



## Buckinghamshire Shareholder Committee agenda

Date: Tuesday 19 July 2022

Time: 10.30 am

Venue: The Oculus, Buckinghamshire Council, Gatehouse Road, Aylesbury HP19 8FF

### Membership:

J Chilver (Chairman), S Broadbent, A Cranmer and P Strachan

<b>Agenda Item</b>	<b>Page No</b>
<b>1 Appointment of Chairman</b> To note the appointment of the Cabinet Member for Accessible Housing and Resources as the Chairman of the Buckinghamshire Shareholder Committee.	
<b>2 Apologies for absence</b>	
<b>3 Declarations of interest</b>	
<b>4 Introductions and Committee Membership</b> Chairman to confirm Committee Membership and Members and Officers in attendance to be introduced.	
<b>5 Terms of Reference and Role of the Committee</b> To note and comment on the Committee's Terms of Reference and to receive a brief overview of the role of the Shareholder Committee. Also attached for information are the report and legal implications that went to Cabinet on 29 March 2022.	<b>5 - 16</b>
<b>6 Exclusion of the public</b> <b>To resolve:</b>  that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in the paragraph indicated in Part 1 of Schedule 12A of the Act.	

## **Business Plans, Governance Arrangements and Financial Statements**

To consider:

- The current governance arrangements of each subsidiary including the Director appointments.
- The Shareholder / Member agreements and agree the timing and methodology for the review of these.
- The Business Plans and agree the timing and methodology for the review of these.

- 7 Aylesbury Vale Estates 17 - 276**
- |                                    |                 |
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| Business Plan                      | Pages 17 – 52   |
| Incorporation Document             | Pages 53 – 56   |
| AVE LLP Members Agreement          | Pages 57 – 224  |
| Board Report Q4 2021/22            | Pages 225 – 246 |
| Portfolio Performance Analysis     | Pages 247 – 250 |
| Draft Financial Statements 2021/22 | Pages 251 - 276 |
- 8 Consilio 277 - 368**
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|-------------------------------------|-----------------|
| Business Plan                       | Pages 279 – 294 |
| Final Financial Statements 2020/21  | Pages 295 – 312 |
| Draft Financial Statements 2021/22  | Pages 313 – 330 |
| Balance Sheet as at 31 March 2022   | Pages 331 – 332 |
| Profit and Loss as at 31 March 2022 | Pages 333 – 334 |
| Memorandum of Understanding         | Pages 335 - 368 |
- 9 Buckinghamshire Advantage 369 - 382**
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| Draft Business Plan                | Pages 369 – 374 |
| Final Financial Statements 2020/21 | Pages 375 - 382 |
- 10 Methods of Reporting**
- To consider the methods of reporting both to this Committee and to Cabinet on the performance of the Subsidiary Companies and to agree a mechanism to communicate the shareholder’s views to the Subsidiary through systematic engagement between the Chair/CEO and shareholder/member role to ensure effective performance against strategy and governance.
- 11 Training**
- Training for:
- Subsidiary’s Directors
  - Cabinet Members
- 12 Forward Plan Discussion**
- To discuss items for future meetings.
- 13 Date of next meeting**
- Wednesday 12 October at 10 a.m.

If you would like to attend a meeting, but need extra help to do so, for example because of a disability, please contact us as early as possible, so that we can try to put the right support in place.

For further information please contact: Leslie Ashton on 01895 837227, email [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk).

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## BUCKINGHAMSHIRE SHAREHOLDER COMMITTEE

### TERMS OF REFERENCE

#### 1. OVERVIEW

- 1.1 The Shareholder Committee forms part of the overall governance arrangements for Buckinghamshire Council ("**the Council**") in relation to companies and other legal entities which are wholly or partly owned or controlled by the Council (including where such control comes about indirectly, such as via a loan agreement) (each a "**Subsidiary**" and together the "**Subsidiaries**").

