



MINUTES OF THE MEETING OF EAST LoTHIAN COUNCIL

TUESDAY 13 DECEMBER 2022
VIA DIGITAL MEETING FACILITY

Committee Members Present:

Provost J McMillan (Convener)

Councillor S Akhtar

Councillor E Allan

Councillor R Bennett

Councillor L Bruce

Councillor C Cassini

Councillor D Collins (from Item 5)

Councillor F Dugdale

Councillor J Findlay

Councillor A Forrest

Councillor N Gilbert

Councillor N Hampshire

Councillor L Jardine

Councillor C McFarlane

Councillor C McGinn

Councillor G McGuire

Councillor K McLeod

Councillor L-A Menzies

Councillor B Ritchie

Councillor T Trotter

Councillor C Yorkston

Council Officials Present:

Ms M Patterson, Chief Executive

Ms L Brown, Executive Director for Education and Children's Services

Ms S Fortune, Executive Director for Council Resources

Mr D Proudfoot, Executive Director for Place

Ms E Dunnet, Head of Finance

Ms M Ferguson, Head of Corporate Support

Ms W McGuire, Head of Housing

Mr T Reid, Head of Infrastructure

Ms S Saunders, Head of Communities and Partnerships

Ms M Sullivan, Head of Development

Ms J Tait, Head of Children's Services

Mr S Cooper, Team Manager – Communications

Ms R Crichton, Committees Officer

Ms F Currie, Committees Officer

Ms A-M Glancy, Service Manager – Corporate Accounting

Mr C Grilli, Service Manager – Governance

Mr D Henderson, Service Manager – Service Accounting

Mr S Kennedy, Emergency Planning, Risk and Resilience Officer

Ms D Pringle, Corporate Accountant

Mr P Vestri, Service Manager – Policy, Improvement and Partnerships

Mr T Renouf, Executive Officer

Visitors Present:

Ms Esther Scoburgh, Audit Scotland

Clerk:

Mrs L Gillingwater

Apologies:

Councillor S McIntosh

Declarations of Interest:

None

The Provost advised that the meeting was being held remotely, as provided for in legislation; that the meeting would be recorded and live streamed; and that it would be made available via the Council's website as a webcast, in order to allow public access to the democratic process in East Lothian. He noted that the Council was the data controller under the Data Protection Act 2018; that data collected as part of the recording would be retained in accordance with the Council's policy on record retention; and that the webcast of the meeting would be publicly available for up to six months from the date of the meeting.

The clerk recorded attendance by roll call.

1. MINUTES FOR APPROVAL

The minutes of the following meeting were approved: East Lothian Council, 25 October 2022.

2. MINUTES FOR NOTING

The minutes of the following meeting were noted: Local Review Body (Planning), 6 October 2022.

3. 2021/22 ANNUAL AUDIT REPORT

The Provost welcomed Esther Scoburgh of Audit Scotland to the meeting, and invited her to present the 2021/22 Annual Audit Report.

Ms Scoburgh, external auditor, presented the report, advising that it had been presented to the Audit & Governance Committee on 21 November. She confirmed that the Council had been given an unqualified opinion on the accounts and on the Dr Bruce Fund, and that the audit report was very positive. She went on to draw attention to the key aspects of the report: financial management, financial sustainability, governance and Best Value arrangements. Ms Scoburgh noted that the Council's good practice had been shared with her colleagues at Audit Scotland. She accepted that the Council was facing challenges, advising that this was replicated across other Scottish local authorities and other public sector bodies. She concluded her presentation by thanking Ms Fortune and her officers for their co-operation during the audit process.

On the estimation of the valuation of land and buildings (outlined in Exhibit 2 of the report), Councillor McLeod asked if the figure included all Council housing stock. Sarah Fortune, Executive Director for Council Resources, confirmed that all dwellings on the Housing Revenue Account were included in this figure, but not mid-market rent properties.

Councillor Hampshire expressed concern that setting a five-year budget may result in inaccurate long-term term predictions and that the Council may be criticised for this. Ms Scoburgh accepted that there was a degree of uncertainty with long-term planning, and that much of it would be based on estimates; however, five-year budget planning would bring it into line with capital planning, and the Council's scenario planning would be useful when setting future budgets. She noted that all councils were facing similar challenges.

