

Leicestershire and Rutland Association of Local Councils

**MOUNTSORREL PARISH COUNCIL
GOVERNANCE REVIEW - DRAFT REPORT**

Jake Atkinson

April 2020

Mountsorrel Pen Portrait

1. Mountsorrel village is situated between the River Soar and the rocky crags of Charnwood Forest. The village grew in between rock and river with the communication links of canal, rail and road. The village today consists of ancient buildings, inns, boatyards and housing. Mountsorrel is home to one of the largest granite quarries in Europe. In 1969, the Mountsorrel Rolls-Royce factory designed and produced the RB211 engine for the Lockheed Tristar, and during the 1970s the factory employed 1,200 people, but it was shut in 1994 as production methods changed. The site has since been replaced by a housing estate.
2. At the Census of 2001 there were 6,662 inhabitants, increasing to an estimate of 13,500 in 2018. The electorate for 2019-20 was 6,767. This is comparable with the following councils (columns show electorate and Band D council tax rate for 2019-20):

Narborough Parish Council	6695	£123.20 ¹
Sileby Parish Council	6724	£77.35
Mountsorrel Parish Council	6767	£188.20
Whitwick Parish Council	7009	£104.64
Barwell Parish Council	7105	£90.73
Broughton Astley Parish Council	7197	£96.52

3. This puts MPC within 43 pence of being in the published list of the 60 highest charging parish and town councils nationally². This places MPC within the top 2% of local councils nationally.
4. The rate of claiming any benefit (which includes in work benefits) is more than 10% lower in Mountsorrel than the national average, suggesting higher salaries and more people in work than the average (DWP).
5. The percentage of residents in Mountsorrel rating their health as 'very good' is more than the national average in the 2011 Census.
6. Once a year (at the May meeting), Members of Mountsorrel Parish Council elect a Chair and Vice-Chair, and decide who will represent the Parish Council on Council Committees and any relevant outside organisations. The Council can have up to 13 Councillors (11 Mountsorrel Ward and 2 Castle Ward). Following the elections in May 2019 there were 5 new Councillors.

¹ NPC's council tax has increased from previous levels (£80.11 in 2016-17) as a result of costs associated with a new build Parish Centre <http://hayward-architects.co.uk/portfolio/narborough-parish-centre/>

² <https://www.leicestershireandrutlandalc.gov.uk/uploads/slcc-band-d-19-20.docx>

7. The Council operates to up to date Standing Orders and Financial Regulations tailored to the Parish Council.
8. There are 6 staff employed by the Council (not including the staff at the Memorial Centre):
 - a) Clerk to the Council (also the Proper Officer and Responsible Financial Officer). Their role is to ensure that the Council functions correctly and that the finances are well managed.
 - b) Administration assistant supports the Clerk.
 - c) Parish Caretaker ensures the Parish Room and Office is kept clean and unlocks/locks the Parish Room for bookings.
 - d) Pavilion Caretaker ensures the Memorial Playing Field Pavilion is kept clean and does litter picking.
 - e) General maintenance employee checks the play equipment, ensures the play areas are kept clean and does some maintenance and repairs.
 - f) Cemetery gardener ensures the Cemetery is kept neat and tidy.
9. The Council's precept increased by 162% in 2018-19. The rise saw Mountsorrel residents of band D properties paying £199.85 a year towards the parish council in 2018/19, compared to the £75 they were charged in 2017-18. This is more than the Council Tax charged by Charnwood District Council.
10. For 2019-20 Mountsorrel residents were paying £188.20 towards the parish council which put the Council more than £40 above any other Parish or Town Council in Leicestershire and Rutland with the next nearest being Blaby PC (£147.34), Castle Donnington PC (£137.30), Thurmaston PC (£132.58), and Braunstone TC (£124.17). There was no explicit and comprehensive community consultation around the increase.
11. By LRALC calculations the 2020-21 council tax rate for the parish is circa £172. There has therefore been a downward trend over the last 3 years, though it is not entirely clear what impact this will have on council reserves and it is strongly recommend that the council implements a Reserves Policy as soon as possible to ensure that reserves are kept at an appropriate level during a time when there is growing pressure to decrease the burden on tax payers.
12. With regard to the increase in 2018-19 a spokesman for the parish council said: "The onset of the Localism Act and the devolution of services to parish councils, as well as the impact of the austerity measures on both the county and district councils, are already resulting in changes to our community, including ways in which some services are to be delivered in the future. These austerity measures have resulted in local parish councils being requested to assume

responsibility for more and more local services, for example, the library, public toilets and youth services.³

13. The council was also advised by the “Audit Commission” (taken from press article but more likely to be their own internal auditor) to rebuild its reserves after it withdrew more than £312,500 over the past five years to support its own budget.
14. Major Projects - There are 3 major projects that the Council is engaged with along with the day to day business of the parish and the management/maintenance of the Parish Rooms and a significant number of other assets including the Cemetery, and Chapel, play equipment and land, land holdings, car park, equipment etc. These projects are impressive in nature and many considerably larger councils do not run comparable facilities for their communities. The council does not lack ambition.
15. The Memorial Centre - The new Mountsorrel Memorial Hall replaced an existing well-used facility that was felt to no longer met the demands of the growing village. It was opened in 2018 (prior to a legal agreement regarding the terms of the operation and management of the venue being adopted by the council).
16. Commissioned by the Mountsorrel War Memorial Trust and Mountsorrel Parish Council, the new multi-purpose facility contains a theatre, a café space, two shops and a crèche, as well as a music and arts performance and practice room plus meeting rooms.
17. The build cost was £3.9m and funded through £2.7m of s106 monies from developers. The rest of the funding for the project has been provided from a range of sources including the Tarmac Landfill Communities Fund, the Mountsorrel War Memorials Trust Ltd and Mountsorrel Parish Council. It appears that no business plan or community needs analysis⁴ was undertaken before the project was commissioned.
18. The building is leased back to the War Memorial Trust from the Council who are responsible for maintenance of the building. The building is operated by the Council who are responsible for all the running costs. In 2019-20 the council was providing £140k annually as a subsidy to the MC (£242k expenditure minus £100k projected income). LRALC first expressed concern about the basis of the proposed lease in March 2017 due to the risk of it being unfavourable to the council and its council tax payers, and we would strongly recommend that the basis of the allocation of costs vs surplus is revisited as at present the council is not able to recoup any of the considerable costs being borne if the venue were to begin generating a surplus.
19. Concerns were also expressed by some Councillors during our interviews at the continuing lack of Business Plan for the venue, and the fact that many of the decisions taken seem to be responsive in nature and taken in isolation

³ Leicester Mercury 15th March 2018.

⁴ <https://www.local.gov.uk/sites/default/files/documents/guidance-paper-1-needs-as-997.pdf>

rather than as part of an overall system of planning and management for the MMC.

20. Halstead Rd Playing Fields - (£2m) project is at initiation stage. Plan is to use further S106 monies obtained by the council from Jelsons to develop 11 football pitches, a cricket square and new pavilion at the Halstead Rd land. The plan is to run the facilities in same way as the MMC. It is not clear what learning from the MMC experience has been applied to the process and decision making behind the Halstead Rd development. Some Councillors expressed concerns about the lack of detail and consultation on these proposals. This is being project managed by MDA Consultants, Birmingham (who project managed the MMC project⁵).
21. The Library - Following a review of libraries by Leicestershire County Council, Mountsorrel Library is a community managed library on 2 floors. The main library and facilities are on the ground floor. There are stairs or a lift to the first floor where you will find learning facilities and courses. It reopened on 4th Feb 2019. The building housing the library is currently owned privately (by Will Antill, who is also the council's advisor on a wide range of planning related matters, and separately is the Chairman of the War Memorial Trust) and leased to the county council for 125 yrs.
22. The plan is to create a charitable trust that will own the building and a maintenance fund will be established with money from surrendering the Council lease. The Parish Council will then fund the running costs of the library including staff. As yet we have not seen any budgets or details of how these arrangements will work, though many Councillors see the project as being one that the council has already committed to. Clearly these all need to be established and understood by the parish council before agreeing to proceed.
23. None of these projects have business plans for their operation. Although there is a recognition by the council that they need to (a working group has been set up to develop these). This is a serious issue for the council as whilst the council has been very successful in achieving considerable capital contributions to projects this has not been matched by a similar robust approach to planning for the revenue costs of the projects. Whilst some Councillors assured us that they had learned the lessons of what happened with the MC the absence of written plans is concerning.
24. The council is clearly very ambitious, and Councillors and staff display a high level of commitment and effort towards making everything that the council does successful. Any failures are not through lack of trying. Although the council can be seen as being "traditional" in many aspects of its operation, it is not content with merely fulfilling a traditional parish council role. It is fair to say that the parish council is a major player in terms of provision of facilities not just for the residents of Mountsorrel, but also far wider geographically.
25. However, it is possible that the major projects that the council is involved in and has delivered may have impacted on provision of services by the council, which

⁵ <https://www.mdaconsulting.co.uk/projects/consulting/sport-and-leisure/mountsorrel-memorial-centre>

seem to take a back seat when compared to the provision of facilities. Many councils of a similar size are involved in the direct delivery of a range of health and wellbeing services that support the elderly, young people, and other vulnerable individuals, especially in the light of principal authority austerity which has seen many services cut.