#### 2. CONSTITUTION

- 2.1 The members of the Shareholder Committee will be set to 4 Cabinet Members consisting of:
- 2.1.1 Cabinet Member for ~~Finance Resources and Property & Assets~~ Accessible Housing and Resources (as Chair);
  - 2.1.2 Deputy Leader and Cabinet Member for Planning and Regeneration
  - ~~2.1.3 Cabinet Member for Housing, Homelessness and Regulatory Services~~
  - ~~2.1.4~~ 2.1.3 Two ~~o~~Other Cabinet Member to be determined by Cabinet
- 2.2 Each Shareholder Committee member may nominate an alternate Cabinet Member to attend a meeting in their place.
- 2.3 The Shareholder Committee will be supported by Council officers as advisors primarily consisting of
- 2.3.1 Section 151 officer
  - 2.3.2 Director of Property and Assets
  - ~~2.3.2~~ 2.3.3 Director of Major Projects
  - ~~2.3.3~~ 2.3.4 Chief Legal Officer or representative
  - ~~2.3.4~~ 2.3.5 Other such officers as may be required including an officer/Member from the service the company or JV is supporting or suitably experienced non-Executive Director.
- 2.4 Committee advisory officer may nominate an alternate officer to attend a meeting in their place.
- 2.5 The Shareholder Committee will appoint the Cabinet Member for ~~Finance Resources and Property & Assets~~ Accessible Housing and Resources as Chair of the Shareholder Committee. If the Chair is not present at the start of a meeting of the Shareholder Committee, those members present will appoint one of the members present to chair that meeting.
- 2.6 Additional advisors, who do not need to be officers or members of the Council, may be invited to attend the Shareholder Committee as required.
- 2.7 The Committee will need to follow and have regard to the rules set out in the Constitution including the finance procedure rules.

### 3. ROLE OF THE SHAREHOLDER COMMITTEE

- 3.1 The Shareholder Committee will have a role in ensuring proper governance of the Council's Subsidiaries, such role to include:
- 3.1.1 monitoring information from each Subsidiary, in particular on financial and other risks and escalating such risks within the Council as appropriate.
  - 3.1.2 exercising decisions relating to the Council's role as shareholder, member, owner, lender, or other position of significant control over the Subsidiary, where those decisions have been delegated to the Shareholder Committee;
  - 3.1.3 making reports and recommendations to the Cabinet on areas outside of the Shareholder Committee's delegated authority;
  - 3.1.4 Agreeing and entering into a Memorandum of Agreement (see 3.2below) with each of the Council's Subsidiaries;
  - 3.1.5 The necessary oversight, from a shareholder's perspective, that the parameters, policies, and boundaries, that the council has established are being adhered to including a regular review of whether the Subsidiary provides the most effective vehicle to deliver the outcomes it requires and whether there are viable alternative models which might offer a more effective means of delivering its priorities;
  - 3.1.6 An articulation of what success looks like in terms of delivery models to meet objectives such as achieving social outcomes and/or a return on investment;
  - 3.1.7 Agree a mechanism to communicate the shareholder's views to the Subsidiary by effecting systematic engagement between the Chair/CEO and shareholder role to assure effective performance against strategy and governance;
  - 3.1.8 Provide a holistic review of risk to the Council offered by all active Subsidiaries;
  - 3.1.9 Consider and advise on the duties and if any, the training needs of potential Directors to allow them to competently assume this role;
  - 3.1.10 Making representations to the Directors on the Business Plans of the Subsidiary Companies or other organisations set out in this report;
  - 3.1.11 Receiving reports from the Directors where appropriate, on the progress and conduct of business in accordance with the approved Business Plan;
  - 3.1.12 Reporting to the Cabinet on the performance of the Subsidiary Companies;
  - 3.1.13 Undertaking due diligence on the various Subsidiary Companies to ensure liabilities are known and accounted for within the Council;
  - 3.1.14 Deciding whether a particular Subsidiary needs to be under the oversight of a specific service area;
  - 3.1.15 In the case of forming a new Subsidiary, the committee will first scrutinise the business case for forming the Subsidiary to clarify the service components to be delivered, outcomes sought and options for how these may be delivered and undergo an effective comparison of alternative delivery models to ensure that the objectives, timescales, and drivers of forming the Subsidiary is the optimum approach and; An advisory paper will be submitted to Cabinet for a decision.
- 3.2 It is expected that each Subsidiary will enter into a form of agreement with the Council (whether as owner, controller or lender) setting out the basis of the relationship between them (each a "**Memorandum of Agreement**").