Councillor Gilbert asked Ms Scoburgh for her view on the level of uncommitted reserves that the Council should hold. Ms Scoburgh commented that she felt the current level of 2% was appropriate, but she could not provide a comparison with other councils at this meeting. Ms Fortune added that, through discussions at the Directors of Finance Group, 2% was not an uncommon level of reserves, but that directors of finance were looking at this in the context of the current financial challenges and risk.

The Provost and other Members thanked Ms Scoburgh and her colleagues again for their work with the Council.

Councillor Akhtar commented that it was very important to reassure the public that the Council's finances were being managed effectively, and she welcomed the positive messages in the Audit Report, particularly that performance was above the Scottish average in a number of key areas, and that staff were working hard to deliver services within budget.

Councillor Hampshire welcomed the report, highlighting the ongoing challenges in delivering services and the pressures on staff. He was reassured that the auditors were confident that the Council had appropriate and effective financial arrangements, and he paid tribute to Ms Fortune, Ms Dunnet and their team for their efforts. However, he warned of the financial challenges ahead and the difficult decisions that the Council would be required to make at a time when East Lothian was undergoing significant growth, noting that without additional funding, the required infrastructure could not be delivered. He thanked Opposition members for their scrutiny, and thanked Ms Scoburgh and her colleagues at Audit Scotland.

Decision

The Council agreed to note the 2021/22 Annual Audit Report.

4. FINANCIAL AND CAPITAL STRATEGIES

A report was submitted by the Executive Director for Council Resources providing the Council with an update on the mitigation measures agreed at the Special Council meeting on 22 November in response to the in-year budget overspend, and seeking approval of the 2023/24–2027/28 Financial and Capital Strategies, appended to the report.

The Head of Finance, Ellie Dunnet, presented the report, advising that the financial environment continued to be very challenging, and that it may not be possible for the Council to deliver on all its obligations. She highlighted the key aspects of both the Financial Strategy and the Capital Strategy.

Councillor Hampshire asked for an update on discussions with the Scottish Government as regards fiscal flexibility. Ms Dunnet explained that the focus was currently on existing funding streams, mostly within Education and Health & Social Care. She noted that applying flexibility to these funding streams would need to be raised directly with the Scottish Government, and that she would report back as required. She stressed, however, that this would not be a recurring solution. In particular, there was an underspend in the 1140 hours budget which had not been used in the last financial year. She confirmed that the Council was delivering on its commitments in this regard, but that this funding would not be available to use in the current or future financial years. Nicola McDowell, Head of Education, added that the majority of that underspend related to staff vacancies.

On the UN Convention on the Rights of the Child (UNCRC), Councillor Ritchie asked how the consultation would be carried out. Lesley Brown, Executive Director for Education and Children's Services, advised that she was currently working with colleagues in Finance on

how to engage with young people and feed their views through the budget consultation process.

In response to a number of questions from Councillor Jardine, Ms Dunnet advised that discussions with Health and Social Care colleagues had taken place as regards fiscal flexibility, but that there were some issues to be resolved as regards governance and the legal relationship between the Council and the Integration Joint Board (IJB). On financial sustainability, Ms Dunnet highlighted the importance of using uncommitted reserves effectively to invest in initiatives that would deliver future cost reductions. As regards extending five-year planning to partnership arrangements with the third sector, Ms Dunnet indicated that this would be difficult due to the Council currently having to work with one-year financial settlements and the uncertainty associated with long-term planning.

As regards the extension of free-school meal provision, a question raised by Councillor Menzies, Tom Reid, Head of Infrastructure, provided an explanation on the costs associated with extending dining rooms and kitchen facilities, and the constraints within which the Council would be working to achieve this. He noted that without additional funding from the Scottish Government, further work could not be done to determine exactly what is required. He further noted that most local authorities were experiencing similar challenges in this area.