Introduction

26. Mountsorrel Parish Council (MPC), like all other local Councils, is responsible for the use of public funds raised by compulsory taxation and other means. It is accountable to citizens as taxpayers and users of Council services for how it uses those funds, regardless of source.
27. The Council has a duty to conduct its affairs in the right way – so that it complies with the law, complies with its own procedures, accounts for its resources, protects the resources entrusted to it, makes informed decisions, and, vitally, can be seen to have done so. It also has a statutory to act in accordance with the general principle of “Wednesbury reasonableness.”⁶
28. The Council is a democratically elected body and, within the constraints imposed by the law, has significant freedom of action. As such it is a matter for Council to consider what it wishes to do with the governance recommendations contained within this report. Nothing contained in this document constitutes an instruction. However, with autonomy and power comes duty and accountability and the contents of this report should be considered with an open mind. None of the issues raised are intended to be explicit criticism of past actions, rather they are intended to be recommendations for the future good of the council and its community.
29. Transparency about governance provides reassurance to citizens, and it protects Councillors and officers of the Council from allegations of impropriety. Perception can be as powerful as the reality of a situation, as the Council has recently experienced via social media and other communication channels. Pro-

⁶ This relates to the actions of a local authority or other public body in exercising its discretion, and relates to whether the body has acted irrationally (rather than ultra vires). The definition was given by Lord Greene in the Wednesbury case (1948 1 KB 223): “When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a limited class of case ... When discretion of this kind is granted, the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law ... If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. There have been in the cases expressions used relating to the sort of thing that authorities must not do ... bad faith, dishonesty – those of course stand by themselves ... Discretion must be exercised reasonably. He must call his own attention to the matters which he is bound to consider, and exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he must truly be said, and often is said, to be acting unreasonably.”

active transparency measures can be effective in reducing the gap between perceptions and the reality of the situation where such a gap exists.

30. This report is intended to provide an objective review of the council's governance, using both empirical and anecdotal evidence compiled by our researchers, with a view to aiding accountability, transparency, and good governance.
31. This governance review is based broadly on the following principles which are adapted from the good governance standard for public services published by the Independent Commission on Good Governance in Public Services⁷:
- a) The Council has a clearly defined purpose, and aims and objectives that are clear and understandable, that have been communicated clearly to the public;
 - b) The Council is performing effectively with clear leadership and the Council, Councillors and staff understand their role, statutory duties and powers;
 - c) The Council has appropriate policies in place to show that it has standards, values and a code of conduct for members and staff;
 - d) The Council's decision making is clear, informed, understandable, transparent and risks are managed with an effective risk management system in place;
 - e) The Council develops and continually improves members and staff performance so they have the capacity to and the capability of working effectively in their roles;
 - f) The Council engages with its community, empowers them to be involved in the decision-making process and has a clearly defined community engagement policy and communicates effectively.

Executive Summary

32. This review has expanded the above principles to also include legislative requirements, the "proper practices"⁸, and sector best practice. It has covered a number of governance areas, including constitutional, operational, financial, risk management, community interaction and human resources. Within each of the governance areas, several documents and processes were examined to test and evidence each of the above areas.

- 33. Principle one: The Council has a clearly defined purpose, and aims and objectives that are clear and understandable, that have been communicated clearly to the public.**

⁷ <https://www.irf.org.uk/report/good-governance-standard-public-services>

⁸ <https://www.leicestershireandrutlandalc.gov.uk/uploads/governance-and-accountability-for-smaller-authorities-in-england-2019-sections-1-5-for-publication-3.pdf>

- 33.1. *It was not initially possible to identify any agreed priorities in our interviews, however during our research we discovered that within the council's reserves policy the following 4 items are listed as "the council's overall strategic objectives": Improving the quality of the Parish's amenities; Promoting the Parish and encouraging inward investment and visitors; Strengthening the quality of its community; and Optimising the Council's administrative costs, assets and income from its assets. It is not clear where these objectives have come from or how they were developed, nor what they mean in practice.*
- 33.2. *e.g. would a project which would be an additional draw on council resources be in line with the objective of "Optimising the Council's administrative costs, assets and income from its assets."*
- 33.3. *There is no forward plan/strategic plan for the council. Forward planning seems to be driven by the budget process which is itself incremental and based on the previous year's budget. We could not discern any underlying adopted principles that were used in guiding decisions.*
- 33.4. *Councillors were not able to say what the priorities of the council are. Some did say that they are the same as the 3 major projects, and that it was a priority to get the MC to be less of a financial call on the council.*
- 33.5. *There is no forward plan, or any set of plans that inform the council's work, its budget planning and so on, though a business plan working party has been set up to look at two projects (MMC and Halstead Road).*
- 33.6. *Community engagement is mainly undertaken by Cllrs in an individual capacity and with members of the public attending meetings. There were different views about how successful this was and there is considerable scope for improving engagement. For example, simply changing the room layout for meetings and inviting members of the public to come forward to speak can change the tone and style of engagement.*
- 33.7. *The Local Council Award Scheme (for example) at the top level requires that the council's "action plan (or similar forward plan) summarises findings from community engagement and sets out aims and objectives that respond to community views. The action plan includes a timetable for actions to be completed with dates for reviewing the plan. The council's budget shows how the action plan is put into practice and manages risks to public money." The council would not meet these criteria in a number of areas at present.*
- 33.8. *Over the last couple of years use of social media by the public has been significant in response to the large increase in precept (eg the creation of the Facebook page Mountsorrel Parish Council Community, which has been critical of the council and sees it's role as providing information about the council's activities and holding it to account). It regularly publishes PC and Committee meeting agendas.*
- 33.9. *There does not appear to be any evidence of comprehensive community engagement by the council on any of the main projects that the council has commenced or is planning to commence since (and including) the MMC project. Certain assumptions seem to have been taken at face value without any testing of these through consultation and engagement apart from a small scale consultation relating to the Loughborough Road project.*
- 33.10. *It appears that budgets are built incrementally from the previous year's budget and actual spend information. We could not find any evidence that*

budgeting is driven by plans for specific cost centres, or projects. Neither have we been able to identify any forecasts or plans for more than one year, or any budget strategy/principles apart from replenishing the reserves. Such strategies/principles may relate to the future level of council tax increases, cost centres such as MMC to move to break-even point in x years, and so on.