3.3 A detailed description of the Shareholder Committee's role in relation to each Subsidiary will be set out in the relevant Memorandum of Agreement.

3.4 Authority to make decisions on behalf of the Council is delegated to the Shareholder Committee for each Subsidiary as follows:

3.4.1 Oversight of any decisions that can only be made by the shareholder, (whether as “reserved matters” under the Memorandum of Agreement and Articles of Association or pursuant to the relevant legislation applicable to that Subsidiary) such as :

Approval of Memorandum of Agreement with each Subsidiary
Approval of annual Business Plan and deviations from Business Plan.
Approval of key appointments (including appointment, removal and or replacement of Directors)
Borrowing money, granting security and giving of guarantees
Winding up of Subsidiary
Altering in any respect the articles of association of a Subsidiary (or any other governing document such as the Rules of a Community Benefit Society)
Altering the rights attaching to any of the shares in a Subsidiary
Permitting the registration of any person as a shareholder or member of a Subsidiary
Ensuring that subsidiaries or the subsidiaries interests are not competing against or conflicting with, other subsidiaries or their interests
Ensure that the Council appointments to the board of a Subsidiary comply with the Council’s constitution
Establish proper arrangements to manage potential conflicts of interest in respect of Council Officers appointed to the board of a Subsidiary
Correctly approve pay and pension arrangements in respect of both key employees of the Subsidiary and Council Officers appointed to the board of a Subsidiary and ensure that decisions made to make termination payments are in line with the law and the Subsidiary’s controlling documents.
Amending the amount of a Subsidiary's issued share capital
Altering the name of any Subsidiary

3.4.2 Any Memorandum of Agreement entered into with a Subsidiary may identify additional decisions which are delegated by Cabinet to the Shareholder Committee in relation to that Subsidiary only.

3.5 Decisions which are not delegated to the Shareholder Committee in accordance with 3.4 above will be taken through the usual decision-making processes in accordance with the Council's governance and constitutional framework. This will include decisions relating to the issue of loan capital in relation to any Subsidiary and to any approvals relating to any intra-group loans.

#### **4. OPERATION OF THE SHAREHOLDER COMMITTEE**

4.1 The Shareholder Committee will meet three times per year, or more frequently if required.

4.2 The quorum for a meeting of the Shareholder Committee is a minimum of 2 members.

4.3 Meetings will be held in public or otherwise in line with the Council's democratic meeting protocol. There may be particular matters or agenda items which are required to be considered in private due to commercial confidentiality, and these will be handled in accordance with the Council's usual democratic protocol.

4.4 Minutes and agendas will be managed and published in accordance with the Council's usual democratic protocol.

4.5 The Shareholder Committee shall make its decisions as follows:

4.5.1 At meetings of its members by consensus of those present, unless any member of the Shareholder Committee requires a vote, in which event a majority decision will be taken with each member of the Shareholder Committee present having a single vote. Advisors and officers present to support the Shareholder Committee will not have a vote. The Chair of the meeting has a casting vote in the event that there is no clear majority; or

4.5.2 In cases of urgency, by a decision made by the Leader or by an alternate Cabinet Member nominated by the Leader.

4.6 After each meeting, the Chair shall approve the minutes and authorise the implementation of the Shareholder Committee's decisions, including where relevant the signature of any documents by appropriate Council signatories.

4.7 The Shareholder Committee will review the Terms of Reference annually and make any necessary recommendations to Cabinet.





