

Appendix 3

Legal Implications

- 1.0 The Committee on Standards in Public Life published 15 recommendations on local government ethical standards best practice. Recommendation 14 states that "*Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.*"
- 2.0 The council may require that certain decisions of the shareholder (within the council's typical levels of materiality and thresholds in its schemes of delegation) require ratification by the Section 151 Officer and/or Monitoring Officer
- 3.0 A review of companies' house should be undertaken to ensure all companies and Directors are recorded correctly
- 4.0 A review of all companies should be undertaken to ensure they are Legally compliant
- 5.0 A review of all current SLA's should be undertaken
- 6.0 Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies.
- 7.0 All potential conflicts of interest should be referred to the council's Monitoring Officer for a decision about whether a conflict exists.
- 8.0 The Council has the power to set up companies or bodies, which they own. Section 1(1) of the Localism Act 2011 introduced the "general power of competence" for local authorities, defined as "the power to do anything that individuals generally may do" and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area. The generality of the power conferred by subsection (1) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power. This has led to the creation of New Companies including wholly owned and partly owned companies and joint ventures with either the public or the private sector. Buckinghamshire Council have inherited Legacy companies set up prior to Unitary in 2020
- 9.0 Section 4(2) of the Localism Act 2011 provides that where, in exercise of the general power, a local authority does things for a commercial purpose the authority must do them through a company.
- 10.0 Section 95 of the Local Government Act 2003 authorises the Council to do for a commercial purpose anything which it is authorised to do for carrying on any of its

ordinary functions (other than where it is under a statutory duty to provide that function) however, this power is only exercisable through a company.

- 11.0 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- 12.0 The Local Government Association's (LGA) guide on enterprising Councils, advises Councils that the governance framework should clearly articulate the role of Councillors and scrutiny.
- 13.0 The Committee on Standards in Public Life published 15 recommendations on local government ethical standards best practice. Recommendation 14 states that "Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place."
- 14.0 In recent months there has been significant consideration in the local government sector of how a number of Council owned companies have been less than successful. One of the highest profile examples is Robin Hood Energy Limited, a company wholly owned by Nottingham City Council. Following concerns regarding that company's governance, NCC instructed Grant Thornton UK LLP to conduct a governance review, and a Report in the Public Interest¹ prepared by them was published in 2020 under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.
- 15.0 The Public Interest Report concluded that: "Overall, the governance arrangements were overshadowed by [NCC's] determination that the Company should be a success, and this led to institutional blindness within the Council as a whole to the escalating risks involved, which were ultimately very significant risks to public money. Where concerns were raised by some individuals, these concerns were downplayed and the resulting actions insufficient".
- 16.0 The proposal to set up a Shareholder Committee, the Terms of Reference as set out as outlined in this report will ensure that the Council not only acts lawfully but also that current guidance and good practice recommendations as mentioned above are followed. The proposals will ensure improved governance of companies or bodies set up by the Council.