Councillor Gilbert asked a series of questions on the provision of schooling at Blindwells. Ms Dunnet confirmed that although the expenditure on the school would be reprofiled to the next financial year, alleviating pressure on the capital and revenue budget for the current financial year, the delivery of the school would not be affected. Children residing in Blindwells would continue to attend primary school in Cockenzie, which had capacity.

In response to a question from Councillor Trotter on the disposal of Council-owned properties, Mr Reid assured him that any available assets would be assessed for their condition and utilisation as part of considerations for future use, be it sale, rental or use by third sector partners.

Councillor Bruce expressed concern that interest rates may continue to rise and this may impact further on the Council. He also asked for additional detail on the review of capital projects. Ms Dunnet pointed out that interest rates were expected to fall over the next year or two; if this is not the case, then a further review of the Capital Plan would be required. As regards the recent review, she advised that the Council was legally committed to a number of projects so these had to be discounted, and that it would be projects where the costs were likely to come in the next financial year which would be delayed.

Councillor Menzies asked if changing the cost:income ratio for rents (currently 40%) would allow the Council to build more affordable homes. Ms Dunnet advised that raising this ratio would introduce additional risks. She offered to share the modelling of this with Members.

On questions relating to funding streams available to the Brunton Theatre, Sharon Saunders, Head of Communities and Partnerships, explained that the Theatre was already active in sourcing funding and looking at opportunities to develop and expand their creative programme.

Councillor Hampshire stressed the importance of this report, and welcomed the questions from Members. He reiterated the enormity of the challenges facing the Council, and the need to ensure there were sufficient reserves available to deal with uncertainties. He also spoke of the positive relationship with health and social care partners, noting that the Council had the lowest level of delayed discharge from hospital in Scotland. Councillor Hampshire also highlighted the challenges in delivering the Capital Plan at a time of significant uncertainty and demand. On borrowing for housing, he suggested that the 40% limit was appropriate as higher limits would result in higher rent levels. He commended the Strategies, remarking that they would help the Council to continue to deliver services within the financial constraints.

Councillor Menzies observed that the Council had one of the lowest rent levels in Scotland, and suggested that the 40% borrowing limit should be revisited. On school lunch provision, she argued that when calculating school capacity a more holistic approach, including lunch provision, should be taken into account. With reference to the SNP motion presented to Council in August, she welcomed the use of Musselburgh East Community Centre as a warm place.

Councillor Akhtar pointed out that 94% of Scotland's growth was taking place in the Lothians. She also provided an explanation on the Integration Joint Board's current financial position, noting that should the Scottish Government take back any of the funding provided during the pandemic, this would have an impact on care providers and delayed discharge from hospital.

The Provost moved to the vote on the recommendations, taken by roll call, which were approved unanimously.

Decision

The Council agreed:

- i. to note the progress made to date to mitigate the in-year forecast budget overspend in line with the additional measures agreed at the Special Council meeting of 22 November, agreeing that these would remain under review and that further updates would be provided to Members;
- ii. to formally approach the Scottish Government directorates to request flexibility in the funding streams outlined at Section 3.4 of the report;
- iii. to agree to the redeployment of earmarked reserves to mitigate the revenue overspend, as outlined with Section 3.4 of the report;
- iv. to approve the proposal to place on hold the capital schemes detailed within Section 3.4 until further notice, with a commitment to review this decision as part of the 2023/24 budget report to Council on 28 February 2023;
- v. to note the proposal to mothball the operational properties detailed within Section 3.4 of the report;
- vi. to approve the Financial Strategy 2023/24–2027/28 (Appendix 1 to the report);
- vii. to approve the Capital Strategy 2023/24–2027/28 (Appendix 2 to the report); and
- viii. to note that the first phase of the budget consultation had now been launched.

5. CORPORATE RISK REGISTER

A report was submitted by the Chief Executive advising of developing international, national and local risks impacting on the delivery of Council services, and reporting on the continued substantial levels of heightened risk, noting that the economic factors driving increased financial pressures and risks for the Council had been incorporated into the relevant risks across the Corporate Risk Register.