## Report to Cabinet

**Date:**

**Cabinet 29<sup>th</sup> March 2022**

**Title:**

**Buckinghamshire Council Companies Governance**

Authorisation to form a Committee of Cabinet to act as Shareholder / Member representative to ensure proper Governance for companies owned or part owned by Buckinghamshire Council

**Cabinet Member(s):**

**Cllr John Chilver: Cabinet Member for Finance, Resources and Property & Assets**

**Contact officer:**

David Pearce

**Ward(s) affected:**

None specific

**Appendices:**

**Appendix 1 - Local Partnerships, Local Authority Companies Review Guidance (use link [shorturl.at/klAY8](https://shorturl.at/klAY8))**

**Appendix 2 - Draft Terms of Reference**

**Appendix 3 - Legal Implications**

**Recommendations:**

**1. Approve the creation of Shareholder / Member Committee as detailed in this report to ensure that its companies and limited liability partnerships act in the interests of the Council as shareholder, Member and /or lender and contribute to the Council's objectives.**

**2. Note the draft Terms of Reference as set out at Appendix 2 and delegate approval of final terms to Director of Property and Assets in consultation with the Cabinet Member for Finance, Resources and Property & Assets.**

**3. Delegate authority to the Director for Property and Assets in consultation with the Shareholder / Member**

**Committee to agree final terms and enter into each Memorandum of Agreement with the relevant company and/or Limited Liability Partnership.**

**4. Delegate authority to the Director for Property and Assets in consultation with the Shareholder / Member Committee to approve final terms and arrange to enter into any Service Level Agreements where corporate functions provide support services to the relevant company and/or Limited Liability Partnership.**

**Reasons for Decision:**

1. The recommendations proposed will improve the Council's company governance arrangements and will allow the Council to closely monitor its interest within each of its companies and societies with increased clarity, transparency, and reporting.

2. The proposals will better ensure that the Council and its subsidiaries are meeting their legal and statutory responsibilities, and are practising good governance.

3. The proposed Shareholder Committee will be a committee of the Cabinet and therefore a Cabinet decision is needed.

**1. Executive Summary**

1.1 Buckinghamshire Council has a number of mainly property based subsidiary companies and limited liability partnerships in place and it is timely to review overall the governance arrangements to ensure continued visibility and reinforce best practise to deliver statutory arrangements.

1.2 An audit report on Nottingham City Council's arrangements relating to its company, Robin Hood Energy, stresses the need to ensure that "sufficient checks and balances are in place and in particular that risks are appropriately recognised and managed, that there is an effective scrutiny function and that challenge of political priorities by both members and officers is seen as a positive. This provides an important message that all councils establishing commercial entities should be alive to what is referred to as "institutional blindness".

1.3 The Council is also aware that external auditors, such as Grant Thornton, have issued public interest reports where local authority companies have performed poorly and where it was found that governance arrangements were not adequate.

- 1.4 Buckinghamshire Council is committed to maintaining strong and robust governance to ensure that decisions are taken in the best interests of the communities it serves. As part of this commitment, the Council constantly reviews its governance arrangements alongside learning best practice with other authorities to ensure the Council continues to meet its statutory obligations in the best way.
- 1.5 Oversight of the Council's companies and limited liability partnerships is currently in place with visibility of board minutes and supporting papers being sent to the relevant Cabinet Members, Cabinet Member for Finance, Resources and Property & Assets, and senior officers: Director for Property and Assets, Head of Legal, Section 151 officer, and Head of Finance. Business plans of subsidiaries are scrutinised by Cabinet and the Finance and Resources Scrutiny Committee. Finance officers regularly attend board meetings of Consilio Property Ltd and Buckinghamshire Advantage, two of our companies.
- 1.6 The proposal for a shareholder committee is consistent with the best practice advice in the recent Local Authorities Companies Review Guidance (use link [shorturl.at/kIAY8](https://shorturl.at/kIAY8)).
- 1.7 The Council has inherited several Property based companies and a LLP which will, together with any future companies to be owned by the Council, require on-going management and oversight. The companies which Buckinghamshire Council currently owns or has an involvement with and to which this report immediately applies are set out below:
  - a) **Buckinghamshire Advantage** (100% BC ownership)
  - b) **Consilio Property Ltd** (100% BC ownership)
  - c) **London Road Business Park Management Ltd** (100% BC ownership)
  - d) **Aylesbury Vale Estates (50% BC ownership)** In this case the Committee may need to consider other shareholder interests when exercising its powers