33.11. *The Internal Audit report March 31st 2019 makes it clear that the budget strategy for the MMC should be towards “ongoing profitability and sustainability”. However, it should be noted that the agreement in place with the War Memorial Trust in effect means that the MMC will only ever be a drain on council resources, or have a neutral effect on council finances. It does not, for example, allow for the council to recoup any of the high costs incurred against income in the early years of the operation of the venue should the venue become profitable as all surplus is ringfenced for MMC use and cannot be used for wider community benefit through the council itself, or to replenish council reserves which have been used to support the MMC.*

33.12. *It is not clear to what extent the revenue costs of major projects are being considered alongside capital costs when planning such projects and setting ongoing budgets.*

33.13. *When considering proposals for major projects there is no evidence that a number of options are being formally presented for consideration. There is a risk that such proposals, the provenance and independence of which are not always clear, will be treated as a “done deal” in the absence of a range of alternatives.*

33.14. *The lack of detailed written reports underpinning such project proposals means it is also very difficult to identify what evidence and data, if any, was identified and tabled to support the proposals being put forward. There is certainly anecdotal evidence that certain assumptions are made and not sufficiently tested when committing the council to high level strategic project outcomes.*

34. Principle two: The Council is performing effectively with clear leadership and the Council, Councillors and staff understand their role, statutory duties and powers;

34.1. *A key observation that needs to be made early on is that some projects have not been progressed as smoothly as they might because governance structures have lacked clarity, particularly in relation to the role played by the council’s “Planning Officer” due to the number of roles this individual fulfils within the council and also in its close orbit. The Planning Officer clearly plays a key strategic and operational role within the council, he is very influential with respect to the council’s decisions and projects, including making recommendations regarding the council’s budget, and his recent decision to stand down from the role will require the council to quickly consider the business continuity implications and risks posed by the loss of this seemingly key role going forward.*

34.2. *The Planning Officer makes many representations to and negotiates with external bodies (e.g., developers, CBC, local groups, land owners, etc) on behalf of the council and it is not clear where the authority for these representations comes from as most minutes only seem to record a report back*

to the council on what the Planning Officer has done on behalf of the council regarding major projects. There is a risk that this could lead to “the tail wagging the dog”. It must be remembered that the council must keep full and absolute control on all aspects of its projects at all times. A council must never be committed to any course of action by anything other than a resolution of a council meeting or a Committee/sub-Committee/officer/other local authority with appropriate delegated authority.

- 34.3. We were also told that the opportunity to properly scrutinise critical plans is potentially curtailed as they are often tabled in original form at a meeting without copies being given in advance or provided to take away. An example of this are the architects plans for the proposed Pavilion.
- 34.4. There is also an issue regarding approval of such plans. For example members of the Recreation and Amenities Committee told us that the architect plans for the new Pavilion were presented to them twice for consideration during 2019, however there is no record in any minutes we have examined of the plans being formally accepted and approved. It is also worrying that these plans were seemingly approved (planning permission has been sought on them) before a written business case has been considered by council which shows that the project is viable. It is **critical** that before the council finally commits to delivering this specific project that a proper detailed business case (including revenue costs and projected income) is considered (we can see no minutes showing that such a decision has already been taken).
- 34.5. It should be noted that the Planning Officer is not an officer of the council (being a contractor) and therefore cannot be delegated any authority on behalf of the council, unlike the Clerk or another officer for example. Unfortunately there are a number of examples recorded in minutes where this individual was delegated such authority. The law regarding which bodies (including persons) can be delegated to is very specific and is a core element of ensuring that councils discharge their functions in a democratic, accountable and transparent manner.
- 34.6. The Minister for Local Government responded to representations made by LRALC in 2015 regarding members of the public taking part in council decision making by stating that as non-Councillors “do not have the same duty as elected members to represent the interests of all the people in an area” they would not be given such powers by government. There are a handful of exceptions to this rule⁹
- 34.7. The precise nature of the role played by the council’s Planning Officer is not clear as his reports and recommendations to council and Committees seem to be almost entirely verbal and there is no agreed contract specification for the provision of services that we have seen.
- 34.8. It is not clear if the council took professional advice regarding the status of the Planning Officer, i.e. should they have been treated as an employee rather than a contractor. LRALC’s HR Adviser (Personnel Advice and

⁹ See NALC LTN 7

Solutions) has advised that “if the ‘Contractor’ operates under the control of the Council, uses Council tools and equipment to do their job, and the Council expects this one individual to deliver their activities, they are acting as an Employee”.

- 34.9. *However, the main structural failings have their roots in capacity overload, and because roles and responsibilities have not been understood as they might; not because of individual shortcomings. The key foci to date appear to have been on administration and fire-fighting relating to existing projects rather than management, whilst at the same time trying to move ahead with new large scale projects.*
- 34.10. *The Clerk is currently unable to fulfil the strategic and business orientated role that is needed due to a staffing structure which has simply grown in size and not evolved according to business needs. It does not allow her to fulfil the role that is needed due to constant interruptions with the most trivial of issues being brought straight to her throughout the working day.*
- 34.11. *Staffing proposals seem to be taken in isolation from each other by a range of individuals/bodies with no clear and agreed set of principles underpinning such decisions, and the role of certain Councillors in both day to day and long term staffing matters is substantial bordering on the excessive, creating a very real risk for business continuity if these Councillors were to stand down or lose an election.*
- 34.12. *It is critical that the council undertakes a full staffing review to ensure that the staffing resources at its disposal are utilised in the most effective way to meet the needs of the council, its assets, and its services.*
- 34.13. *On 27th February 2020 we emailed the Chairman and Clerk and advised that “a full staffing review is undertaken on the council. [The Governance Review] report will provide full information and the background behind this but I am aware that some discussions are taking place about staffing issues at present and I would recommend that no staffing decisions involving the creation of or appointment to permanent staffing posts are taken until such a time as the council has considered undertaking such a review at the very least.” However, it appears a number of permanent roles have recently been created, though this may have been prior to our advice being given.*
- 34.14. *Annual Governance and Accountability Return (AGAR) - The Clerk fulfils the lead on this key annual process and the AGAR has been completed on time. Financial reporting is done at every council meeting in detail, though it is not clear that all Councillors understand this as there is no induction programme or council wide training policy for Councillors (for example including a requirement that any Committee members must attend appropriate training course as a condition of appointment, e.g. LRALC’s Finance for Councillors course¹⁰).*

¹⁰ <https://www.leicestershireandrutlandalc.gov.uk/finance-for-Councillors.html>

- 34.15. *There is also a general failure to fully understand the Code of Conduct and interests regime by Councillors and key officers, which although not unusual presents serious reputational risks to Councillors and the council itself, as well as legal risks to individual Councillors due to the fact that at least two Councillors hold substantial contracts with the council.*
- 34.16. *We also identified an issue relating to “officer interests” where the Clerk by her own admission “stepped back” from advising on a critical staffing issue because a family member was involved due to the belief that she could not be involved by nature of the relationship. The only requirement in law is that an officer must inform the council in writing of any direct or indirect interest they have in a contract¹¹.*
- 34.17. *This distancing was done with best intentions and an abundance of caution. However, this led to Councillors taking a lead on a critical issue with no officer guidance or recommendations, which in turn led to rather chaotic decision making on the matter in the context of the criteria being assessed. Although Councillors quite rightly take the final decision the Clerk as head of paid service should be tabling costed options and recommendations (with Councillor input and/or professional advice as appropriate) for all permanent staffing appointments at the very least.*
- 34.18. *There is nothing that would preclude an officer from continuing to play their professional role even where there was a direct interest in a contract as long as the interest was declared in writing and council was content that their judgement remained impartial and objective.*
- 34.19. *The Chairman of council broadly understands his role as do the Committee chairs. The difference between Councillor and officer roles are also broadly understood, but there are instances where Councillors are acting in a more involved way, particularly with MMC staff, than ought to be the case.*
- 34.20. *There may be some confusion between cllrs roles in relation to staff. The distinction between line manager and employer needs to be understood by all Councillors; individual Councillors must never act in a line management capacity as this would be ultra vires.*
- 34.21. *The reliance on individual Councillors in the management (both day to day and overall project delivery) of key Council projects poses a range of risks which I am not aware are identified or mitigated in any Council document. As we characterise in our core training for both Clerks and Councillors, within local councils Councillors govern, and officers are the doers.*
- 34.22. *It is clear from our work with the Council that one of the main reasons for Councillors becoming involved in management activities is a lack of officer capacity to be able to discharge the functions that they should be (especially for the Clerk), and a lack of clarity of the respective (and very different) roles of*

¹¹ <http://www.legislation.gov.uk/ukpga/1972/70/section/117>

council officers and of Councillors/co-opted Committee members in a council with the range of operations and projects that MPC has.

