



Report to Cabinet

Date:

Cabinet 29th 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)*

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).
- 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)

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**