

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 Accessible Housing and Resources (as Chair);
 - 2.1.2 Cabinet Member for Planning and Regeneration
 - 2.1.3 Two other Cabinet Members to be determined by Cabinet
- 2.2 Each Shareholder Committee member may nominate an alternate Cabinet Member to attend a meeting in their place provided that said Member is not a Board Member of any of the subsidiaries and thus does not have a conflict of interest.
- 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
 - 2.3.3 Director of Major Projects
 - 2.3.4 Chief Legal Officer or representative
 - 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 provided that said officer is not a Board Member of any of the subsidiaries and thus does not have a conflict of interest.
- 2.5 The Shareholder Committee will appoint the Cabinet Member for 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.
 - 3.1.16 In the case of a recommendation to wind up an existing subsidiary, the Committee will review the current business case for the subsidiary and undergo an effective comparison of alternative delivery models to achieve the optimum approach (including the option of transferring the assets and liabilities into the Council), consider the components to be delivered, outcomes sought and financial implications of the different options. 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 <u>(subject to 3.1.16 above and an advisory paper to Cabinet)</u>
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.