## 2. Other options considered

- 2.1 **Option 1** – Do nothing. The Companies, and LLP are to a varying degree active and lack any formal shareholder standardisation and oversight. **This is not a recommended option**
- 2.2 **Option 2** – Form a Committee of Cabinet to act as the Council's shareholder and corporate trustee representatives to receive reports and monitor the activities of the Companies and LLP; and to undertake the further work identified in the recommendations. If required take steps to amend the constitution. **This option is recommended.**

### **3. Financial implications**

- 3.1 The proposals set out in this report seek to strengthen and consolidate the financial monitoring undertaken in terms of the Council's subsidiary companies and limited liability partnerships. Key financial monitoring information will be brought together for the Shareholder Committee. This will provide a regular snapshot of the financial performance of each company and the group to support wider decision making. It will also help to raise early concerns about the financial position of any of the subsidiary companies/limited liability partnerships and where necessary discuss and agree appropriate actions.

### **4. Legal Implications**

- 4.1 These are detailed in Appendix 3.

### **5. Corporate implications**

- 5.1 Oversight of the activities of the Companies mentioned in this report would be undertaken by a new Cabinet Committee comprising selected Members and Officers, the Board will be constituted to be a shareholder representative committee to receive reports from the company Directors on the day-to-day activities of the Companies.
- 5.2 Reputationally the liabilities and benefits of all the legacy companies and limited liability partnerships rest with the Council. Due diligence would be undertaken to ensure any assets and liabilities relating to the Companies are known about and understood.
- 5.3 Committee members would similarly be supported in carrying out their roles, with training and development provided.
- 5.4 Some Companies may have access to substantial potential, and this would be kept under review on a case-by-case basis and monitored by the Committee.
- 5.5 Similar arrangements will need to be considered for Council owned Trusts and Charities and reviews made of information provided to the Charity Commission including filed annual returns in respect of the charities registered with the Commission, and for which the Council is the corporate trustee. This would be the subject of a separate report to Cabinet.

## **6. Local Councillors & Community Board Consultation and Views**

- 6.1 As this report does not relate to a specific locality in this instance Local Councillors and Community Groups views have not been sought.

## **7. Communication, engagement & further consultation**

- 7.1 Other than extensive internal due diligence, regard has been given to background papers referenced in section 11.
- 7.2 There are no further planned communications, consultation or engagement.

## **8. Next steps and review**

- 8.1 Form Committee to Cabinet.
- 8.2 Draft articles of association, shareholders agreements and matters to be reserved to shareholders and seek Cabinet approval.
- 8.3 Develop a support programme for proposed Committee members.
- 8.4 Undertake due diligence reviews on all Companies and Directors.
- 8.5 Regular reports will be submitted by the Committee to Cabinet at intervals to be agreed for any matters reserved for Cabinet decision, such as proposed material changes or budgets and risk changes.
- 8.6 Reports on Companies progress will be submitted by the shareholder to Cabinet at no less than annual intervals.

## **9. Background Papers**

Local Partnerships, Local Authority Companies Review Guidance 2021 (use link [shorturl.at/klAY8](http://shorturl.at/klAY8))

Report to Shadow cabinet on Companies, LLP, Trusts, and other organisational transfers to the Unitary Council 2020

City of Westminster Council Governance arrangements for Council owned companies and societies report to Cabinet July 2021

## **10. Your questions and views**

If you have any questions about the matters contained in this report, please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider, please inform the democratic services team. This can be done by **telephone 01296 764814** or **email [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk)**

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## 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 Interest<sup>1</sup> 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.



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