34.23. *It is also possible that Councillors may be finding it difficult to separate their employment/business backgrounds from their entirely separate role as Councillors, as this challenge is one which can rear its head frequently. However, as Councillors are not selected in the same way as employees (ie against a set of agreed criteria designed to ensure that an individual has the necessary knowledge, skills, and experience), and as the role of an elected Councillor is entirely different from an officer with management responsibilities, reliance by the council on professional skills held by individual Councillors should be avoided where possible as it creates serious business continuity and internal control risks to the council.*

34.24. *There seems to be an understanding of legal powers, but not of all governance duties that are placed on Councillors, particularly in relation to major projects. There is no evidence that certain key steps have been undertaken in the lead up to a final decision to proceed with the current major projects, e.g., risk analysis, needs and benefits analysis, and project business case.*

34.25. *A well prepared project business case enables the organisation and its key stakeholders to understand, influence and shape the project's scope and direction early on in the planning process; assists decision makers to understand the key issues, the available evidence base and to avoid committing resources to schemes that should not proceed; demonstrates to senior management, stakeholders, customers and decision makers the continuing viability of the project; and provides the basis for management, monitoring and evaluation during and after implementation.*

34.26. *It is of course possible that certain projects may not have reached inception or may have been dramatically scaled back if a project business case was considered before the final decision to commit was made by council. Many councils use, or base their business case templates on, the 'five case model'¹². This is a structure for a business case that was developed by central government.*

35. Principle 3 - The Council's decision making is clear, informed, understandable, transparent and risks are managed with an effective risk management system in place;

35.1. *Apart from the key issue of the need for separation of roles as a key part of the Council's internal controls and risk management, and the limitations imposed by Hillingdon caselaw¹³, I would advise the Council that officers (or an appointed project manager reporting to the Council for major projects or where capacity issues require it) manage the delivery of future*

¹² <http://fivecasemodel.co.uk/overview/>

¹³ See para 10 of NALC LTN 1.

capital projects to minimise the inherent risks relating to consistency and continuity that come with elected members undertaking such roles.

- 35.2. *Where specialist knowledge and experience exists amongst Councillors this should be utilised at an operational level by providing advice and guidance to the relevant officer rather than directly issuing instructions to staff or contractors, for example. Individual Councillors must never give direct instructions to contractors which have cost implications, and officers should only do so where they have delegated authority. Consultants cannot be delegated such authority.*
- 35.3. *Management of projects and contractors is another key area of governance. For example, the previously mentioned Public Interest Report to Kirby Muxloe Parish Council was critical of the council for not having “effective mechanism to specify contracts or control the volume of extra work awarded to existing contractors”, and MPC must ensure that it reviews its own mechanisms to ensure they are fit for purpose and are being followed, a need highlighted by experiences with the MMC.*
- 35.4. *Agendas and wording of items. These are clear and published on the website for the next Full Council meeting. They usually identify what decisions are required, with accompanying information, though not always. Some agenda items are not explicit and where there is an intention to go in the closed session the agenda item often gives no indication as to what decision Councillors will be asked to consider making.*
- 35.5. *The ability of Councillors to demand items are added to agendas with little or no background information should be stopped immediately, as provided for in the council’s Standing Orders (the Clerk has the power to refuse items which do not provide sufficient information or a clear proposal¹⁴).*
- 35.6. *Background and supporting information for agenda items is not in the form of a report that would ideally give a summary or recommendations from the Clerk or other relevant senior officer (eg MMC Manager) and include appropriate data and information collated in appendices. Many councils of a similar size, eg Anstey Parish Council, produce a pack of information for each council meeting¹⁵ and supporting papers are explicitly referenced on the agenda (summons) itself.*
- 35.7. *These usually provide a covering report from the Clerk for important proposals and recommendations. A one or two page report setting out the purpose of the report and recommendations, then background, followed by the detailed information. It is not clear if the MPC Clerk makes explicit and formal recommendations to the Council in advance of the meetings but it is*

¹⁴ Paras 9 (d), (e), and (f) MPC Standing Orders 2019

¹⁵ <https://www.ansteypc.org.uk/uploads/full-council-agenda-25th-february-2020.pdf>

not always evidenced as happening in meetings. It is not always apparent as to whether formal professional advice from an appropriate source has been circulated and/or tabled for Councillors to consider.

- 35.8. *There is an archive page on the website for previous Agendas for Full Council and the papers to accompany them. There are minutes for some meetings in 2019. However most of the links are broken. Some Councillors expressed frustration with this as it did not help with understanding previous decisions and provide context for what they were now being asked to agree. We found at least one example where the incorrect minutes were uploaded against a specific meeting¹⁶,*
- 35.9. *The position is similar for Committee meetings. Agendas are sent out in time and published on the website for the forthcoming meeting. There are no recommendations of what the Committee is asked to do on the agenda and no covering report. For example, a Recreation and Amenities Committee held on the 16th December 2019 lasted over 3 hours despite having only two very generic agenda items (“LOUGHBOROUGH ROAD PROJECT” and “HALSTEAD ROAD PROJECT”) and it appears from the minutes that no written reports were circulated or tabled. If they were then these must be referred to in minutes to evidence that the council is acting reasonably and making informed decisions.*
- 35.10. *There are also only 3 resolutions recorded in the minutes of this meeting; 2 x to note reports, and 1 to go in to closed session. Whilst this may be entirely accurate it would be unusual for a meeting considering major projects to last this length of time without making any decisions relating to the progression of the projects.*
- 35.11. *There seems to be evidence that when the council or its Committees go in to closed session they do not note the decisions taken in the minutes (certainly from those seen on the council’s website). All decisions taken, even if in closed session, must be recorded in the formal minutes of meetings.*
- 35.12. *Other meetings of the same Committee approved expenditure of £3,500 at one meeting¹⁷ and £4,500 at another¹⁸ without any reference on the agenda that such expenditure was being proposed. It is essential that such proposals are explicit. For example the Public Interest Report issued by the Audit Commission to Kirby Muxloe Parish Council¹⁹ in 2012 singled out the fact that “the council entered into a major financial commitment without an explicit reference on the agenda that such a proposal was to be considered” for explicit criticism.*

¹⁶ <https://www.mountsorrelparishcouncil.co.uk/wp-content/uploads/2020/02/Council-Minutes-13.01.2020.pdf>

¹⁷ Committee of 8/10/19

¹⁸ Committee of 5/8/19

- 35.13. Steps to ensure Councillors are able to make informed decisions appear to be based on information given by the Clerk and other officers/Councillors at the meetings of Council and Committees and not on original copies of professional and legal advice given in writing to Councillors. Also, in terms of finances reports that go to council are for example just the budget figures for the whole council or sales and some expenditure in the case of the café, and there does not appear to be any written analysis or commentary to accompany these.
- 35.14. There are also issues surrounding the lease agreement of the Memorial Centre and the liability it places on the Parish Council. It does not appear that the PC took independent legal advice about its own interests until very recently, ie they had the same advisors as the District Council and the War Memorial Trust during the setting up of the lease.
- 35.15. The council needs to take its professional legal, business planning and financial advice independent of the advisers used by the District Council and War Memorials Trust on these projects.
- 35.16. We are also concerned that the 'model agreement' used for establishing the relationship between the PC and the MMC was based on the agreement between Charnwood Borough Council and the Soar Valley Leisure centre. It is not clear what independent advice if any the PC took about the appropriateness of this agreement for a medium sized parish council. It is unfortunate that the council's planning consultant who provided advice on a wider range of issues, including the MMC and the arrangements between the council and the War Memorial Trust, was also the Chairman of the War Memorial Trust. This means that he had a legal duty to promote the interests of the charity itself. Some legal advice taken specifically by the charity in relation to the MMC was presented to LRALC officers undertaking this report as evidence that the council had taken appropriate advice. There needs to be much clearer lines of demarcation between both bodies on any future joint projects and an understanding that each body must protect its own interests.
- 35.17. We have concerns that the very different scale and resources of CBC when compared with Mountsorrel PC means that what is an appropriate arrangement for the Soar Valley Leisure Centre may not be for the MMC as the risk to the PC in this arrangement is proportionally much greater than the risk CBC is exposed to in its arrangement.
- 35.18. Risks and how they are considered (risk assessment, preparation for making major decisions, role of officers in preparing info, background papers)
- 35.19. There is a Risk Register updated 2019 which identifies risks and measures to minimise them, including insurance. However, only 12 separate risks are identified in total and all of these are classed as "low risk" with no explanation as to how this conclusion has been arrived at.