Sharon Saunders, Head of Communities and Partnerships, presented the report. She drew attention to CR1 (Managing the Financial Environment), which was now at its highest level, due mainly to significant external pressures, such as the increasing costs of utilities, rising interest rates and the cost of borrowing, and the national pay award. She also highlighted a

number of other risks where there were significant pressures, such as CR2 (Homelessness); CR3 (National Care Service); CR4 (Cost of Living and Economic Volatility); and CR5 (Workforce Challenges). She noted that eight Council services were currently working under Business Continuity arrangements.

Councillor McLeod asked about the implications for the Council should the risk score for CR1 (Managing the Financial Management) not be reduced through the enhanced measures currently being applied, and if there were any further measures that could be taken. In respect of CR2 (Homelessness), he asked why there was no change in the risk score following application of control measures. On the latter question, Wendy McGuire, Head of Housing, explained that the Homelessness Team was working hard to prevent and tackle homelessness, but that with recent changes in legislation and the impact of the war in Ukraine, this issue was largely outwith the Council's control. She added that the Council was engaging with ministers in the Scottish Government on this. On the financial management risk, Ellie Dunnet, Head of Finance, advised that many of the Council's current financial risks were due to external factors, and that the enhanced mitigation measures would take time to implement. She was hopeful that the risk score would reduce, but that depended on improvements to the economic environment and a favourable grant from the Scottish Government.

Councillor Gilbert noted that staffing challenges, particularly in the social care sector, featured throughout the Risk Register, and asked if these challenges were linked to a dependency on the private sector. Ms Saunders indicated that there were significant staffing pressures across all services, caused by the current employment market, recruitment and retention difficulties, and staff absence. On care sector posts, she pointed out that managers were working hard to encourage recruitment and increase the calibre of applicants. Iain Gorman, Head of Operations for Adult Social Care, advised that there had been workforce challenges in the care sector for some time. He noted that in the past year, the private provision of care posts had decreased from 90% to 70%, due to an increase in internal capacity – this was positive in that it would allow the Health and Social Partnership to respond better to private provider failure. He reassured Members that the staffing situation was currently better than it was a year ago, and that levels of delayed discharge remained low. He indicated that the Health and Social Care Partnership would be reviewing contracts with all private providers.

Councillor Dugdale asked about staffing pressures within Children's Services, particular in view of the long-term impacts of COVID-19 on children and young people. Judith Tait, Head of Children's Services, reported that the situation was challenging, and that recruitment of staff in this area was a national issue. She reassured Members that measures were being taken to ensure that the needs of young people and families were being met. However, she believed that government support was required to resolve the current issues. She also stressed the need to provide support for staff and carers, and noted that measures were in place to ensure the wellbeing of staff.

On CR19 (Development Plan), Councillor Hampshire asked if councils would be given additional time to produce their Development Plans in view of the delay in the publication of National Planning Framework 4 (NPF4). Michaela Sullivan, Head of Development, confirmed that authorities would have five years from the approval date of NPF4 to produce their Development Plans.

The Provost moved to the roll call vote on the recommendation, which was approved unanimously.

Decision

The Council agreed to approve the Corporate Risk Register, and in doing so agreed that:

- i. the Corporate Risk Register would be maintained as a 'live' document which would be reviewed by the Council Management Team (CMT), the newly established CMT sub-

group on Risk Management, the Service Management Teams (SMT), risk owners, and the Corporate Risk Management Group on a regular basis and reported back to Council as required;

- ii. the relevant risks had been identified;
- iii. the significance of each risk is appropriate to the current nature of the risk;
- iv. the total profile of corporate risk could be borne by the Council at this time in relation to the Council's appetite for risk but in the context of the planned mitigations; and
- v. while the Corporate Risks require close monitoring and scrutiny over the next year, many are long-term risks for the Council that are likely to be a feature of the Risk Register over a number of years.

6. LEARNING ESTATE STRATEGY

A report was submitted by the Executive Director for Education and Children's Services presenting the Council with the East Lothian Council Learning Estate Strategy (LES), which sets out the Council's current position, ambitions and continuous improvement priorities for its learning estate. The LES, a high-level, education-specific, strategic document, would be underpinned by a Learning Estate Improvement Plan (LEIP), to be developed in 2023, which would set out how the LES would be realised in practice and would give more specific detail about condition, suitability and roll projections, and how future developments in the learning estate would be prioritised.

