this reform to include the ability to set more meaningful local taxes, with the appropriate reprofiling of the national/local tax take from the public. Proper local fiscal empowerment could align with a Power of General Competence/ Power of Wellbeing.

4.10 Local authorities provide and service much of society's infrastructure, and so core grant should be funded fairly and in a demonstrably sustainable way – including the reintroduction of the Comprehensive Spending Review process and the provision of longer-term financial settlements for both General Services and Housing Capital, to assist local authorities with their financial planning.

**5    Finally**

5.1 Whatever structure is decided on, members of the public should be able to see clearly where responsibility lies and how to influence these decisions.

East Lothian Council

December 2018