- 35.20. *There are no risks identified with regard to the council's capacity, revenue consequences of major capital projects, management and delivery of major projects, or business interruption for activities which are income generating.*
- 35.21. *There is a detailed adopted Reserves Policy in place though this appears to be drawn heavily from an original document by Andover Town Council and as such it is not clear how appropriate it is for MPC as such a policy should be based on the unique circumstances of each council.*
- 35.22. *The proper practices state that "arrangements need to be in place to ensure that the authority's funds are managed properly and that any amounts surplus to requirements are invested appropriately, in accordance with an approved strategy which needs to have regard to MHCLG's statutory Guidance on local government investments. If total investments are to exceed the threshold specified in MHCLG's statutory guidance at any time during a financial year, an authority needs to produce and approve an annual Investment Strategy in accordance with the MHCLG guidance". MPC will exceed this threshold (£100,000) if it is following the recommendations made in recent internal audit reports regarding reserves.*
- 35.23. *The range and scope of delegated authority in place is detailed in a scheme of delegation²⁰ for Committees and two employees (the Clerk and MMC Manager). The document was last updated in May 2019. The terms of reference are not sufficiently detailed as to provide absolute clarity regarding the "hard lines" of delegated authority within which the Committees operate. It also does not cover the delegated authority which has been given to the newly constituted Memorial Centre Committee, or detailed terms of reference of the councils working parties and panels²¹.*
- 35.24. *It should be noted that the NALC legal unit advise that working parties "are, in fact, Committees or sub-Committees" and are "subject to the same legal provisions in the 1972 Act as other Committees²²." This conflicts with the council's belief that such working parties are advantageous as they do not have to operate within a formal statutory framework.*
- 35.25. *Business planning for income generating activities - The Council has been very successful in achieving significant capital contributions from S106, the Memorial Trust and the PC, to undertake 2 major projects. The Memorial Centre Development (£3.9m) and Halstead Rd Playing Fields. The Memorial Centre has been delivered and the Halstead Rd project is at initiation stage. There is a third major project, the Library building and associated service.*

²⁰ <https://www.mountsorrelparishcouncil.co.uk/wp-content/uploads/2019/06/Approved-scheme-of-delegation-for-2019-20.doc>

²¹ <https://www.mountsorrelparishcouncil.co.uk/wp-content/uploads/2019/06/Committees-and-WP-2019-20.docx>

²² See para 24 of NALC LTN 1.

35.26. *None of these have business plans for their operation. Although there is a recognition that they need to. We have had sight of early drafts of business plans for the Memorial Centre but these would need significant additional data, analysis, projections, plans, and targets to be appropriate and meet the needs (and risks to public funds) presented by a project the size of the MMC.*

35.27. *This is a very serious issue for the council as whilst the council has been very successful in achieving considerable capital contributions towards the funding of projects this has not been matched by a similar robust approach to planning for the revenue costs of the projects. There are precedents which illustrate the risks of failures of governance with regards to such projects²³.*

35.28. *All Councillors, including any who join the council midway through capital projects, should have a full understanding of the business case and decision-making processes which underpin them.*

35.29. *Monitoring of financial performance - There are quarterly reports of expenditure to Council meetings. It is critical that these reports are used to manage the council's finances and not simply be a record of what has happened. Councillors should feel able to request the reports they feel they require to fulfil their duties with respect to council finances. For example, the financial monitoring reports for the performance and operation of the MMC will by necessity look very different to those for the administrative side of the council.*

35.30. *Buildings and asset management - The council has extensive assets and has a register of these and their value. I am not clear at this stage if there is an asset management plan, which includes planned maintenance, disposal policies etc. Typically, an asset management plan will cover more than a single asset, taking a systematic approach - especially where a number of assets are co-dependent and are required to work together to deliver an agreed standard of service. It would be advisable to add the production of such a plan to the council's forward plan.*

36. Principle Four - The Council develops and continually improves members and staff performance, so they have the capacity to and the capability of working effectively in their roles;

36.1. *The Councillors and staff at MPC have the potential to be the council's greatest asset. However, the greatest hindrance currently to people working effectively in their roles is the deeply embedded conflict and/or breakdown in relations which exists within the council. The council is not working as a cohesive unit, and it appears that consensus decision making on major items*

²³ <https://www.publiclawtoday.co.uk/governance/396-governance-a-risk-articles-news/22655-town-council-made-decisions-without-due-consideration-of-legal-powers-auditors>

of council business is extremely rare, leading to decisions being taken which have considerable opposition amongst both officers and members. We believe that at least some of this stems from the lack of underlying principles, priorities and plans adopted to support the council's operation.

- 36.2. *We were (and are) concerned about the risks of introducing this report in to this environment. On 27th February we wrote to the Chairman and Clerk and advised that we were “concerned that the internal turmoil between Councillors appears to be continuing and potentially becoming more entrenched. [We] are very concerned about introducing our report in to this environment. Addressing issues raised in a Governance Review can be challenging to those in charge of governance at the best of times, and I am concerned that introducing our report in to the council whilst issues between members remain is likely to be counterproductive.”*
- 36.3. *We therefore advised that mediation take place as soon as was feasible if members agreed to this, and we contacted 3 providers of such services to ask them to make contact with MPC to discuss what they could provide. However, the coronavirus crisis escalated during the following week and face to face mediation is now impossible for at least the short-term. We still advise the council to seek appropriate mediation or conflict resolution services as soon as is possible once social distancing measures allow it.*
- 36.4. *The council can also improve in the areas covered by this principle by adopting a training policy which is underpinned by an appropriate budget line. As well as covering Councillors this should apply to council staff, and there should also be an annual appraisal for all council staff, regardless of role. LRALC provides an “off the shelf” appraisal toolkit²⁴ to enable this as part of the benefits of membership.*
- 36.5. *We would also advise that the council considers adopting a policy making appropriate training compulsory for all Committee appointments. There can be a perception that training is unnecessary for those with transferable experience and skills. However, the principles, practices, and legislative environment for local councils are entirely different to those for businesses and charities, and it is essential that even the most experienced Councillors regularly engage with training and development activities as is the case for those who have organisational responsibilities in any specialist operating environment. Adopting such a policy can help engender a culture where engaging with training on a regular basis is the norm.*
- 36.6. *If the council commits to working to achieve the Local Council Award Scheme²⁵ it will find a number of criteria that help to strengthen the quality of its work in this area.*

²⁴ <https://www.leicestershireandrutlandalc.gov.uk/appraisal-pack.html>

²⁵ <https://www.nalc.gov.uk/library/our-work/lcas/1855-local-council-award-scheme-guide-2016-pdf>

36.7. *For example at the Quality level the council is required to have a formal appraisal process in place for all staff. The council must also have a training budget and a general training policy for staff and Councillors with a detailed record of all training undertaken by staff and Councillors in the last year. The panel assessing the award seeks assurance that a training culture is embedded in the council. Finally, the Clerk would be expected to achieve at least 12 Continuous Professional Development Points every year.*

37. Principle Five - The Council engages with its community, empowers them to be involved in the decision-making process and has a clearly defined community engagement policy and communicates effectively.

37.1. *There are certainly some elements of good practice in this area of operation, for example consulting with local schools. However, it appears that the preferred option expressed through this specific consultation was deemed too expensive by the council and disregarded, which stands in stark contrast to the MMC project where decisions which were the cause at least in part of a tripling of the council tax were not the subject of even a basic consultation exercise.*

37.2. *With Halstead Road the council's Planning Consultant has reported that there is widespread support amongst specific local sporting clubs for the proposals (we do not know the form that this consultation took, and whether the results were documented and were presented to the council) but of at least equal importance are the views of parishioners on the costed proposals and there has been no systematic engagement with them on the proposals. For all major commitments made by the council the question should be asked "how do Councillors know that this is what parishioners want their council to be prioritising over other possible projects?" If this question is not asked there is a risk that the council commits to "vanity projects" which do not have the support of council tax payers and where the benefit to the number of parishioners it serves is not commensurate with the spend.*

37.3. *When a council is looking to gain borrowing approval for a capital project from government it must evidence that "regardless of precept increase there must be public support for the project or at the very least opportunities given to residents for their views / opinions / feedback on the project." They also require that "along with the results we must see all the consultation materials produced either on paper or online; public presentations, etc." These principles for capital projects are an ideal best practice template for councils to follow even when borrowing is not required, regardless of the source of the funds.*

37.4. *Where a project for which borrowing approval is being sought will increase the precept requirements of a council the government is even clearer; "The evidence of public support can only come from a council tax precept increase survey, poll, consultation which needs to be run at the earliest possible opportunity. This is very much **mandatory**. And must not be avoided." Even if borrowing is not a feature of a capital project there is no*

good reason for councils not to follow the same process where the business case shows a likely increase in precept requirements, or even poses the risk of one.