The Head of Education, Nicola McDowell, presented the report. She highlighted the projected increase in population for East Lothian over the next 20 years, with the number of children projected to grow by over 15%. She set out the Council's aspirations of a place-based approach, the provision of facilities for young people with additional support needs, the provision of digitally enabled and connected learning spaces, and the delivery of energy-efficient approaches to delivering the learning estate.

Councillor Forrest asked about the development of outdoor learning spaces. Ms McDowell advised that children and young people would be consulted to ensure that play facilities met their needs and aspirations.

Councillor Akhtar questioned how the LES would fit with the Local Development Plan (LDP). Ms McDowell confirmed that the LES had been developed in conjunction with other Council services. Michaela Sullivan, Head of Development, added that the LDP included provision of community assets, and that there was an integrated approach to ensure that allocated sites would blend into the local communities.

Councillor McFarlane asked if the pre-apprenticeship initiative would be continued into the future. Ms McDowell assured her that officers were looking for as many opportunities as possible in this regard.

On the communication of the strategy to communities, Ms McDowell stressed the importance of engaging with the wider community, and that community councils, parent and carer councils, children and young people would be included in the consultation on the LEIP.

Regarding safe routes to school, Tom Reid, Head of Infrastructure, advised of the aspiration to deliver sustainable path networks in new communities, and that officers were looking at connectivity with the new learning campus at Wallyford.

The Provost opened the debate by commenting that the Learning Estate Strategy had to be both aspirational and realistic, with a focus on the future.

Councillor Menzies hoped that the LES would contribute to better outcomes for children. She welcomed the Strategy and the involvement of young people in decision-making, especially as regards outdoor and natural learning spaces for both young people and adults.

Councillor Yorkston spoke of the challenge to deliver learning facilities to meet the needs of communities at a time of significant growth in East Lothian, but he was confident that these challenges could be overcome. He welcomed the Strategy, particularly the support for flexible pathways for young people, and he made reference to the new learning campus at Wallyford, which would provide facilities for the wider community.

Councillor Dugdale welcomed the Strategy, commenting that it was important for schools to be at the heart of communities. She highlighted the need to deliver facilities for future generations, and was pleased that young people would be consulted.

Concluding the debate, the Provost recognised that it was important to provide a variety of pathways to employment, and that the LES would enable this.

The Provost moved to the roll call vote on the recommendations, which were approved unanimously.

Decision

The Council agreed:

- i. to approve the Learning Estate Strategy; and
- ii. to note that an associated Learning Estate Improvement Plan would be developed early in 2023.

7. COMMUNITY BENEFITS FROM OFFSHORE AND ONSHORE WIND INSTALLATIONS

A report was submitted by the Executive Director for Place highlighting the varied practice arising around community benefit funds arising from offshore and onshore wind installations, and of the intention to encourage the Scottish Government's development of finalised guidance for offshore community benefits upon which councils and communities could rely and which would promote the allocation of benefits between local communities adjacent to installations and wider community objectives in the local authority area.

The Service Manager for Policy, Improvement and Partnerships, Paolo Vestri, presented the report, providing Members with information on current Scottish Government guidance on community benefits, and noting that the Association of Community Councils (AoELCC) was currently considering how community benefits from wind installations should be distributed in East Lothian (set out in Sections 3.7 and 3.8 of the report). Mr Vestri also highlighted examples of community benefits in other areas in the UK.

In response to questions from Councillor Gilbert in the distribution of community benefits for offshore installations affecting the Preston, Seton and Gosford ward, Mr Vestri indicated that AoELCC would discuss how benefits would be split between the local community and wider East Lothian community. Michaela Sullivan, Head of Development, advised that communities within that ward would be involved in the AoELCC discussions. She added that the negotiations on benefits would take place between the communities and the providers. Mr

Vestri noted that in some circumstances, the allocation of community benefits may be controlled by the Council, but no decision had yet been taken on this.