37.5. *The full government guidance on ensuring community support for capital projects including suggested methods for consultation, polls, etc, can be found on the LRALC website²⁶*

Additional findings

38. It is critical that local Councils are transparent and accountable for their actions and decisions, not only to its electors but also within the Council (e.g. between Committees, Council, Councillors, and Officers). There must be trust in Council decision making structures, especially where delegation to Committees and officers exists.
39. Whilst informal external methods of communication (websites, social media, etc) are valuable, there are several formal requirements relating to transparency and publicly accessible Council records, including minutes of meetings and the interests of members, that must be met.
40. The Local Government Transparency Code 2015²⁷ applies to any local Council which has either gross annual income or expenditure exceeding £200,000²⁸. The Code is designed to increase democratic accountability and ensure that local people can access and scrutinise data covering:
- a) how money is spent – all spending transactions over £500 and contracts valued over £5,000;
 - b) use of assets – how the Council manages its assets;
 - c) decision making – how and by whom decisions are taken, including how much senior officers are paid;
 - d) issues important to local people – for example, parking
41. At the time of writing this report the Council is not yet compliant with the Code.
42. An unfortunate issue of note that is relevant to transparency (and compliance with the above Code) is that there are ongoing difficulties with the Council's website which means that many links (112 as of 19th April 2020²⁹) are "dead" and bring up a 404 error. A prime and unfortunate example of this is the "Your Councillors"

²⁶ [https://www.leicestershireandrutlandalc.gov.uk/uploads/baa-\(hints-tips-note\)-template.docx](https://www.leicestershireandrutlandalc.gov.uk/uploads/baa-(hints-tips-note)-template.docx)

²⁷ <https://www.gov.uk/government/publications/local-government-transparency-code-2015>

²⁸ See page 56 of NALC's "Good Councillor's Guide to Finance and Transparency".

²⁹ <https://www.leicestershireandrutlandalc.gov.uk/uploads/dead-links.docx>

page³⁰ and the Code of Conduct page³¹, both important information for parishioners to hold elected members to account.

43. It is clear that much precept and budget information is shared with the community, an improvement on previous years, though the ability to actually shape the council's future spending plans seems limited to making representations during the public participation session at meetings.
44. Minutes are intended to be formal records of official acts and decisions. I would make the observation that MPC's minutes are generally very good, however the detail behind key decisions on major projects and other important resolutions could be improved. Also, at times excessive detail of representations made by the public is recorded.
45. Finally, personal data of parishioners is also recorded in minutes at times when wording such as "a member of the public made representations on....." is sufficient and avoids data protection/GDPR issues. There is no operational need to capture data detailing the names of members of the public attending council meetings and the ability to attend a meeting anonymously should be maintained. Council may wish to consider sending Officers responsible for taking minutes on LRALC's Effective Local Council Minutes course³².
46. Proper governance and accountability for Councils is taken seriously by those tasked with ensuring it is present, e.g. SAAA, JPAG, external and internal auditors, etc. Locally, for example one Council was strongly criticised in a Public Interest Report³³ because in many areas, the Council had failed to establish and secure the standards of governance and accountability that citizens have the right to expect. However, External Audit regime is "light touch", many Public Interest Reports only come about due to electors exercising their right to question and object³⁴. However, it is noted that there have been no serious failures identified by MPC's Internal Audit in recent years and the reports provided by the council's internal auditor are comprehensive and assess appropriate criteria and standards. Due to the lack of historical minutes available on the council's website it is hard to identify the process followed once the internal audit is received. Both the internal and external audit reports should be tabled in full to the next available council meetings so that they can be scrutinised and understood by all Councillors.
47. A local Council is established by statute. It must comply with the law and have regard to applicable codes of practice. Those who are responsible for the conduct of public business and for spending public money are accountable for ensuring that public business is conducted in accordance with the law and applicable proper

³⁰ <https://www.mountsorrelparishcouncil.co.uk/your-Councillors/>

³¹ <https://www.mountsorrelparishcouncil.co.uk/wp-content/uploads/2016/08/Common-Members-Code-of-Conduct-for-Leicestershire-parishes.doc>

³² <https://www.leicestershireandrutlandalc.gov.uk/effective-local-Council-minutes.html>

³³ <http://www.kirbymuxloe-pc.org.uk/docs/view.php?file=Reports/Reports%20in%20the%20Public%20Interest/Report%20in%20the%20Public%20Interest%202011-12.pdf>

³⁴ <https://www.nao.org.uk/code-audit-practice/wp-content/uploads/sites/29/2015/03/Council-accounts-a-guide-to-your-rights.pdf>

practices. They must also ensure that public money is safeguarded, properly accounted for and used economically, efficiently and effectively.

48. In discharging this accountability, public bodies and those responsible for their management are required to make, and comply with, proper arrangements for the governance of their affairs and the stewardship of the resources in their care. They are required to report on these arrangements in their published Annual Governance Statement.
49. In its Annual Governance Statement a Council (i.e. the Councillors collectively) must make a series of statement that as a whole acknowledge it has discharged its responsibility to take reasonable steps to satisfy itself that there had been no instances of non-compliance with laws, regulations or proper practices that could have a significant effect on the ability of the Council to conduct its business or its finances. With the recent three fold increase in the council tax charged to parishioners and the overspend on the MMC project particular scrutiny should be given to this statement when considering any changes to council practices required in order for Councillors to be comfortable in making this assertion.
50. As with all statements on the Annual Governance Statement a Council should only tick “yes” to any of the statements if, to the best of their belief and knowledge, the Council is able to give that assurance, as in doing so they are acknowledging their responsibilities in respect to all the statements contained within the Annual Governance Statement. It is a matter for Mountsorrel Parish Council as to whether anything in this report has an impact on how the Council responds to any of the required statements for the 2019-20 year.
51. A Council should ensure that it holds evidence to show that it has complied with all the statements on the Annual Governance Statement, and effective minutes and written reports to council are an appropriate way of ensuring that such evidence is available should external auditors request it to test assertions made by a council.
52. A common choice for testing has previously been Assertion 3³⁵ where one of the intermediate review objectives is to show that all expenditure and income decisions made are within existing [legal] powers and are minuted. This includes expenditure authorised by officers using delegated powers.
53. National Audit Office guidance³⁶ says that required evidence should be proportionate but an example of the additional information which may be requested is “Copies of minutes for a selected period showing expenditure and income powers have been properly identified.”
54. The council has been through significant change over the past 3 years with a very large increase in budget and 3 major projects to run. Whilst it has been very successful in securing large amounts of capital, including s106, grants and using its own resources to fund these there has been a lack of planning to deal with the

³⁵ “We took all reasonable steps to assure ourselves that there are no matters of actual or potential non-compliance with laws, regulations and Proper Practices that could have a significant financial effect on the ability of this authority to conduct its business or manage its finances”.

³⁶ <https://www.nao.org.uk/code-audit-practice/wp-content/uploads/sites/29/2015/03/Auditor-Guidance-Note-02-Specified-Procedures-for-Assurance-Engagements-at-Smaller-Authorities.pdf>

revenue consequences of these large capital projects. There is still no business plan for the Memorial Centre even though it has been open for some time. There is also no agreement about whether it should aim to break even by maximising income or be a free or low-cost community facility.

55. The lease agreement with the War Memorial Trust places a significant financial burden on the PC for an exceptional period of time (125 years) and it would be unwise if this were to be replicated with any further council projects. As already mentioned this lease agreement should be revisited to understand whether it is possible to change it to improve the position of the council. Some Councillors have already queried revisiting the agreement and were reportedly told that this was not possible. It is not clear what was meant by this but any lease agreement can be amended with the agreement of both parties. Even if this is not possible at the extreme end of the scale one party can usually exit a lease though there will usually be consequences for that party.
56. There is tension and at times conflict between Councillors, often between those newly elected and those who have held office for some time. Some of this stems from concerns of new Councillors about the MMC and the precept increase. As a consequence, they have asked many questions and challenged some previous decisions. They would argue that they have not been given the information they have requested and that there is a lack of transparency and co-operation. (eg MC accounts, staffing structure, budgets, conflicts of interest between staff).
57. For example, there has been a challenge from the new Councillors about a Council decision which they feel has not been implemented and is being stalled, i.e. that the MC should operate as a conference centre. Understandably this level of questioning, and particularly about previous decisions, has provoked a defensive response and a degree of polarisation which is becoming entrenched. There is not full agreement about what the priorities of the Council are, which is also leading to tension. The budget for 2020-2021 was agreed unanimously following an amendment to reduce expenditure by £40,000 and after seven meetings of the Budget Working Party. Whilst there was some concern about how long this took the process clearly worked in building a consensus.
58. Some Councillors have raised the concern that they do not know what decisions they are being asked to make before they get to a meeting and this is only stated at the meeting. Some agenda items can be very open (e.g. staffing decisions at Extraordinary Council meeting on 17.2.20³⁷) and without background papers it is hard to see the audit trail that supports informed decision making.³⁸
59. There has been no induction of new Councillors or work done to build a team or 'one council' approach to working together.

³⁷ We have had sight of this agenda but unfortunately neither the agenda or minutes for this meeting are provided when following the link to the meeting <https://www.mountsorrelparishcouncil.co.uk/event/special-council-meeting-17-february-2020/>

³⁸ It should be noted that since the first draft of this report was completed there has been an increase in the number of agenda items for which there is a supporting report provided.

Decision Making Structures

60. LRALC's role is not to adjudicate on the wisdom or otherwise of what a member Council has done, nor any disagreements about methods of governance between Councillors, etc. This report makes a series of observations and recommendations based on statute, proper practices, and good governance standards identified in the Local Council Award Scheme³⁹ and by the Independent Commission on Good Governance in Public Services⁴⁰.
61. The current Committee structure is somewhat demanding on the Council's resources. In addition, in some instances the responsibilities of these Committees seems to overlap or lack clarity
62. The Terms of Reference and membership for each Committee are set out on the Council's website. The Terms of Reference do not specify the size of Committee membership but do specify membership at any given time. It should be noted that Councillors not on a Committee must leave the meeting if it votes to go in to closed session along with the public and press.
63. However, as this report will recommend a restructuring of the entire Committee system for the Council I will not provide any further analysis of the existing Terms of Reference documents as if the recommendations are adopted by the Council it can ensure that with LRALC's support it adopts appropriate Terms of Reference documents.
64. Whilst MPC is genuinely to be commended on what it has achieved and provides (and aims to continue to do so) for the village and its residents with limited human resources, the risks posed to the Council by some of the current methods of working are in some cases, in this author's view, potentially high and very real.
65. Tabled written risk assessments for proposed capital and other major projects do not appear to be part of the decision-making process for the Council. Such risk assessments are not intended to be the stereotypical "health and safety" style assessment but rather a primary and initial part of the decision-making process about whether a specific project should go ahead. This process also provides a mechanism for weighing the benefits against costs for major commitments. These risk assessments are designed to protect the Council and ensure that it takes no unacceptable risks with public money. Project risk assessments also assist in ensuring that project management controls are operating effectively and are managed at a corporate rather than individual level.
66. Before addressing the detailed recommendations for a future Committee structure and Terms of Reference it may be helpful to lay out the legal position, and the very real risks posed by non-compliance with statute, policy, and proper practices.

³⁹ <https://www.nalc.gov.uk/library/our-work/lcas/1855-local-Council-award-scheme-guide-2016-pdf>

⁴⁰ <https://www.jrf.org.uk/report/good-governance-standard-public-services>

67. Section 101 of the Local Government Act 1972 allows local Councils to appoint one or more Committees or Sub-Committees to discharge any of its functions⁴¹. It is not necessary for the Council to ratify Committee decisions where delegated authority has been given by Council, decisions are simply reported back to Council in an appropriate manner. The calling in of Committee decisions should only be done in exceptional circumstances and with compelling and clearly outlined reasons. The council should trust its Committees to discharge their functions without undue interference.
68. However, chapter 6 of Local Councils Explained⁴² explains the necessity and importance of having effective reporting structures⁴³ within local Councils that have a Committee structure, as Committees and Sub-Committees are undertaking work for and on behalf of the Council. Ultimately Council retains full control over all aspects of its work (e.g. Council can still take decisions on matters which it has delegated to a Committee). It is the job of Council as a whole to hold Committees to account and ensure they are being properly governed and are operating in a compliant manner.
69. As Local Councils Explained says “If the minutes of the Committee or the Sub-Committee meeting do not provide sufficient information for the appointing body it may request a report from a Committee or Sub-Committee”. Although this should be the exception rather than normal practice it is acceptable where felt necessary by the appointing body (e.g. Council as the appointing body of a Committee) in discharging its governance responsibilities. Unlike minutes a report may better explain the reasons or factors for recommending a course of action/making decision and may confirm alternative courses of action that have been considered but rejected. For major projects this will provide an audit trail which will demonstrate and evidence the proper management of risk, compliance with rules/statute, and the use of internal controls.
70. The creation/dissolution, membership and terms of office of Committees is fixed by the Council, and of Sub-Committees by the appointing Committee (unless Council specifically withdraws authority to create such bodies in the approved Terms of Reference).
71. In constituting Sub-Committees the appropriate Committee (and the Council as a whole) should have full regard to the implications on the Officer and Member workload of such creation, and I would advise should only be established following consideration of a written report outlining the purposes of such body, why the matters in question cannot be dealt with direct by the main Committee, and proposed Terms of Reference.
72. It is unwise to have formal Committees/Sub-Committees (especially decision-making ones) that meet without the relevant Officer (usually the Clerk or a deputy)

⁴¹ See para 1 of NALC Legal Topic Note 1

⁴² <https://www.nalc.gov.uk/publications>

⁴³ Page 128 Local Councils Explained

in attendance as this can lead to the Proper Officer⁴⁴ for the Council not having knowledge or control of key areas of the administration of the Council.

73. Committee members should not be enacting or implementing operational decisions they have made which the Council's own procedures (e.g. Financial Regulations, Scheme of Delegation, Job Descriptions, etc) specify are the responsibility of an Officer. This separation of duties between Officers and Councillors is not only an essential part of a Council's internal controls, it also means that the Clerk in either of their statutory roles (Responsible Financial Officer or Proper Officer) is informed and in full control of all areas they are responsible for. This in itself reduces risk in a number of areas.
74. Another issue which was identified during the Officer/Councillor 1:1 interviews was the potential that the Council was at times in contravention of the Hillingdon case law⁴⁵ which means that a Council cannot delegate the performance of its statutory and legal responsibilities to an individual Councillor, including the Chairman. It is also not possible for a group of Councillors (e.g. Committee members) to take decisions relating to the performance of its statutory and legal responsibilities outside of a formal meeting environment, and this includes financial decisions. Such decisions cannot lawfully be "ratified" at a subsequent meeting. Spending cannot be retrospectively presented to Council as a done deed unless proper delegated authority is in place, and this cannot be given to Councillors.
75. ALL expenditure must be made in line with Financial Regulations and there are only a few very clearly defined areas in your Financial Regulations where expenditure can be made without explicit prior authorisation by the relevant body. There have been occasions where it appears the Financial Regulations have not been followed but I do not intend to go into these in detail as it risks creating further conflict within the Council. However, looking forward the Council MUST ensure that it follows its own Financial Regulations or suspends (and records the suspension of) the relevant standing order where lawful and allowed.
76. Often there can be real benefit from establishing Sub-Committees or Advisory Committees to focus on specific areas of work, which require in-depth analysis; usually for task and finish projects. However these should be limited in number; it is unwise to create too many of these at any time and Council may decide not to give Committees the authority to set up Sub-Committees where it deems appropriate. The reason for the creation of the Social Media Working Party is not entirely clear (we can find no terms of reference for it) as it does not seem to be a priority area for the council in terms of their social media presence.
77. Several Councillors said that if they were starting with a blank sheet of paper they would not come up with the structure and operating model they find themselves working to. With the proposed new Committee structure my intention is not to stifle or restrict MPC's ability to carry on delivering quality services and facilities.
78. I would suggest there are four types of core activities which are essential for any local Council to discharge properly and effectively to allow a Council to meet its full

⁴⁴ Local Government Act 1972, s270

⁴⁵ See para 10 of NALC Legal Topic Note 1

potential. NALC's Local Council Award Scheme embeds these in its criteria⁴⁶. In simple terms they can be defined as:

- **Governing.** Usually this will include finance, audit, administration, internal organisational services, staffing, policy creation & review, performance management etc. A Committee with delegated authority in these areas is often seen as a Council's primary Committee and often go under a title such as Finance and General Purposes (commonly called F&GP), or a similar name such as Policy and Resources. This report proposes the former for Mountsorrel but the name is of lesser importance than the scope and remit (and of course, proper operation and demarcation of roles).
- **Doing.** This will include responsibility for the entirety of a Council's ground level and public facing services. For Mountsorrel these would be services such as parks, recreation grounds, public open spaces, children's play areas, Mountsorrel Memorial Centre, the library, and community events would all usually be reflected in the Terms of Reference. For Mountsorrel such a Committee should be titled Projects and Amenities Committee.
- **Representational matters.** This embraces all policy response to other third-party consultations, particularly providing the Council's formal response to planning applications but also embracing issues including for example, healthcare, environmental issues, government policy, sector legislation, etc. The latter types of policy issues seem to take a back seat compared to planning applications and highways issues and we would suggest that the council should look to strengthen its role in this area. This Committee is often called the Planning and Policy Committee and such would be proposed here.
- **Corporate Strategy and Business Planning** (see para 69 below).