Councillor Menzies remarked that members of the Planning Committee should be cognisant of the views of community councils when considering applications for wind installations. Douglas Proudfoot, Executive Director for Place, reminded Members that community benefits were not provided as compensation for development, and that they could not undermine statutory processes. Ms Sullivan further advised that community benefits were a voluntary offering to communities which could not be used to pay for Council services.

Councillor Akhtar suggested that all three MSPs for East Lothian could lobby on behalf of communities on this matter. The Provost, as Economic Development Spokesperson, noted that he would be happy to include anyone with influence.

Councillor Cassini asked if the contributions could be used for charitable purposes. Mr Vestri advised that the funds could be managed by a charitable body or development trust, but that he was not sure if any tax benefit would apply.

The Provost moved to the roll call vote on the recommendations, which were approved unanimously.

Decision

The Council agreed:

- i. to note the Scottish Government's Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments;
- ii. to note that discussions would take place with the Association of East Lothian Community Councils and the wind energy developers active in East Lothian about the Association's proposal to develop a voluntary scheme to split community benefits between communities adjacent to renewable energy installations and a wider East Lothian Community Benefits Fund;
- iii. to note the varied practice in terms of how community benefits are funded and allocated and the lack of finalised and clear guidance relating to offshore wind developments; and
- iv. to mandate the Economic Development Spokesperson to call upon the Scottish Government's Cabinet Secretary for Net Zero, Energy and Transport to finalised guidance from the valuation and distribution of community benefits arising from offshore wind developments and seek the support of Paul McLennan MSP in this respect.

8. APPOINTMENTS TO COMMITTEES AND OUTSIDE BODIES

A report was submitted by the Executive Director for Council Resources advising Council of the resignation of Councillor Kenny McLeod from the SNP Group, and of the implications of his resignation for committee and outside body membership.

The Head of Corporate Support, Morag Ferguson, presented the report, advising that as a result of Councillor McLeod's resignation from the SNP Group, the political proportionality on committees had had to be recalculated, resulting in the SNP losing a seat on the Planning and Education Committees. Councillor McLeod had intimated that he would take his seat on Planning Committee, but not on Education Committee. Ms Ferguson advised that Councillor Allan would step down from the Education Committee, and in doing so, she would also have

to relinquish her place on the East Lothian Education Trust. There were therefore vacancies on both the Education Committee and Education Trust.

The Provost sought nominations to fill the vacancy on the Education Committee. Councillor Dugdale, seconded by Councillor Yorkston, proposed Councillor Bennett. There were no other nominations.

The Provost then sought nominations to fill the vacancy on the East Lothian Education Trust. Councillor Dugdale, seconded by Councillor McFarlane, proposed Councillor Yorkston. There were no other nominations

The Provost moved to the roll call vote on the recommendations, as amended to reflect the above-mentioned nominations, which were approved unanimously.

Decision

The Council agreed:

- i. to note the re-designation of Councillor Kenny McLeod as an Independent Councillor;
- ii. to note that Councillor McLeod does not wish to take up his position on the Education Committee, and to appoint Councillor Ruaridh Bennett to this vacant position;
- iii. to appoint Councillor Colin Yorkston to the East Lothian Education Trust, replacing Councillor Liz Allan; and
- iv. that Councillor McLeod should be invited to participate in the two cross-party groups recently constituted by the Council in relation to Budget Development, and Climate Change and Sustainability.

9. SUBMISSIONS TO THE MEMBERS' LIBRARY SERVICE, 10 OCTOBER TO 27 NOVEMBER 2022

A report was submitted by the Executive Director for Council Resources noting the reports submitted to the Members' Library since the meeting of the Council in October 2022.

Decision

The Council agreed to note the reports submitted to the Members' Library Service between 10 October and 27 November 2022, as listed in Appendix 1 to the report.

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Council unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 3 (information relating to any particular applicant for, recipient or former recipient of a service provided by the Authority) and Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

Eskgreen Care Home: Care Inspectorate Environmental Requirements

A private report submitted by the Director for Health and Social Care concerning the outcome of an inspection of Eskgreen Care Home was approved.

Cockenzie Power Station Site: Update

A private report submitted by the Executive Director for Place updating the Council on the current position with the former Cockenzie Power Station site was approved.

DRAFT