79. If such a structure, or similar, was to be introduced into Mountsorrel and meetings frequency were to be bi-monthly (except Planning which will need to meet monthly or as required in order to meet Charnwood Borough Council consultation deadlines) then this would be more manageable than the current structure, and the logistical arrangements would look something like the following (with the Chairman of Council as ex-officio on all Committees):

- i. Council:
- ii. Lead Member: Chairman of the Council
- iii. Lead officer: Parish Clerk
- iv. Finance and General Purposes:
- v. Lead Member: Chairman of Finance and General Purposes Committee

⁴⁶ <https://www.nalc.gov.uk/library/our-work/lcas/1373-lcas-guide-jan-2015-v2/file>

- vi. Lead Officers: Parish Clerk/Responsible Finance Officer
- vii. Projects and Amenities
- viii. Lead Member: Chairman of Projects and Amenities Committee
- ix. Lead Officers: Parish Clerk (MC Manager as required)
- x. Planning and Policy:
- xi. Lead Member: Chairman of Planning and Policy Committee
- xii. Lead Officer: Administrative Officer

NB, the above allows for the Clerk to arrange Substitute officers to attend in the event of holidays or sickness.

- 80. If the Council chooses to adopt the above structure (or similar) LRALC would be able to provide draft Terms of Reference for consideration by Council.
- 81. The above structure does not contain a Personnel Committee; such responsibilities will fall under the Finance and General Purposes Committee which will have accountability for all resource-based matters. Clearly many will be looking for a justification for such a major change in approach.
- 82. The first point to make is that the current system seems not to be fit for purpose based on the interviews undertaken and issues described and observed. Next, and perhaps more importantly in terms of moving forward, the staffing budget is a significant element of total Council budget spend and in controlling the Council's resources overall it is important that there are not conflicting agendas, whilst recognising the important work, that needs to be achieved in this area as affirmed by the proposed Terms of Reference.
- 83. There is nothing to stop Council allowing the Finance and General Purposes Committee from creating a Personnel Sub-Committee with its own detailed Terms of Reference to address key HR based issues and recommend on to its parent Committee. An additional benefit to having such a Sub-Committee is that it could hear or investigate grievances/disciplinary matters (depending on the delegated authority given) which would then allow the parent Committee to hear any appeal that was lodged (for obvious reasons it is not advisable that the same body hears an appeal to its previous staffing decision). In such an instance a Sub-Committee could meet as required according to need.
- 84. It is recommended that the council forms sub-Committees instead of working parties. Although this would mean that there would be a statutory framework within which they would operate, this is minimal for sub-Committees (e.g. no public notice is required, and the public do not have a statutory right to attend sub-Committee meetings unlike with Committee meetings).
- 85. If the above model of three main standing Committees is considered appropriate then the next step would be to look at Councillor representation on those

Committees. In terms of workload it is intended that each Committee's would be broadly similar. By having clear and explicit Terms of Reference what I refer to as "the hard lines of authority" are clear and understood. Everyone knows where authority to make decisions or recommendations begins and ends. The point beyond which an issue is outside of their authority (and therefore, by default becomes the responsibility of Council) is a clear, hard line.

86. Members are often appointed to Committees according to skill sets, interests and experience. However, many Councils are increasingly setting as policy the requirement that Committee members (the Committee Chairman at the very least) must attend specified training before they can be appointed to such a Committee, so where democracy overrules experience members can still be supported in fulfilling their role effectively. LRALC provides training⁴⁷ in all the areas covered by the above Committee structure.

87. Committee membership could look like this:

- Finance and General Purposes Committee – Chairpersons of the other two Standing Committees, six other members plus Chairman of the Council as ex-officio.
- Projects and Amenities Committee – seven members plus Chairman of the Council as ex-officio,
- Planning and Policy Committee - seven members plus Chairman of the Council as ex-officio,

88. An ex-officio member of a Committee is a member who is part of it by virtue of holding another office, i.e. "by right of office". There is often a misconception that the participatory rights of ex-officio members are limited by their status; this is incorrect. The term denotes only how one becomes a member of the Committee, not what that member's rights are. It is a method of sitting on a Committee, not a class of membership. Ex-officio members can be afforded the same rights as other members, including debating, making formal motions and voting, and I recommend that this is applied here.

89. It would also be perfectly appropriate for non-Councillors to be appointed to Sub-Committees for example where individual expertise and knowledge can be invaluable, specifically in relation to task and finish sub-Committees.

90. I would suggest that with a Council that has the ambition and drive that MPC has one other matter that should be considered if any review of the Council's governance structure is to be complete is that of overall Council strategic development. As the Local Council Award Scheme (LCAS) recognises, best practice suggests a Council should have a strategic/business plan covering a financial forecast for at least three years linked to revenue and capital plans for the Council and its community.

⁴⁷ <https://www.leicestershireandrutlandalc.gov.uk/list-of-courses.html>

91. The drafting and development of a new strategic plan (and identification of corporate priorities which would influence all decisions made by the Council and its Committees) could be led by the creation of a Chairperson's Group to drive forward the Council's priorities and strategy. Alternatively, this task can be done by involving all members of Council (LRALC facilitates strategic planning and priority setting away-day sessions for all Council members for example). Further advice and guidance on this area is available upon request from LRALC.
92. A mistake made by many proactive and ambitious councils is that their plans are solely outward looking and do not have any objectives that relate to the organisation itself, e.g. inward-looking objectives that deal with corporate matters (e.g. an objective to transform the internal workings of the Council to modernise the way the Council operates and delivers, one of the actions under this objective could be to go "paperless"). Such matters should be viewed as being just as important as those outward looking "community" outcomes. If the Council's corporate and its resources and structures are not maintained and developed (i.e. firm foundations to build service delivery on) then those community outcomes will suffer or, worst case scenario, be undeliverable or fail.
93. Although uncommon in Leicestershire, we are aware that in other parts of the country some Councils have created a Chairperson's Group to drive forward strategic/business planning policy. These groups would also include the Clerk in their role as Proper Officer/RFO and would provide a focus for reviewing business undertaken in the previous cycle, progress against policy decisions generally and priority areas for action in the forward cycle. Such a group would have no decision-making powers but would serve as a monitoring and overview body. Alternatively, this function could be delivered by Council through its meetings.
94. I would recommend that MPC should introduce a new Committee structure to take effect as soon as possible during the 2020/2021 civic year in broad accordance with proposals contained in this report. New Terms of Reference should be agreed for the three recommended Standing Committees having regard to not only the structural changes proposed in this review report, but also the other observations relating to Committees and Sub-Committees.
95. To conclude, taken in conjunction with the proposed Staffing Review, if all the recommendations and observations contained within this report are acted upon the Council will be looking at comprehensive organisational restructuring, a major project in itself. It is suggested that the recommendations of both reports are compiled into an Action Plan. A good example of such a plan can be found on Uppingham Town Council's website⁴⁸ (LRALC has also provided an action plan template which contains the main recommendations from this report in summary form). This will assist the Council in ensuring the process is closer to evolution rather than revolution.

Jake Atkinson

Chief Executive, LRALC, 23rd April 2020.

⁴⁸ <https://www.uppinghamtowncouncil.gov.uk/uploads/2017-11-07-lgrc-action-plan.pdf>